

Neutral Citation No. - 2023:AHC:221478

Court No. - 35

Case :- WRIT - A No. - 15960 of 2023

Petitioner :- Smt. Usha Singh And 2 Others

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Kamal Kumar Keshewani

Counsel for Respondent :- C.S.C.

Connected with

(E-Filing)

Case :- WRIT - A No. - 7771 of 2021

Petitioner :- Usha Devi

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Kamal Kumar Keshewani

Hon'ble Vikas Budhwar, J.

1. Rejoinder affidavit and affidavit of service filed are taken on record.

2. Heard Sri Kamal Kumar Keshewani, learned counsel for the writ petitioners in the leading and the connected writ petitions and Sri Saurabh, learned Standing Counsel who appears for the respondents no. 1 to 6 in the leading writ petition and the respondents no. 1 to 4 in the connected writ petition.

3. This Court entertained the leading writ petition on 11.10.2023 while seeking response and issuing notice to the seventh respondent, Committee of Management, Sri Gandhi Smarak Inter College, Bardah, District Azamgarh. There is an office report dated 4.11.2023 i.e. delivery upon the seventh respondent, Committee of Management, Sri Gandhi Smarak Inter College, Bardah, District Azamgarh is confirmed. In so far

as the connected writ petition is concerned probably the Committee of Management of the institution in question, Sri Gandhi Smarak Inter College, Bardah, District Azamgarh has been impleaded as the fifth respondent but notices have not been issued. However, in view of the order which is being proposed to be passed the interest of the Committee of Management is being protected so as to accord in opportunity post remand.

4. The case of the writ petitioners is that there happens to be an institution by the name of Sri Gandhi Smarak Inter College, Bardah, District Azamgarh which is recognised under the provisions of U.P. Intermediate Education Act, 1921, the provisions of U.P. Act No. 24 of 1971 and 5 of 1982 stands applicable.

5. As per the writ petitioners on account of promotion of one Smt. Kamlawati Rai a teacher from C.T. Grade to L.T. Grade in the year 1987 a vacancy stood arisen in C.T. Grade. The State Government declared C.T. Grade as a dying cadre. A request is stated to have been made by the Committee of Management of the institution in question to the District Inspector of Schools, Azamgarh to fill up the vacancy on account of promotion of Smt. Kamlawati Rai. However, no such permission was accorded and on 14.4.1992 a letter is stated to have been issued by the Manager of the institution in question to the District Inspector of Schools, Azamgarh.

6. The management of the institution in question proceeded to advertise the vacancy and the husband/father of writ petitioners namely Viveka Nand Singh was recommended by the selection committee on 10.7.1992, papers were forwarded

on 13.7.1992 for approval and a reminder is stated to have been issued on 14.8.1992.

7. A counter claim was made by Sri Ram Alam Rai, however according to the writ petitioner an order is stated to have been passed on 26.5.1997 whereby the claim of the writ petitioners for according approval was rejected. This led to filing of Writ-A No.19237 of 1997 by the respondent Committee of Management and Writ Petition No.43391 of 2004 by the husband of the writ petitioner no.1. In between one Sri Ram Alam Rai, who was impleaded as the respondent in the writ petition preferred by the Committee of Management sought regularisation against the vacant post on account of promotion of Smt. Kamlawati Rai. Entailing, to passing of an order dated 18.1.1993 by the District Inspector of Schools, Azamgarh and consequential order dated 11.2.1993. Since Sri Ram Alam Rai was not absorbed as a teacher he also preferred Writ Petition No.34228 of 1992. Both the writ petitions preferred by the writ petitioners as well as the Committee of Management were tagged together and came to be decided by this Court on 8.11.2011 while passing the following orders:

Civil Misc. Writ Petition No.19237 of 1997 has been filed under Article 226 of the Constitution of India claiming the following reliefs :

a) to issue a writ, order or directions in the nature of certiorari quashing the impugned order dated 26.5.1997 passed by respondent no.2.

b) to issue a writ, order or direction in the nature of mandamus restraining the respondent - District Inspector of Schools from forcing the managing committee to appoint respondent no.2 as a teacher in L.T. grade.

c) to issue a writ, order or direction in the nature of mandamus commanding he respondent - District Inspector of Schools to make payment of salary to petitioner no.3 regularly along with arrears on that account.

d) to issue any other writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

e) to award cost of the writ petition to the petitioners. During the pendency of the said writ petition, this Court while admitting the writ petition on 14.5.2004 passed the following order :

Admit.

Issue notice.

Heard Sri Arvind Srivastava, learned counsel for the petitioners and counsel for the respondents.

A counter affidavit has been filed on behalf of respondent no.2, which is taken on record. A rejoinder affidavit has been filed to the same today in the court, which is also taken on record. Counsel for the petitioner has also moved a Misc. Application, a copy of which has been served on counsel for the respondents today in the court, which is taken on record. He has filed a supplementary affidavit dated 10.7.2001 after service on the standing counsel in the court, annexing various orders passed by the authority concerned from time to time, the same is taken on record. Learned counsel for the respondents prays for and is granted two weeks' time to file a counter affidavit. List this case for order in the 2nd week of July, 2004.

