

Neutral Citation No. - 2024:AHC-LKO:16290-DB

A.F.R.

Reserved

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 36 of 2024

Appellant :- Karmesh Pratap Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Vidhan Sabha
Sachivalaya , U.P. And Others

Counsel for Appellant :- Ajay Singh, Sakshi Singh, Sameer Singh

Counsel for Respondent :- Abhinav Trivedi, Lalta Prasad Misra

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Attau Rahman Masoodi, J.

[Per: Attau Rahman Masoodi, J.]

- (1) The appellant herein feeling aggrieved against the judgment dated 25.01.2024 passed by the learned Single Judge in Writ-A No. 20207 of 2016 has filed the present intra-Court appeal questioning the legality of the same.
- (2) Briefly stated the facts of the case are that a post of Information Officer fell vacant in the Secretariat of Legislative Assembly, Uttar Pradesh in the year 2015. An advertisement was issued for filling up the said post on 27.05.2015, which, for ready reference, to the extent of prescription of essential academic qualification and preferential, is extracted hereunder:-

“2. शैक्षिक योग्यता एवं अन्य अर्हतायें।

(क)– अनिवार्य अर्हता

(एक)–भारत में विधि द्वारा स्थापित किसी विश्वविद्यालय से एक विषय के रूप में हिन्दी के साथ स्नातक उपाधि या सरकार द्वारा समकक्ष मान्यता प्राप्त कोई उपाधि,

(दो)–पत्रकारिता में डिप्लोमा या 5 वर्ष का पत्रकारिता का अनुभव।

(ख)–अधिमानी अर्हता

(1)—समाचार पत्रों और पत्रिकाओं में लेख, पटकथा और फीचर लिखते का अनुभव

(2)—भारत में विधि द्वारा स्थापित किसी विश्वविद्यालय से या सरकार द्वारा उसके समकक्ष मान्यता प्राप्त किसी संस्था से पत्रकारिता में स्नातक उपाधि

(3)—सरकार द्वारा मान्यता प्राप्त किसी संस्था से संगीत/प्रकाश-व्यवस्था/अभिनव/निर्देशन इत्यादि में डिप्लोमा।

पात्र अभ्यर्थियों में से साक्षात्कार के आधार पर चयन किया जायेगा। साक्षात्कार में सम्मिलित होने हेतु अभ्यर्थियों को कोई यात्रा भत्ता आदि देय नहीं होगा।

यदि कोई अभ्यर्थी अपने उम्मीदवारों के लिए प्रत्यक्ष या अप्रत्यक्ष रूप से अथवा अन्य साधनों द्वारा अपने पक्ष में समर्थन प्राप्त करने का प्रयत्न करेगा तो वह अनर्ह कर दिया जायेगा। ”

The process of selection was by way of interview, besides some other norms.

- (3) The period for submission of application forms against the advertisement was specified from 27.05.2015 to 17.06.2015. The appellant's application itself came to be filed under surreptitious circumstances. As per the material placed on record that too at the appellate stage, an application is said to have been presented before the Hon'ble Speaker, Legislative Assembly, U.P. on 15.06.2015 which was registered vide Sl. No. 716 and on the same very application, Hon'ble the Speaker made an endorsement to the effect of granting permission to participate in the selection. The application seeking permission to participate in the process of selection on the post of Information Officer did not mention the rule under which the same was presented. The advertisement, on the other hand, required the eligible candidates to submit their application forms in the prescribed format. There is no explanation in the counter affidavit filed by the appellant as to when the

application form alongwith the permission was filed by the appellant.

- (4) It appears that the process of selection i.e., interview took place on 28.12.2015 and the appellant as well as respondent No. 4 alongwith other candidates participated in the selection. The result of the selection remained undeclared although some complaints raising sense of doubt regarding induction of the appellant alone came to be made which went unnoticed. The counter affidavits filed by the appellant as well as Vidhan Sabha nowhere have disclosed as to when the result of the selection was declared. There is also a contradiction in paras – 8 and 11 of the counter affidavit filed by the Vidhan Sabha. In the process of scrutiny only 23 candidates were found eligible which shows that the appellant was not inclusive. In para – 11, it is stated that 24 candidates were called for interview.
- (5) The record reveals that an order of appointment was issued in favour of the appellant on 14.07.2016, whereafter, the respondent No.4/petitioner feeling aggrieved approached this Court by means of Writ Petition No. 20207 (SB) of 2016. The writ petition was dismissed by means of judgment and order dated 27.02.2018 on the ground that after participation in the selection, the respondent No.4 (petitioner in the writ petition) could not turn around and challenge the selection.
- (6) The judgment rendered by the Writ Court was assailed by the respondent No.4/petitioner by filing a Review Application No. 64707 of 2018 and the same, on being heard with due opportunity to the parties, was allowed vide judgment dated 31.08.2022. After allowing of the review application, the writ proceedings revived and during the interregnum period, jurisdiction of service matters cognizable before a division

