

**(2008) 12 AHC CK 0057**

**Allahabad High Court**

**Case No:** None

Jainandan Tripathi

APPELLANT

Vs

State of U.P.and others

RESPONDENT

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**Date of Decision:** Dec. 5, 2008

**Hon'ble Judges:** V.K.Shukla, J

**Final Decision:** Dismissed

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### **Judgement**

V.K.Shukla, J.

In the present case Mahatama Harihar Das Uchchattar Madhyamik Vidyalaya Amuwari Narainpur, District Azamgarh is recognized institution under the provision of U.P. Act No. II of 1921. Earlier said institution in question was duly recognised as Junior High School and in the said institution Chutkum Ram was appointed as Headmaster and had been functioning as Headmaster in the institution since 1977. Institution in question was upgraded from Junior High School to High School on 01.10.2003. Managing Committee of the institution on 05.10.2003 on the premises that Chutkun Ram is not qualified to hold the charge of Principal, proceeded to pass resolution in favour of the petitioner and said resolution was duly approved by District Inspector of Schools and thereafter record in question reflects that complaint was made before District Inspector of Schools complaining therein that signature of junior incumbent has been attested. On the said complaint being made, District Inspector of Schools, Azamgarh called up both Jainandan Tripath and Chutkun Ram and thereafter after dates were fixed final decision has been taken in the matter on 03.11.2008. At this juncture present writ petition has been filed.

Sri Shesh Kumar, Advocate appearing with R.R. Tripathi, Advocate, contended with vehemence that in the present case order which has been passed by District Inspector of Schools is totally illegal order and same is without jurisdiction and the order of promotion of the petitioner attained finality, as such in this background writ petition deserves to be allowed.

Countering said submission Sri J.P. Singh, Advocate appearing for Chutkun Ram contended that on totally wrong premises earlier order has been passed, as such rightly order has been passed in favour of Chutkun Ram as such writ petition deserves to be dismissed.

After respective arguments have been advanced factual position qua which there is no dispute that at all point of time when institution in question was recognized up to Junior High School level, Chutkun Ram admittedly functioned as Headmaster of the institution and petitioner Jainandan Tripathi had been functioning as Assistant Teacher and on up gradation of the institution, the Headmaster of Junior High School in the event he is having requisite qualification, is entitled to be offered appointment as Headmaster of recognized High School.

In the present case resolution has been passed by Managing Committee on 05.10.2003 clearly mentioning therein that Chutkun Ram was ineligible as he was not having master's degree and on the basis of the same right of Chutkun Ram to function as Principal was defeated and same has been approved by District Inspector of Schools. Subsequent to the same Chutkun Ram has represented the matter before District Inspector of Schools and District Inspector of Schools has proceeded to examine the matter and then recorded categorical finding of fact that Chutkun Ram had already acquired his Master's degree from Sampurnanand Sanskrit Mahavidyalaya, Varanasi, result of which has already been declared on 28.03.2003 and in this background decision has been taken that entire resolution passed by Managing Committee of the institution was motivated one and senior most teacher should be given charge.

Once resolution had been passed by Managing Committee on totally wrong premises and based on the said wrong presumption approval has been accorded by the District Inspector of Schools then District Inspector of Schools has every right to revoke order passed on earlier occasion as it was clearly based on misrepresentation of facts Law is well settled that if any order is based on misrepresentation of facts then authority concerned has got full authority to review or revoke the said order. Managing Committee of the institution passed resolution based on the fact that Chutkun Ram was not qualified whereas fact of the matter is that Chutkun Ram had already acquired Master's Degree, result of which had already been declared on 28.03.2003. In this background once all these facts have been apprised to the District Inspector of Schools and thereafter District Inspector of Schools having come to this conclusion that fact was concealed and fact of the matter is that Chutkun Ram had acquired Master's degree, in this background, as it is well settled that senior most eligible teacher is only entitled to function as ad hoc Principal, view taken by District Inspector of Schools is correct view in the fact of the present case. Any interference with the aforesaid impugned order in question would amount to restoring another illegal action of permitting junior incumbent to function on adhoc Principal visaviz senior most person qua whom there is no

dispute that at Junior High School level he had been functioning as Headmaster and petitioner was functioning as Assistant Teacher under him. Consequently, in the facts of the present case this Court refuses to interfere with the impugned order in question.

Consequently, present writ petition is dismissed.

No order as to cost.