Learned counsel for the petitioner has also submitted that during the pendency of the writ petition, the petitioner has moved a representation to the Deputy Director of Education (Secondary) and on not being decided represented before the Joint Director of Education (Secondary), who has directed the Deputy Director of Education, (Secondary), Azamgarh, to decide the same. Under the said circumstances, the Deputy Director of Education (Secondary), Azamgarh, is directed to dispose off the said representation of the petitioner with a speaking order, preferably within a period of three weeks from the date of production of a certified copy of this order along with a copy of the writ petition, counter and rejoinder affidavits with annexures before him. Pursuant to order dated 14.5.2004 the petitioners submitted a representation before the Deputy Director of Education (Secondary), Azamgarh which has since been dismissed by order dated 9.8.2004. The said order of the Deputy Director of Education (Secondary), Azamgarh has been assailed by way of Writ Petition No.43391 of 2004.

There is an Institution by the name of Gandhi Ismarak Inter College, Bardah, District Azamgarh (hereinafter referred to as the Institution). It is a recognized Institution and is on the grant-in-aid list of the State Government up to Intermediate. It is governed by the provisions contained in the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the 1921 Act), the Rules and Regulations framed thereunder, the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 (hereinafter referred to as the 1971 Act) and

the U.P. Secondary Education (Services Commission And Selection Boards) Act, 1982 (hereinafter referred to as the 1982 Act).

Upon the promotion of one Smt. Kamlawati Rai, a Teacher from C.T. Grade to L.T. Grade in the year 1987 a vacancy had arisen in the C.T. Grade. Subsequently the State Government declared the C.T. Grade as a dying cadre and accordingly all the posts of C.T. Grade stood upgraded and converted into L.T. Grade. It appears that the Committee of Management of the Institution requested the District Inspector of Schools to fill up the vacancy caused on account of the promotion of Smt. Kamlawati Rai but as the vacancy was not filled up it requested the District Inspector of Schools to permit it to fill up the vacancy. In this regard letter dated 14.4.1992 is said to have been sent by the Manager of the Institution to the District Inspector of Schools, Azamgarh. Thereafter another letter dated 10.5.1992 was sent with similar request. Later on the Management of the Institution proceeded to advertise the vacancy and in the selections held, petitioner Vivekanand Singh was duly recommended by the Selection Committee on 10.7.1992. The papers are alleged to have been forwarded to the District Inspector of Schools on 13.7.1992 for approval. Thereafter again a reminder letter dated 14.8.1992 was sent. The papers relating to the approval remained pending before the District Inspector of Schools, Azamgarh.

In the meantime it appears that Sri Ram Alam Rai, who had been arrayed as respondent no.2 in Writ Petition No.19237 of 1997 claimed that he had worked against the vacancy caused during the State-wide strike by the teachers of Secondary Institutions in the year 1978 and was entitled to regularization under the scheme of the Government, framed for such teachers who had worked during strike period and were later on classified as reserved pool teachers. Sri Ram Alam Rai claimed regularization against the vacant post caused on account of promotion of Smt. Kamlawati Rai in the Institution. The District Inspector of Schools vide order dated 18.1.1993 and the consequential order dated 11.2.1993 directed for absorption of Sri Ram Alam Rai as a reserved pool teacher in the Institution in question. As Sri Ram Alam Rai was not being absorbed as a reserved pool teacher, he filed Writ Petition No.34228 of 1992, claiming the following reliefs :

- i) to issue a writ, order or direction in the nature of mandamus commanding the respondent not to make any selection on one post out of total post advertised in the advertisement contained in Annexure-II of the writ petition.*
- ii) to issue a writ, order or direction in the nature of mandamus commanding the respondent to make the appointment of the petitioner as Assistant Teacher in any of the institutions.*
- iii) to issue any other suitable, writ, order or direction in favour of the petitioner as this Hon'ble Court may deem fit and proper.*
- iv) to award costs of this petition to the petitioner.*

In the said writ petition in paragraph 4 it had been claimed that he was appointed in Janta Inter College, Thekma Mejauli, Azamgarh on 10.1.1978 against the vacancy caused during the strike period

in the year 1978. Thereafter he had claimed that he may be absorbed in any institution from the list of reserved pool teachers. The Division Bench did not find any merit in the contention of the petitioner and accordingly dismissed the writ petition by order dated 24.8.1992. However, the Division Bench directed the respondents to consider and decide the representation of the petitioner for appointment as Assistant Teacher in L.T. Grade in the reserved pool category. The order dated 24.8.1992 is quoted herein under :

Heard the learned counsel for the petitioner at length and perused the record.

The grievance of the petitioner is that he is an approved Asstt. Teacher. A vacancy had arisen during strike of the teachers against which the petitioner had applied and was appointed by the Committee of management of the institution in question. It is alleged that State Government had decided that the persons who had worked during strike should be given appointment on regular basis in the institution, where they worked during strike, whenever vacancy might arise in the future. The petitioner submits that there is a vacancy in the institution in question, but instead of giving regular appointment to the petitioner, the Committee of Management has invited applications. The petitioner has already made several representations to the authorities in this regard, but of no avail.