bench was reclassified. After reclassification of the jurisdiction under the orders of Hon'ble the Chief Justice, the matter became cognizable by a learned Single Judge. It is in this manner that the matter came up before the learned Single Judge, who in turn has decided the same.

- (7) It would be apt for this Court to take note of the fact that while dealing with the application for review, the issue as to the locus of the respondent No.4/petitioner was dealt with on the premise of settled principles of law and the judgment so rendered was not questioned by the present appellant or the Vidhan Sabha, therefore, the same **attained** finality.
- (8) It is in pursuance of the above judgment that the Writ Court proceeded with the matter afresh and has rendered the judgment impugned here in this appeal. Although the arguments have been advanced on the aspect as to the locus of respondent No.4/petitioner to institute the proceedings before the Writ Court, but such a ground urged before us was open to be raised in the review application or even before the Writ Court, therefore, such an argument at the first blush did not impress us for any consideration.
- (9) We may also take note of the fact that no material whatsoever as regards the possession of essential eligibility of academic qualification, filing of the application in prescribed form or disclosure of result declaration was placed before the Writ Court in the counter affidavit filed by the appellant, as such, to question the locus of respondent No.4/petitioner on the ground that he does not have a consequential right of appointment based on the declaration of result, in our humble view, is afterthought, misconceived and short of a legal ground. The only stand taken before the Writ Court in para 20 of the counter

affidavit filed by the appellant was that the appellant was permitted to appear by the Hon'ble Speaker who was vested with the power to relax the rule and the appellant having obtained more marks was stated to have been appointed. It was on this much of premise set-out by the appellant before the Writ Court that he contested the matter inclusive of the review application. The Vidhan Sabha or the appellant never challenged the order passed on the review application questioning the locus of the respondent No.4/petitioner. The case laws cited by the learned counsel for the appellant in absence of any challenge to the judgment dated 31.08.2022 passed on the review application are wholly misplaced and misconceived.

- (10) Sri Sandeep Dixit, learned Senior Counsel assisted by Sri Ajay Singh, learned counsel for the appellant laid emphasis on the following case laws in particular:-
- (i) Md. Zamil Ahmed v. State of Bihar and others [(2016) 12 SCC 342]
 - (ii) Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and others [(2013) 4 SCC 465]
 - (iii) State of Uttar Pradesh v. Karunesh Kumar and others [2022 SCC OnLine SC 1706]
 - (iv) Dr. Pragya Shukla v. Union of India and another [2022 SCC OnLine Del 3522]
- (11) Having heard learned counsel for the appellant at length, we are not convinced that the respondent No.4/petitioner did not have a locus for the reason that the said question between the parties had attained finality in terms of the judgment rendered in the review application. Further, for want of declaration of result, any participant in the selection held on 28.12.2015 was an aggrieved party inclusive of the respondent No.4/petitioner. We

may emphasize that every selection held for filling up the posts in public employment is bound to be concluded in accordance with law before it is acted upon. Therefore, while rejecting the arguments advanced on the issue of locus, we find ourselves in agreement with the judgment rendered on 31.08.2022 which has attained finality.

CONSIDERATION ON MERIT

- (12) Coming to the merits of the case, it is to be noticed that the post of Information Officer having fallen vacant became open for being filled up in the Secretariat of Legislative Assembly, U.P.. Any post in the Secretariat of Legislative Assembly is to be filled up as per the Act or Rules framed under Article 187 of the Constitution, which, for ready reference, is reproduced below:-

“Article 187. Secretariat of State Legislature

-- (1) The House or each House of the Legislature of a State shall have a separate secretarial staff:

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both Houses of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State.

(3) Until provision is made by the Legislature of the State under clause (2), the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so

made shall have effect subject to the provisions of any law made under the said clause.”

