

**(2004) 10 AHC CK 0191**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 21158 of 2004

Committee of Management,  
Patel Vidyapith Inter College and  
Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Oct. 28, 2004

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 - Section 6(3)

**Citation:** (2005) 5 AWC 4933 : (2005) 1 UPLBEC 1028

**Hon'ble Judges:** Arun Tandon, J

**Bench:** Single Bench

**Advocate:** Ashok Khare and S.D. Shukla, for the Appellant; K.P. Shukla, S.N. Verma, M.P. Sarraf and S.C., for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Arun Tandon, J.

Heard Sri S.D. Shukla on behalf of the petitioner, Sri S.N. Verma on behalf of respondent Nos. 5 to 7 and learned Standing Counsel on behalf of respondent Nos. 1 to 4.

2. Patel Vidyapith Inter College Baraur, District Kanpur Dehat is an aided and recognized institution under the provisions of the Intermediate Education Act. The provisions of the said Act as also those of the U.P. High School and Intermediate Colleges (Teachers and other Employees Payment of Salary) Act, 1971 are fully applicable to the Teachers and Staff of said institution.

3. Sri J.K. Singh, who claims himself to be the Manager of the Committee of Management of the said institution, has filed this writ petition against the order of

the Regional Joint Director of Education dated 18th May, 2004 whereby the Regional Joint Director of Education has appointed a Prabandh Sanchalak in the institution. The said order of the Joint Director of Education has been challenged amongst other on the two grounds (a) that the reply submitted by the petitioner to the show cause notice dated 14th April, 2004, which was duly received in the office of the District Inspector of Schools on 19th April, 2004 has not been taken into consideration while passing the impugned order and, as such, there has been violation of the principles of natural justice, (b) the appointment of respondent Nos. 5 and 6 was made by the Principal of the institution against whom disciplinary proceedings were pending and consequently the Management was justified in not carrying out the direction of District Inspector of Schools directing the payment of salary to the aforesaid persons.

4. On behalf of the respondents it is submitted that the dispute with regards to the appointment of respondent Nos. 5 and 6 was raised by the petitioner himself by means of Writ Petition No. 38631 of 2003, Committee of Management v. State of U.P. and Ors. The writ petition was dismissed by the Hon"ble Supreme Court vide judgment and order dated 1st September, 2003 with the finding that the petitioner has no locus standi to challenge the appointment of Class IV employees inasmuch as the competent authority to make appointment is Principal of the institution. It is further submitted that there has been manifest non-compliance of the order of District Inspector of Schools and, therefore, no interference under Article 226 of the Constitution of India is called for.

5. I have heard Counsel for the parties and have gone through the records of the writ petition.

6. The first ground raised on behalf of the petitioner that there has been violation of principles of natural justice because of non-consideration of the reply submitted by the petitioner is concerned, suffice is to point out that every order passed in violation of the principles of natural justice need not to be set aside. One of the exception, as noticed by the Hon"ble Supreme Court, is that if only one view is possible in the matter, this Court has to keep in mind the said legal position while judging the merit of the case. From the facts, which are borne out from the records, it is apparently clear that respondent Nos. 5 and 6, who belong to scheduled caste, were appointed by the Principal of the institution after obtaining permission from the District Inspector of Schools and after necessary selection. The appointment of respondent Nos. 5 and 6 has also been approved by the District Inspector of Schools.

7. The Committee of Management of the institution, not being satisfied with the aforesaid appointments of the respondent Nos. 5 and 6 namely Palan and Sri Virendra Kumar, filed Writ Petition No. 38631 of 2003; Committee of Management v. State of U.P. and Ors. The writ petition was dismissed by this Court vide judgment and order dated 1st September, 2003. The judgment dated 1st September, 2003

reads as follows :

"The Principal is the competent authority for the appointment of Class IV employees. In filling up the backlog of reserved categories of Scheduled Castes, Scheduled Tribes and Backward, the Principal after due permission from the District Inspector of Schools, Meerut had filled up the posts" by holding interview in which about 64 candidates had appeared and two persons who had secured highest marks in the interview had been selected. The approval has also been given by the District Inspector of Schools, Kanpur Dehat. The petitioner is the Management Committee of the College and is not the appointing authority or respondent Nos. 5 and 6. No other candidate has challenged the selection.

The writ petition is misconceived and is dismissed."

8. In view of the aforesaid judgment of this Court, it is apparently clear that the Court was satisfied that the Committee of Management has no right to challenge the appointments of the aforesaid persons and further the Court has specifically noticed the various fact including the approval granted by the District Inspector of Schools with regards to the appointments of the respondent Nos. 5 and 6, In such circumstances, it is not open to petitioner to contend that the respondent Nos. 5 and 6 have not been validly appointed and, therefore, they are not entitled to payment of salary. In the opinion of the Court, the controversy in that regard has been settled between the parties under the judgment and order dated 1st September, 2003. The petitioner has not disclosed as to whether any appeal against the said order of the Hon"ble Single Judge dated 1st September, 2003 was filed or not and if filed what was the fate. In such circumstances, it is to be presumed that the order of the Hon"ble Single Judge has become final between the parties.

9. In such circumstances, the explanation furnished by the petitioner (copy whereof has been enclosed in the present writ petition) is of no consequence inasmuch as the controversy with regards to the appointments of respondent Nos. 5 and 6 has been settled up to the stage of Hon"ble High Court, it is not open to petitioner to reopen the said controversy by submitting reply to the notice issued by the educational authorities nor before this Court, under Article 226 of the Constitution of India in the present writ proceedings.

10. Thus, there is an admitted non-compliance of lawful order of the District Inspector of Schools directing payment of salary to respondent Nos. 5 and 6, passed in compliance of the judgment of this Court, referred to above.

11. In such circumstances, only one view is possible in the matter with regards to non-compliance of the lawful order of the District Inspector of Schools with regards to payment of salary to the respondent Nos. 5 and 6 i.e. the petitioner has not complied with the lawful direction, he, therefore, cannot be permitted to raise any objection with regards to appointment of Prabandh Sanchalak u/s 6 (3) of the Payment of Salary Act, 1971. This Court, while deciding the present petition, cannot

reopen the settled position with regards to appointment of respondent Nos. 5 and 6 as has been canvassed by the petitioner.

12. In such circumstances, the writ petition, as filed by the petitioner, is devoid of merit and is, accordingly, dismissed. Interim order, if any, stands discharged.