Considering the facts and circumstances of the case, we are not inclined to interfere in this writ petition which is hereby rejected. However, we direct the respondents to consider and decide the representations of the petitioner within a month of the filing of certified copy of this order, and that they shall consider the petitioner for appointment as an Asstt. Teacher (L.T. grade) as Reserved Pool Teacher. Till the petitioner's representation is decided, one vacancy shall be kept reserved for him.

The orders dated 18.1.1993 and 11.2.1993 passed by the District Inspector of Schools directing for absorption of Sri Ram Alam Rai as a reserved pool teacher in the Institution in question, were challenged by the petitioners before this Court by way of Writ Petition No.16601 of 1993. Initially this Court by order dated 11.5.1993 passed an interim order staying the communication dated 11.2.1993. Subsequently vide order dated 4.11.1996 Writ Petition No.16601 of 1993 was allowed. The orders dated 18.1.1993 and 11.2.1993 were quashed and the matter was remitted to the District Inspector of Schools, Azamgarh to pass a fresh order after affording due opportunity of hearing to the parties.

Pursuant to order dated 4.11.1996 the matter was taken up by the District Inspector of Schools, Azamgarh, who vide order dated 26.5.1997 held that Sri Ram Alam Rai deserved to be appointed from the reserved pool teachers category in the Institution as against the case of the petitioner whose appointment had not been validly made. It is the said order dated 26.5.1997 which is the subject matter of consideration in Writ Petition No.19237 of 1997.

As already referred to above pursuant to the order dated 14.5.2004 passed in Writ Petition No.19237 of 1997, the matter was to be examined by the Deputy Director of Education (Secondary). It would be relevant to state here that Sri Ram Alam Rai in the meantime had been absorbed and appointed as L.T. Grade Teacher in Janta Inter College, Thekma Mejauli, Azamgarh vide order dated 17.3.1998 and is since then working in the said institution.

Thus pursuant to order dated 14.5.2004 the Deputy Director of Education (Secondary) was only required to examine the validity of the appointment of the petitioner no.3 as the claim of Sri Ram Alam Rai was no longer an issue as he had already been absorbed in Janta Inter College, Thekma Mejauli, Azamgarh where in fact he originally claimed to have been appointed in 1978 during the strike period. The Deputy Director of Education by order dated 9.8.2004 had rejected the claim of the petitioner for the following reasons:

- i) On account of the promotion of Smt. Kamlawati Rai on adhoc basis as L.T. Grade Teacher, a short-term vacancy had arisen in the C.T. Grade and there was no Government Order at that time to fill up the short-term vacancy in C.T. Grade as the C.T. Grade had been declared to be a dying cadre vide Government Order dated 11.9.1989.*
- ii) A post of C.T. Grade would have converted into L.T. Grade only where the teacher had either superannuated, died or had been granted regular promotion. Since none of the aforesaid contingencies existed as such the vacancy caused by the adhoc promotion of Smt. Kamlawati Rai would not be treated to be a L.T. Grade post and no appointment could have been made on the same.*
- iii) The advertisement issued for inviting the applications was defective as it did not disclose the vacancies.*
- iv) The advertisement had not been published in two newspapers having nation-wide circulation.*
- v) The appointment had been made by interpolation and fabrication of records.*

This order of the Deputy Director of Education (Secondary) is under challenge in Writ Petition No.43391 of 2004.

I have heard Sri Shashi Nandan, learned Senior Advocate & Sri Arvind Srivastava, learned counsel appearing for the petitioners, the learned Standing Counsel representing the State-respondents and Sri I.R. Singh, Advocate representing Sri Ram Alam Rai (in both the petitions, although impleaded as respondent no.2 in Writ Petition No.19237 of 1997 only).

At the outset it has been submitted by Sri Arvind Srivastava, learned counsel for the petitioners that he is not claiming any relief against Sri Ram Alam Rai as he had already been absorbed on a regular post as a L.T. Grade Teacher in Janta Inter College, Thekma Mejauli, Azamgarh from the category of reserved pool teachers. This Court also finds from the material placed on record

that Sri Ram Alam Rai has already been absorbed by the order of the District Inspector of Schools dated 17.3.1998 and is regularly working in Janta Inter College, Thekma Mejauli, Azamgarh and therefore no orders can be passed as against him. Sri I.N. Singh, learned counsel appearing for Sri Ram Alam Rai states that in view of the above he has nothing further to add in so far as no adverse orders are passed against him. In view of above, the dispute which remains to be considered is with regard to the validity of the appointment of the petitioner Vivekanand Singh.