- (13) The Governor in exercise of the powers conferred under sub-Article (3) of Article 187 had framed the Uttar Pradesh Legislative Assembly Secretariat (Recruitment and Conditions of Service) Rules, 1974 [in brevity, it is referred to as ‘**Rules, 1974**’] for the purpose of appointment on the posts in the Vidhan Sabha Secretariat, whereas the post in question was not enumerated in the said Rules.
- (14) Undisputedly, the post in question was advertised for being filled up as per the essential academic qualification mentioned in the advertisement and open competition was based on the marks obtained in the interview. The essential qualification in the advertisement, as noted above, clearly prescribes that **a candidate must possess a degree of graduation with Hindi as a subject**. Prescription for such a qualification was in consonance with the Rules applicable by reference under Rule 50 of Rules, 1974.
- (15) The case set-up by the respondent No.4 (petitioner) before the Writ Court was to the effect that as per the advertisement issued on 28.05.2015, the essential qualification for Information Officer is Graduation with one subject as Hindi alongwith Diploma in Journalism or 5 years experience in the field of Journalism. The preferential qualifications were also prescribed. The respondent No.4/petitioner possessed the requisite qualification of B.A. and was rather M.A. in Hindi with Post-Graduate Diploma in Journalism and Mass Communication. The appellant on the other hand was stated not to have the requisite qualification of Graduation with one subject as Hindi, yet he participated in the interview held on 28.12.2015 and without declaration of result, the post of Information Officer

was filled up by the appellant. Such an appointment became known from the website of Vidhan Sabha, U.P. It was also pleaded that when the result for the post of Information Officer was not declared, the respondent No.4/petitioner had moved an application under Right to Information Act, but of no avail. Again he had moved applications dated 05.08.2016 and 16.08.2016 under Right to Information Act for providing the appointment letter of appellant which evoked no response. A complaint was moved on 23.12.2015 by a public spirited person to His Excellency the Governor of U.P. stating therein that the entire selection procedure has been influenced just to accommodate the appellant/respondent No.3 who did not possess the essential qualification required for the post in question. Further, it was averred in the writ petition that though Hon'ble the Speaker was not vested with any power to relax the essential educational qualification, but even then on relaxing the essential qualification for the appellant, the solitary post of Information Officer which fell vacant in the Vidhan Sabha Secretariat was filled up without declaration of the result of the selection held on 28.12.2015. In these circumstances, the respondent No.4/petitioner prayed for quashing of the selection/appointment of the appellant/opposite party No.3 and for declaration of the result of selection held on 28.12.2015.

- (16) In the counter affidavit filed by the Vidhan Sabha before the Writ Court, it was stated that under relevant Rules, neither there is any prescription or mode of recruitment nor the source of recruitment for the post of Information Officer in the Secretariat of Legislative Assembly, U.P. Accordingly, an advertisement dated 25.05.2015 was said to have been issued inviting applications from the eligible candidates for filling up the post of Information Officer. In response to the advertisement issued by the Legislative Assembly, 254 applications were received,

however, 23 applicants were found eligible and rest of 231 applications were rejected being ineligible. Further, it has been averred in the counter affidavit that on the application moved by the appellant/opposite party No.3 to the Hon'ble Speaker, he was granted permission to appear in the interview. It has been emphasized in the counter affidavit that in terms of the provisions contained in Rule 49 of the Rules, 1974, the Hon'ble Speaker is vested with the power to relax rules.

- (17) It is further averred in the counter affidavit that in terms of the provisions contained in Rule 6 (ii) of 1974 Rules, the selection committee was constituted and 24 incumbents including appellant/opposite party No.3 were intimated about the date of interview as 28.12.2015. Out of 24, 20 candidates appeared in the interview on 28.12.2015 and after considering the academic qualifications, experience and performance of the candidates, appellant/opposite party No.3 was awarded 35 marks, whereas respondent No.4/petitioner was awarded 27 marks. On this basis, appellant/opposite party No.3 was issued appointment order dated 14.07.2016. It has been stated in the counter affidavit that since the appellant/opposite party No.3 was permitted to participate in the interview on the basis of the application moved by him before the Hon'ble Speaker, who is vested with the power to relax rules and the post of Information Officer is an important post, the discretion of Hon'ble Speaker has to be given due weightage. Lastly, it has been stated in the counter affidavit that requisite reply was sent to the application dated 08.08.2016 preferred by the writ petitioner under Right to Information Act through post on 11.08.2016, but it was returned undelivered with the noting that the applicant does not reside at the given address.

