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**(2014) 03 AHC CK 0210**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 32334 of 1999

Devesh Kumar Sharma

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** March 7, 2014

**Citation:** (2014) 5 AWC 5210

**Hon'ble Judges:** Mahesh Chandra Tripathi, J

**Bench:** Single Bench

**Advocate:** V.K. Shukla and A.C. Tiwari, Advocate for the Appellant; Neeraj Tripathi and V.K. Rai, Advocate for the Respondent

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### **Judgement**

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Mahesh Chandra Tripathi, J.

Heard Sri A.C. Tiwari, learned counsel for the petitioner, learned standing counsel for the respondent Nos. 1 to 3 and Sri Neeraj Tripathi learned counsel for the respondent No. 4.

2. The present writ petition has been filed by the petitioner with the following prayers:

"(i) Issue a writ, order or direction in the nature of certiorari calling for the records of the case and to quash the order dated 30.6.1999 passed by the Secretary, Secondary Education, U.P. at Lucknow (Annexure-"7" to this writ petition).

(ii) Issue a writ, order or direction in the nature of mandamus commanding and restraining the respondents not to interfere in the functioning of the petitioner as Principal of Government Intermediate College, Pipari, District Sonbhadra during the pendency of the present writ petition, in any manner, whatsoever.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to ensure payment of salary to the petitioner in the capacity of Principal of Government Intermediate College, Pipari, District Sonbhadra, as and when, same falls due in accordance with law.

(iv) Award costs of the petition to the petitioner."

3. Brief facts of the case which give rise to the present writ petitioner are that the U.P. Public Service Commission, Allahabad had conducted examination for the post of Principal of Government Intermediate Colleges in the year 1997. The petitioner who was well qualified had appeared in the interview and became successful. The appointment letter No. 1060/15-1-99-8(2)/95 T.C. dated 19.4.1999 has been issued in favour of the petitioner. The same has been brought on record through Annexure-1 to the writ petition. In the said letter of appointment, the name of petitioner had been shown at serial No. 3 as Devesh Kumar Sharma, C-843, Guru Teg Bahadur Nagar, Kareli Scheme, Allahabad and in the next column his place of posting also shown as Principal of Rajkiya Inter College, Pahar Pani, Nainital.

4. Bare perusal of appointment letter dated 19.4.1999, it is clear that the said selection was made for the hill cadre. It is further clarified at this stage that at relevant point of time, State of Uttar Pradesh was not bifurcated and State of Uttranchal had not come into existence only in the year 2000 and prior to it, there were two cadres known as plain cadre and hill cadre. The relevant portion of the said appointment letter is quoted below:

5. Subsequently, the State Government had issued Government order dated 1.6.1999 numbered as 1471/15-1-99-8(2)/95 T.C. by which four persons were selected, out of which serial Nos. 1 to 2 had been selected as Deputy Director, Directorate, Uttar Pradesh and serial Nos. 3 and 4 had been given an appointment as Principal. The claim of the petitioner is that in the said letter, he has been placed at serial No. 3, namely, as Devesh Kumar Sharma, Principal, Rajkiya Inter College, Pipari, Sonbhadra. It is relevant to mention that the petitioner who was initially working in Central School at Allahabad, vide letter dated 5.5.1999 petitioner had informed to the Competent Authority regarding his appointment as Principal of Rajkiya Inter College, Pahar Pani, Nainital and asked for relieving (Annexure-2 to the writ petition).

6. The case set out by the petitioner that by virtue of appointment letter dated 1.6.1999 which had been issued in his name and had been sent at his residence, therefore, he was entitled for the benefit to get an appointment on the post of Principal, Rajkiya Inter College, Pipari, Sonbhadra in response to the letter dated 1.6.1999 (Annexure-4 to the writ petition). In pursuance to the said appointment letter dated 1.6.1999, the petitioner claimed that he had immediately handed over charge on 28.6.1999 to Sri Tulsi Ram, Lecturer (Hindi) in the afternoon. The said relieving letter is being brought on record as Annexure-5 to the writ petition. It is

clarified at this stage that the petitioner has not filed any joining letter as Principal of Rajkiya Inter College, Pahar Pani, Nainital but by virtue of relieving order dated 28.6.1999, it is apparent that he has joined the said place of posting. The State Government had immediately issued corrigendum on 30.6.1999 by which subsequent appointment letter dated 1.6.1999 had been rectified to the extent that serial No. 3 as Devesh Kumar Sharma be corrected by placing the name of Sri Devesh Kumar Mishra son of Bindeshwari Prasad Mishra Village Jhunsi, District Allahabad.