As has already stated above, three questions arise for consideration. First is with regard to the nature of vacancy which had arisen on account of promotion of Smt. Kamlawati Rai. Admittedly Smt. Kamlawati Rai was a C.T. Grade Teacher and had been promoted on 14.8.1987 as L.T. Grade Teacher. At that time the C.T. Grade was still in existence. It was only by Government Order dated 11.9.1989 when the C.T. Grade was declared to be a dying cadre and all C.T. Grade teachers along with their posts stood upgraded and merged into L.T. Grade. The vacancy of C.T. Grade teacher definitely existed in the Institution in 1989. It would stand automatically upgraded into L.T. Grade teacher. The observation of the Deputy Director of Education (Secondary) that as the promotion of Smt. Kamlawati Rai was adhoc in nature, the C.T. Grade vacancy caused by her promotion would continue to be a C.T. Grade cannot be accepted. Post for a teacher would continue to remain vacant until and unless an appointment had been made on the same. The declaration of C.T. Grade as dying cadre would only mean to the effect that no appointment can be made in C.T. Grade and it cannot be said that a vacancy caused by way of adhoc promotion would result into the post remaining as such. It is not the case that right from 1987 till 2004 Smt. Kamlawati Rai had ever been reverted to her substantive post of C.T. Grade nor could she have been reverted as the posts of C.T. Grade stood merged in the L.T. Grade as such the post would have remained and appointments were since to be made only in L.T. Grade. In view of the above discussion the reasoning given by the Deputy Director of Education (Secondary) cannot be accepted.

The appointment of petitioner Vivekanand Singh had been made in July, 1992. The power to make adhoc appointments against the existing vacancies which had been notified and had remained vacant for more than two months thereafter, was with the Management as provided under Section 18 of the 1982 Act. This power had been withdrawn vide the U.P. Secondary Education Service Commission and Selection Boards (Second Amendment) Act 1992 (hereinafter referred to as Act No.24 of 1992) by replacing Section 18 of the 1982 Act and it was made effective from 14.7.1992. The Section 18 of 1982 Act as it existed prior to Act No.24 of 1992 and its replacement by the Act No.24 of 1992 is quoted hereunder :

Section 18 as it stood prior to 1992 Amendment 18. Ad hoc Teachers (of 1982 Act).- (1) Where the management has notified a vacancy to the Commission in accordance with the provisions of this Act and

(a) the Commission has failed to recommend the name of any suitable candidate for being appointed as a teacher specified in the Schedule within one year from the date of such notification ; or

(b) the post of such teacher has actually remained vacant for more than two months, then, the management may appoint, by direct recruitment or promotion, a teacher on purely ad hoc basis from amongst the persons possession qualifications prescribed under the Intermediate Education Act, 1921 or the regulations made thereunder.

(2) The provisions of sub-section (1) shall also apply to the appointment of a teacher (other than a teacher specified in the Schedule) on ad hoc basis with the substitution of the expression 'Board' for the expression "Commission".

(3) Every appointment of an ad hoc teacher under sub-section (1) or sub-section (2) shall cease to have effect from the earliest of the following dates,

(a) when the candidate recommended by the Commission or the Board, as the case may be, joins the post ;

(b) when the period of one month referred to in sub-section (4) of Section 11 expires ;

(c) thirtieth day of June following the date of such ad hoc appointment.

The word "appointment" appearing in Section 16 has to be construed in harmony with the provisions of the two Acts, particularly Sections 10 and 11 of the new Act and Section 16-G of the Intermediate Education Act. Words take their colour from the context in which they appear. The expression "appointment" in its widest sense would, no doubt, include a transfer also but considering the context and the object of the new Act the word "appointment" as it appears in Section 16 cannot comprise an appointment through transfer or an appointment of say, a government Official on deputation to a recognised institution. Section 16 does not depend for its operation on fulfilment of any condition precedent or making of a provision, the language of sub-section (2) of Section 16 is clear and leaves no room for doubt that the appointment to be made against the provisions of the Ordinance would be void.

The expression 'void' used in sub-section (2) of Section 16 is very material. In the strict sense the word 'void' means nullity.

Section 18 as it stood after the 1992 Amendment 18. Ad hoc teachers (as amended by U.P. Act No.24 of 1992). - (1) Where the management has notified a vacancy to the Commission in accordance with the provisions of this Act, and the post of such teacher has actually remained vacant for more than two months, the management may appoint by direct recruitment or promotion a teacher, on purely ad hoc basis in the manner hereinafter provided in this section.

(2) A teacher, other than a Principal or Headmaster, who is to be appointed by direct recruitment, may be appointed on

recommendation of the Selection Committee referred to in sub-section (9).

(3) A teacher, other than a Principal or Headmaster, who is to be appointed by promotion, may in the manner prescribed be appointed by promoting the seniormost teacher possession prescribed qualifications-

(a) in the trained graduate's grade, as a lecturer, in the case of a vacancy in lecturer's grade ;

(b) in the Certificate of Teaching grade, as a teacher in the trained graduate' grade, in the case of vacancy in trained graduate' grade.

(4) A vacancy in the post of a Principal may be filled up by promoting the seniormost teacher in the lecturer grade.

(5) A vacancy in the post of a Headmaster may be filled by promoting the seniormost teacher in the trained graduate's grade.

(6) For the purpose of making appointments under sub-sections (2) and (3), the Management shall determine the number of vacancies, as also the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, Scheduled Tribes and other categories of persons in accordance with the rules or orders issued by the State Government in this behalf. If in determining the vacancies it is found that persons belonging to such categories are not holding such number of posts as should have been filled by them in accordance with such rules or orders, then the vacancies shall be so determined that first and every alternative vacancy shall be reserved for the persons of such categories until the required percentage of posts is held by them.