- (18) In the counter affidavit filed by appellant/opposite party No.3 before the Writ Court, it has been stated that he is a Graduate and he was engaged as Assistant Review Officer (Sessional) in 2004-05, 2005-06 and 2006-07. Thereafter, he performed on the post of Review Officer on contract basis since 13.04.2012 and he continued to work on the said post till 14.07.2016, as he was appointed on the post of Information Officer in the month of July, 2016. Since he had worked in the field of journalism from 01.01.2007 to 31.03.2012 in a Hindi Daily newspaper Tarun Mitra and he became a Member of the Press Club from the year 2011 to 2016, he has vast experience in writing news in vernacular language and during this period, he discharged his duties for covering the proceedings of Legislative Assembly.
- (19) Sri Sandeep Dixit, learned Senior Advocate for the appellant has argued that once a candidate has participated in the selection and found unsuccessful, he has no right to question the selection proceedings of a successful candidate. The argument on locus we have already dealt with in the first part.
- (20) Besides this, all the arguments made on behalf of the appellant and employer are more or less the same with the distinguishing feature that U.P. Vidhan Sabha has not filed any intra-Court appeal against the impugned judgment.
- (21) In the light of the factual position narrated above, the submission putforth on merit by the learned counsel for the appellant is to the effect that once relaxation/concession as to the essential academic qualification was granted by the competent authority, his selection based on the merit ought not to have been interfered with at the instance of respondent No.4/ petitioner who, even in the event of writ petition having been

allowed, does not reap the consequences of the declaration of result, if any.

- (22) In order to make out a case for interference, some additional documents have come to be filed before us at the appellate stage which deserve a deeper scrutiny. The selection based on the interview took place on 28.12.2015 and interestingly, the material placed on record indicates that the office noting in relation thereto was only prepared on 05.06.2016 and was placed before the Hon'ble Speaker on 14.07.2016.
- (23) Prior to the approval of competent authority, the office note does not indicate as to when the result of the selection was declared. The only fact which the office note indicates is regarding the merit of the 20 candidates that too without mention of their application numbers. Holding of the interview on 28.12.2015 is mentioned. The office note evidently shows that the same is silent about the declaration of the result of selection held on 28.12.2015. Surprisingly, even without declaration of the result until 14.07.2016, no appointments could be made. The order of appointment issued in favour of the appellant was itself issued on 14.07.2016 vide letter No. 1231/पि०स०/अधि०/94/97. Not only that the permission to participate in the selection was highly objectionable and beyond the scope of Rules but the very appointment of the appellant benefiting the result in a clandestine manner brought the controversy before this Court through Writ Petition No. 20207 (SB) of 2016 which has finally been allowed by means of the judgment dated 25.01.2024 for the reasons recorded therein.
- (24) The counter affidavits filed before the Writ Court by the Vidhan Sabha as well as by the appellant for the purposes of relaxation

of essential academic qualification have banked upon Rule 49 of 1974 Rules, which for ready reference is extracted below:-

“49. Power of the Speaker to relax Rules – The Speaker may, in exceptional circumstances, relax the age limit and other qualifications, other than educational qualification, prescribed for any post in these rules.”

- (25) Having heard the arguments putforth by learned counsel for the parties, **the first question that arises for consideration is as to whether the competent authority was well within his jurisdiction to have relaxed the essential conditions of recruitment or the same as per the Rules applicable in this behalf was permissible or not; and secondly, as to whether appointment of an ineligible candidate *dehors* the rules has a right to continue in blatant disregard of Articles 14 and 16 of the Constitution of India read with the Rules applicable.**

DISCUSSION ON FINDINGS

- (26) Recruitment in the matter of public employment is founded on two basic principles. Firstly that the recruitment agency must have credibility of the highest order in executing the principle of open competition and secondly, the implementation of rules applicable insofar as the process is concerned must equally stand the tests of Article 14 of the Constitution of India. It is a foundational principle of recruitment as laid down in *Syed Khalid Rizvi & Ors. vs. Union of India & Ors. [1993 Supp.(3) SCC 576]* that the essential conditions of recruitment cannot be relaxed. In the context of principle as laid down by the Hon'ble Apex Court, we may profitably refer to Rule – 49 of the Rules, 1974 as has been placed reliance upon. It is true that in exceptional circumstances, Hon'ble the Speaker can relax Rules pertaining to age limit and other qualifications, but not