7. Aggrieved with the said corrigendum dated 30.6.1999, the petitioner has filed the present writ petition. This Court vide order dated 3.8.1999 stayed the impugned order dated 30.6.1999 until further orders of the court. It is pertinent to state that a detailed counter-affidavit had been filed in the present writ petition by the State immediately in the year 1999 which had been served to the petitioner's counsel on 22.9.1999. Whereas, the State Government has taken categorical stand in the matter that the petitioner had applied and had been appointed as Principal, Rajkiya Inter College, Pahar Pani, Nainital. The said appointment was specifically made for the hill cadre and in response, he joined actual place of posting as Principal, Rajkiya Inter College, Pahar Pani, Nainital.

8. The learned standing counsel submitted that the petitioner was initially appointed as Principal of Rajkiya Inter College, Pahar Pani, Nainital for the "Hill Cadre". It is further stated by learned standing counsel that once the petitioner was given appointment in the hill cadre, there was no occasion to transfer the petitioner or to give fresh appointment in the plain cadre on the basis of subsequent appointment letter dated 1.6.1999.

9. The Court has perused the record and heard the rival submissions. The letter dated 1.6.1999 clearly talks about an appointment for the plain cadre and there was no occasion to place the petitioner as Devesh Kumar Sharma at serial No. 3 on the post of Principal, Rajkiya Inter College, Pipari, Sonbhadra. There were two appointment letters, one was issued for hill cadre and another was issued for plain cadre and the selections were also different. The discrepancy which had cropped up due to inadvertence in the appointment letter dated 1.6.1999 whereby in place of Devesh Kumar Sharma, Devesh Kumar Mishra had to be shown. This discrepancy had been immediately rectified by the State Government by issuing corrigendum dated 30.6.1999.

10. In the present matter, stay vacation application has been filed on behalf of the State Government bringing on record the correct facts and in the garb of interim order, the petitioner continued to work as Principal, Rajkiya Inter College, Pipari, Sonbhadra and very lately in the year 2009, rejoinder-affidavit had been filed.

11. This is also surprising that once the petitioner had himself appeared in one selection process got an appointment letter which had taken place for the hill cadre

then by no stretch of imagination it can be presumed that he had been shifted from hill cadre to plain cadre without any proper procedure. There is also no pleading on the part of the petitioner that in fact the subsequent appointment letter dated 1.6.1999 which talks about plain cadre and he was entitled for appointment on the post of Principal, Rajkiya Inter College, Pipari, Sonbhadra. It is apparent from the record itself that there were two selections, one was held for the hill cadre and on the basis of interview, petitioner was selected and appointment letter dated 19.4.1999 had been issued in his favour (Annexure-1 to the writ petition). On the basis of another appointment letter dated 1.6.1999, the petitioner allegedly claimed for the plain cadre. The petitioner has not submitted any relevant document or made any pleading that he had also applied or participated in the subsequent interview for the plain cadre and he was entitled for the said benefit. When the discrepancy was found, the State Government through corrigendum had rectified the same. The petitioner has taken the benefit of surname with mala fide intent and had exploited the situation. He was well conversant with fact that he had applied for hill cadre where he was duly selected, joined the place of posting and eventually due to inadvertence in garb of letter dated 1.6.1999, he has taken over charge of Principal, Rajkiya Inter College, Pipari, Sonbhadra. It was his responsibility to apprise to the Competent Authority regarding the discrepancy that if he had not applied or appeared in any subsequent interview for the plain cadre then the second appointment letter dated 1.6.1999 could not be issued in his favour but he utterly failed in his duty and concealed the material facts and got an ex parte interim order in his favour. Even though fully conscious and aware of the fact that he had no entitlement for the post of Principal, Rajkiya Inter College, Pipari, Sonbhadra.

12. In the course of arguments, Sri Neeraj Tripathi, learned counsel for the respondent No. 4 has also informed that mean while respondent No. 4 who was validly selected candidate for the post of Principal. Rajkiya Inter College, Pipari, Sonbhadra had died.

13. The Court may visualize the traumatic situation of the deceased even though he was validly selected but unfortunately could not join.

14. With the aforesaid facts and circumstances, the writ petition is devoid of merit and accordingly dismissed. No order as to costs.