(7) After determining the number of vacancies as provided in sub-section (6) the Management shall within fifteen days from the date of commencement of the Uttar Pradesh Secondary Education Services Commission and Selection Board (Second Amendment) Act, 1992 intimate the vacancies to be filled by direct recruitment to the District Inspector of Schools. If the Management fails to intimate such vacancies within the said period of fifteen days, the District Inspector of Schools may, after verification from such institution or from his own records, determine such vacancies himself.

(8) The District Inspector of Schools, on receipt of intimation of vacancies or as the case may be, after determining the vacancies under sub-section (7), invite applications, from the persons possessing qualifications prescribed under the Intermediate Education Act, 1921 or the regulations, made thereunder, for ad hoc appointment to the post of teachers, other than Principal or Headmasters in such manner as may be prescribed.

(9)(a) For each district, there shall be a Selection Committee for selection of candidates for ad hoc appointment by direct recruitment

comprising

(i) District Inspector of Schools, who shall be the Chairman ;

(ii) Basic Shiksha Adhikari ;

(iii) District Inspectress of Girls' Schools, and where there is no such Inspectress, the Principal of the Government Girls' Intermediate College and where there are more than one such

college, the seniormost Principal of such Colleges and where there is no such College, the Principal of the Government Girls' Intermediate College as nominated by the State Government.

(b) The Selection Committee constituted under clause (a) shall make selection of the candidates, prepare a list of the selected candidates, allocate them to the institutions and recommend their names to the Management for appointment under sub-section (2).

(c) The criteria and procedure for selection of candidates and the manner of preparation of list of selected candidates and their allocation to the institutions shall be such as may be prescribed.

(10) Every appointment of an ad hoc teacher under sub-section (1) shall cease to have effect from the date when the candidate recommended by the Commission or the Board joins the post.

(11) The provisions of Section 21-D shall, mutatis mutandis, apply to the teachers who are to be appointed under the provisions of this section.

From a perusal of above, it is apparent that the Committee of Management could have filled up a vacancy which it had done on 10.7.1992, prior to the Section 18 of the 1982 Act having been substituted by the U.P. Amendment Act No.24 of 1992. In support of the submission reliance has also been placed on a Division Bench decision of this Court in the case of Ravindra Singh Niranjana vs. District Inspector of Schools, Jhansi and another [1988 UPLBEC 223]. The Division Bench has held that the appointment could have been validly made by the Management prior to the Amendment of 1992..

Although in the operative portion of the order the Deputy Director of Education (Secondary) he had not referred to any ban being imposed on the appointment of L.T. Grade teacher on adhoc basis but in the subjective part of the order he had referred to a ban having been imposed. Reference has been made by the Deputy Director of Education (Secondary) to the Telex dated 29.6.2001 imposing a ban on appointment of any kind of teachers in secondary institutions and the Government Order dated 31.8.1991 by which the substantive appointments had been stopped. He had also referred to the Government Order dated 16.7.1992 which provides that selections on substantive posts can be made by the District Inspector of Schools and in fact the District Inspector of Schools had issued an advertisement in which the post against which the petitioner had been appointed had not been advertised. This Court in series of decisions has already held that the ban imposed by the Government was illegal and in any case it had subsequently been lifted by the Government. On 10.7.1992 at the time when the selection was made there was no ban in operation. Reference may be made to the following decisions :

i) Smt. Sudha Chaturvedi vs. State of U.P. [2003 (2) ESC 661]

ii) Smt. Nirja Sharma vs. Director of Education (Madhyamik), U.P., Lucknow and others [2004 (5) AWC 3987]

iii) Ram Swaroop Bajpayee vs. Joint Director of Education, Kanpur and others [2004 (5) AWC 4905]

Further the observation that the District Inspector of Schools had advertised certain vacancies to be filled up on substantive posts did not include the post against which the petitioner had been

appointed is self contradictory as earlier it had been recorded that the vacancy was short-term and while referring to the Government Order dated 16.7.1992 he had referred to it as a substantive vacancy. This reasoning therefore also can not be substantiable in law.

Now coming to the merit of the selection process adopted by the Management in making the appointment of the petitioner. The Deputy Director of Education (Secondary) has sought to rely heavily upon the letter dated 13.7.1992 of the Management of the Institution addressed to the District Inspector of Schools, forwarding the papers of selection of petitioner Vivekanand Singh for approval which according to him had been interpolated. According to the Deputy Director of Education (Secondary) the date 13.7.1992 had been interpolated. The correct date was 15.2.1993 and by overwriting it had been changed to 13.7.1992 in order to overcome the affect of the Act No.24 of 1992, by which the powers of the Management had been withdrawn for making appointments of teachers against short-term vacancies. In that regard the learned counsel for the petitioner has not only referred to the said letter but has also referred to the previous and subsequent letters issued by the Management right from 14.4.1992 requesting the District Inspector of Schools for filling up the said vacancy and expressing the hardship which was being faced by the students and the Institution in the absence of the vacancy being not filled up. There is reference to the letter dated 14.4.1992 (copy of which has been enclosed), letter dated 10.5.1992, the advertisement issued on 20.6.1992, the selection proceedings of 10.7.1992, the letter dated 13.7.1992 forwarding the papers for approval and the reminder dated 14.8.1992 with regard to which relevant proof has been filed which shows that it was duly received in the Office of the District Inspector of Schools, Azamgarh. It is not just one letter dated 13.7.1992 but the other letters referred to above which had been issued prior to the enforcement of the Act No.24 of 1992 which was published on 29.11.1992 that is much after the selection and therefore it could not be said to have been fabricated.

Further the Deputy Director of Education (Secondary) has referred to certain inconsistencies in the stand of the petitioner and the Management at the time when the District Inspector of Schools had passed the order on 4.11.1996 and at the time when the matter was being heard by the Deputy Director of Education (Secondary). The comparison appears to be only technical in nature with no substantive difference. The only difference worth referring is with regard to an affidavit filed by Sri Jhuri Singh, claiming to be the President of the Committee of Management, stating that no such meeting had been held for holding the selection on 10.7.1992. According to the petitioner Sri Jhuri Singh had some grudge against the Manager and the petitioner and had accordingly filed that incorrect affidavit. All other Members of the Committee of Management had filed affidavits in favour of the petitioner of the meeting having been held and as such the sole affidavit of Sri Jhuri Singh would not have any strength. The other objections which had been referred to were that there had been no reference of any advertisement in the newspaper; the

selection proceedings did not contain the signatures of the Principal and that initially there were three applications but later on before it was alleged that there were eight applications. These three objections run contradictory to the record. The Court finds that throughout from beginning the claim of the petitioner was that there were eight applications, the Principal had signed the proceedings and the advertisement had been published in newspapers. If the District Inspector of Schools had recorded incorrect facts, the Deputy Director of Education (Secondary) ought to have clarified the facts from the record and thereafter passed the order instead of merely mentioning the inconsistencies. The learned counsel for the petitioner has sought to refer the relevant documents and also the previous pleadings in the earlier writ petitions.

Lastly the observation that there was no publication in two newspapers having nationwide circulation would not be applicable in the present case in as much as this view had been expressed by the Full Bench of this Court in the case of Radha Raizada vs. Committee of Management [1994 (3) UPLBEC 1551 : 1994 (2) 345 ESC]. This has been held to be prospective in publication and accordingly explained by the Division Bench in the case of Ashika Prasad Shukla vs. District Inspector of Schools, Allahabad and others [(1998) 3 ESC 2006 (All)]. Petitioner Vivekanand Singh is said to be continuously working in the Institution right from the date of appointment but has not received any salary. Another fact which is relevant to be mentioned here is that right from 1987 till date no teacher has been recommended to be selected by the Board or the District Inspector of Schools for imparting education and of which the petitioner had taken care and has been continuously working as alleged by him and also by the Management of the Institution. The appointment of the petitioner is against substantive vacancy and would not cause extra or unnecessary financial burden on the State exchequer. The petitioner is duly qualified to be appointed as no question has been raised with regard to his qualification. Further no other candidate had come forward alleging that he could not apply on account of lack of publicity or knowledge or that he had a better claim than the petitioner for being appointed. All these aspects justify the claim of the petitioner for being paid salary from the time from which he has been working. The Deputy Director of Education (Secondary) while passing the fresh order may verify from the original record and also from the Management / Principal regarding continuous working of the petitioner and pass appropriate order.

In view of above discussions, the orders of the Deputy Director of Education dated 9.8.2004 and the District Inspector of Schools dated 26.5.1997 do not appear to be sound in law and cannot be sustained. Both the orders are accordingly quashed. The Deputy Director of Education (Secondary), Azamgarh is directed to pass afresh order in the light of the observations and discussions made above within a period of two months from the date of production of a certified copy of this order.

Both the writ petitions succeed and are allowed. There shall be, however, no orders as to costs."

9. Post passing of the above noted order the Deputy Director of Education (Secondary), Azamgarh Region, Azamgarh proceeded to pass an order dated 31.4.2012 whereby the District Inspector of Schools was required to comply with the order passed by this Court and consequently on 15.5.2012 the District Inspector of Schools, Azamgarh proceeded to pass an order granting approval to the appointment of the husband/father of the writ petitioners with respect to payment of salary from 8.11.2011.

10. Since according to the husband/father of the writ petitioners the approval ought to have been granted from the date of the appointment i.e. in the year 1992 thus a contempt petition was preferred being Contempt Petition No.4963 of 2012 which remain pending and ultimately came to be disposed of on 2.3.2022 while passing the following order:-

"Civil Misc. Delay Condonation Application No. 6 of 2019:- Cause shown in the delay application is sufficient. Delay in filing the substitution application is condoned. Civil Misc. Substitution Application No. 7 of 2019:-

This application has been filed with a prayer for substituting the heirs and legal representatives of the sole applicant no. 1 Vivekanand Singh, who is said to have died on 10.03.2019.

For the reasons given in the accompanying affidavit, the substitution application is allowed.

Let the heirs and legal representatives of deceased-applicant no. 1, Vivekanand Singh mentioned in paragraph no. 5 of the affidavit accompanying the substitution application namely Smt. Usha Singh W/o Sri Vivekanand Singh, Yugantar Singh, son and Shweta Singh daughter of deceased-applicant be substituted as applicant nos. 1/1, 1/2 and 1/3 in the contempt application.

Office is directed to carry out the substitution of the cause title within a week.

Order on Petition:-

The applicant has preferred the present petition for non-compliance of the judgment and order dated 08.11.2011 passed in Writ A No. 19237 of 1997 (C/M Gandhi Ismarak Inter College, Baradah Azamgarh & Others vs. D.I.O.S. Azamgarh And Another). The operative portion of the order is reproduced below:-

"The Deputy Director of Education (Secondary) while passing the fresh order may verify from the original record and also from the Management / Principal regarding continuous working of the petitioner and pass appropriate order.

In view of above discussions, the orders of the Deputy Director of Education dated 9.8.2004 and the District Inspector of Schools dated 26.5.1997 do not appear to be sound in law and cannot be sustained. Both the orders are accordingly quashed. The Deputy Director of Education (Secondary), Azamgarh is directed to pass afresh order in the light of the observations and discussions made above within a period of two months from the date of production of a certified copy of this order.

Both the writ petitions succeed and are allowed. There shall be, however, no orders as to costs."

Pursuant to the aforesaid, a decision was taken by the Deputy Director of Education (Secondary) Azamgarh Region Azamgarh on April 21, 2012. Operative portion reads as follows:-

"विद्यालय द्वारा श्री विवेकानन्द सिंह की नियुक्ति संबंधी प्रकरण में उपलब्ध कराये गये पत्रजातों एवं उनके विद्यालय में नियमित रूप से कार्यरत होने की स्थिति की दृष्टिगत रखते हुए मा० उच्च न्यायालय के आदेश दिनांक 08.11.2011 के अनुपालन में जिला विद्यालय निरीक्षक, आजमगढ़ को निर्देशित किया जाता है कि श्री विवेकानन्द सिंह के विद्यालय में नियमित कार्यरत होने की स्थिति का विद्यालय के मूल अभिलेखों से स्वयं परीक्षण कर संबंधित अध्यापक को मा० उच्च न्यायालय के आदेश दिनांक 08.11.2011 से वेतन भुगतान के संबंध में अधिनियम के प्राविधानों के अन्तर्गत अग्रेतर कार्यवाही सुनिश्चित करें।"

In compliance of the aforesaid order, an order was passed by the District Inspector of School on 15.05.2012. By the aforesaid order, the Manager of School was directed that salary would be paid in

favour of Vivekanand Singh w.e.f. 08.11.2011 i.e. the date of which the final judgment was delivered by this Court in favour of Vivekanand Singh. In so far as the arrears of the salary is concerned nothing has been paid to the deceased-applicant. It is argued by the counsel for the applicant that during the pendency of the present contempt petition, the sole applicant has died. It is further argued by the counsel for the applicant that nothing has been stated by the District Inspector of School while passing the order dated 15.05.2012 regarding the arrears of salary to the applicant.

On the other hand, it is argued by the learned Standing Counsel that the order passed by the Writ Court has already been complied with in its letter and spirit and no contempt has been made out. Heard counsel for the parties and perused the record. From perusal of the record the Court is of the prima-facie opinion that the order dated 15.05.2012 passed by the District Inspector of School is without any reason, whatsoever, the present petition is pending before this Court last about ten years.

With the consent of counsel for the parties, the present petition is disposed of finally permitting the legal heirs of the sole-applicant/ applicant nos. 1/1 to 1/3 to move a proper representation in this regard before the Director of Education (Secondary) U.P. Government, Lucknow along-with copy of this order. If such representation is made within a period of one month from today, the Director of Education (Secondary) U.P. Government, Lucknow is directed to see the grievances of the applicants and pass appropriate orders on the same regarding arrears of salary and other some benefits for which the applicants are entitled, expeditiously and preferably within a period of three months thereafter. “

11. In the meantime the husband/father of the writ petitioner s expired on 10.3.2019 however now an order has been passed by the second respondent, Director of Education (Secondary), Uttar Pradesh, Education Directorate, Prayagraj on 4.8.2023 whereby the claim of the writ petitioners for payment of pension and payment of arrears of salary from the date of the appointment has been negated. Questioning the said order the writ petitioners have filed the leading writ petition.

12. This petition was entertained by this Court on 11.10.2023 while passing the following order:-

“Supplementary affidavit filed today is taken on record. Put up this case along with record of Writ-A No.7771 of 2021, Smt. Usha Devi vs. State of U.P. & others showing

the names of the parties and their counsels. Since the writ of certiorari has been sought for quashing the order dated 4.8.2023 passed by the Director of Education (Secondary), Prayagraj let notices be issued to the seventh respondent.

Sri Shailendra Singh, learned Standing Counsel for the respondents no. 1 to 6 is present.

Notices be issued to the seventh respondent. Steps to be taken by tomorrow i.e. 12.10.2023 by both ways.

Counter affidavit be filed by all the respondents by 31.10.2023. Rejoinder be filed by the petitioners by 2.11.2023.

Put up this case on 6.11.2023 as fresh. Affidavit of service be filed."

13. A counter affidavit has been filed by the learned Standing Counsel sworn by Associate District Inspector of Schools, District Azamgarh dated 31.10.2023 to which a rejoinder affidavit has been filed.

14. The wife of the deceased Viveka Nand Singh had also filed a writ petition questioning the order dated 3.3.2021 passed by the Deputy Director of Education (Secondary), Azamgarh which got connected with the present writ petition in which a counter affidavit has been filed on behalf of respondents no. 1 to 4 by Associate District Inspector of Schools, District Azamgarh to which a rejoinder affidavit has been filed.

15. Since the counsel for the parties do not propose to file any further response thus the writ petitions are being decided at the fresh stage.

16. Learned counsel for the writ petitioners in both the writ petition while assailing an orders dated 4.8.2023 & 3.3.2021 passed by the second respondent, Director of Education (Secondary), Uttar Pradesh, Education Directorate, Prayagraj has sought to argue that the order cannot be sustained for a single moment as it seeks to reopen an issue which has attained finality inter se between the parties in Writ-A No.19237 of 1997

preferred by the Committee of Management and Writ-A No.43391 of 2004 decided on 8.11.2011. He submits that once the said order attains finality then the findings so recorded therein would bound the respondents and they cannot take a different view from the view taken by this Court as the same amounts to circumventing and overreaching the orders of the court.

17. According to the learned counsel for the writ petitioners the appointment of the husband/father of the writ petitioners was found to be valid and the only exercise which was to be undertaken at the end of the respondents was to verify the fact as to whether the deceased had worked for the period for which he seeks payment of salary.

18. Learned counsel for the writ petitioners has invited the attention of the Court towards the findings recorded in internal pages 7, 8, 11, 12, 13 and 14 of the order dated 8.11.2011 so as to contend that this Court had addressed the case of the husband/father of the writ petitioners on merits and then remanded the matter back to the authorities to pass a fresh order and the said remand order cannot be said to be a simpliciter remand order as the said order en-capsuled and bracketed the claim of the writ petitioners which was to be considered in the light of the observations made therein.

19. Learned counsel for the writ petitioners also invited the attention of the Court towards the approval order dated 15.5.2012 of the District Inspector of Schools, Azamgarh paragraph no.2 so as to contend that even the Committee of Management of the institution in question had provided inputs and records and taken a stand that the husband/father of the writ

petitioners (deceased) was working since the date of his appointment.

20. Sri Saurabh, learned Standing Counsel while further inviting attention towards paragraph 20 it is also sought to be contended that the husband/father of the writ petitioners did not undertake any teaching work. He however submits that the said grounds which has been sought to be taken are for the very first time findings its presence in the counter affidavit and according to him they are relevant for adjudication of the matter in question and the order in question be set aside and the matter be remitted back granting liberty to the second respondent in the leading writ petition Director of Education (Secondary), Uttar Pradesh, Education Directorate, Prayagraj to summon the records and to examine the claim of the writ petitioners in this regard. He further submits that so far as the relief sought for regularisation of the services of the deceased is concerned the same is dependent upon the core and the fundamental issues which are to be adjudicated at the first instance as according to law posthumous regularisation can also be made post death. According to him the payment of family pension and other benefits are to be subject to the final orders to be passed on the entitlement of the writ petitioners with regard to either payment of salary as well as the issue with respect to regularisation if any.

21. I have heard learned counsel for the parties and perused the record.

22. Since Sri Saurabh, learned Standing Counsel has gracefully accepted and submitted that the order in question dated 4.8.2023 passed by the Director of Education (Secondary), Uttar Pradesh, Education Directorate, Prayagraj

suffers from vice of skipping and overlooking crucial fundamental and core issues, thus this Court is of the opinion that the order dated 4.8.2023 passed by the Director of Education (Secondary), Uttar Pradesh, Education Directorate, Prayagraj be set aside and the matter be remitted back.

23. In so far as the order dated 3.3.2021 passed by the Deputy Director of Education (Secondary) Azamgarh Region, Azamgarh denying the pensionary and other benefits is concerned the same is also dependent upon the outcome of fresh order post remand after quashing of the order dated 4.8.2023 passed by the Director of Education (Secondary), Uttar Pradesh, Education Directorate, Prayagraj.

24. Accordingly, the writ petitions are being decided in the following manner:- (a) the order dated 4.8.2023 passed by the Director of Education (Secondary), Uttar Pradesh, Education Directorate, Prayagraj in the leading writ petition and the order dated 3.3.2021 passed by the Deputy Director of Education (Secondary), Azamgarh Region, Azamgarh in connected writ petition are set aside; (b) the matter stands remitted back to the Director of Education (Secondary), Uttar Pradesh, Education Directorate, Prayagraj to consider the matter afresh after summoning the record and putting to notice the writ petitioner as well as Committee of Management of the institution in question; (c) so far as the payment of family pension and other benefits are concerned the same would be dependent upon the fresh exercise to be undertaken by the Director of Education (Secondary), Uttar Pradesh, Education Directorate, Prayagraj; (d) so far as in prayer caption B in the connected writ petition for regularisation is concerned the matter be transmitted to the

competent authority and the same shall be considered strictly in accordance with law.

25. With the aforesaid observations, both the writ petitions are **disposed off**.

Order Date :-22.11.2023
piyush