educational qualifications, prescribed for any post mentioned in the Rules, 1974. Undisputedly, the Rules framed under Article 187 of the Constitution of India, i.e., 1974 Rules did not enumerate the post of Information Officer. It is strange that against the advertised post of Information Officer, which is not enumerated in the Rules, 1974, on the application of appellant/opposite party No.3, the Hon'ble Speaker has relaxed the educational qualification, which is not at all permissible. Thus, the appointing authority under these circumstances for the purpose of recruitment was firstly bound by the terms of the advertisement and secondly the power of relaxation available, if any, could not be exercised beyond the scope of rules as applicable to the service in question.

- (27) Learned counsel for the appellant in order to defend the appointment made has argued that once the permission to participate in the selection was granted by the competent authority, it clearly would signify that an exemption pertaining to the possession of essential academic qualification was implied to have been granted by the competent authority. The submission put forth before us is unconvincing and does not impress us for the reason that the permission as available on record was firstly not weighed in the light of the academic qualifications possessed by the appellant and secondly, there was no exercise. The reference to Rule 49 of the 1974 Rules as has been placed reliance upon in the counter affidavit filed by the Vidhan Sabha is merely an eyewash. The appellant's further contention that the appointment made by the competent authority in view of the relaxation having been granted was fully in consonance with law and the appellant having rendered more than 7 years and at this stage having become overage, would face uncertainty in his career is again an argument which essentially is, more an emotional argument than legal. Legally

in absence of declaration of result of a selection, it cannot be said to have been done culminating into the rights of appointment in favour of a meritorious candidate and in the present case, no stand was adopted in the counter affidavits filed before the Writ Court that the result of selection, prior to the date of appointment of the appellant, was ever declared by the competent authority. Even the office note based on the selection held on 28.12.2015 was drawn nearly six months later. There is no reference to the declaration of result prior or after the approval of such a selection by the competent authority. In these circumstances, the appointment termed to have been made validly though based on an unauthorized relaxation is a far-fetched argument which has no sanctity in the eyes of law.

- (28) *Per contra*, learned counsel appearing for the respondent No.4/ petitioner taking us through the material available on record has, at the first instance, argued that **the question of relaxation in the present case, when analyzed from the plain reading of application made on 15.06.2015 is purposely silent on the academic qualification possessed by the appellant** and secondly, even if there was a disclosure on the part of appellant for not being possessed with the subject of Hindi at the level of graduation as required in the advertisement, yet **the exercise of power within the scope of Rule 49 of 1974 Rules firstly not being applicable in the present case was wrongly availed of by the competent authority** and secondly, even if the said Rule was available, yet the same does not permit relaxation of the essential academic qualification as is evident from the plain reading of the Rule itself. Once the rule itself forbids the relaxation of essential academic qualification, no question of relaxation in the present case could arise. There did not exist any special circumstances too as has rightly been observed by the learned Single Judge.

- (29) The argument put forth by the learned counsel for the respondent No.4/petitioner is sought to be fortified on the strength of case laws for which ready reference, we may refer to, as under:-
- (i) Management of Narendra & Company Private Limited vs. Workmen of Narendra & Company [(2016) 3 SCC 340];
 - (ii) Judgment dated 04.04.2019 passed in Special Appeal No. 562 of 2005, Devendra Singh vs. District Administrative Committee
 - (iii) Kishorilal Charmakar and another v. Distt. Education Officer and another [(1998) 9 SCC 395]
 - (iv) State of Madhya Pradesh & another v. Dharam Bir [JT 1998 (4) SC 363]
 - (v) State of Karnataka and others v. Gadilingappa and others [(2010) 2 SCC 728]
 - (vi) Basawaraj and another v. Special Land Acquisition Officer [(2013) 14 SCC 81]
- (30) Dr. Misra, learned counsel has heavily come down on the aspect of non-declaration of result. It is argued that no stand whatsoever was adopted before the Writ Court, therefore, all the factual pleas taken at the appellate stage are of no consequence.
- (31) Having regard to the arguments and observations made above, even if the documents which are additionally filed alongwith the appeal are taken into consideration, the same lead us to a strong conviction that the manner in which the relaxation of academic qualification for appointment was granted by the competent authority, the same was clearly indicative of nothing but nepotism besides it being in blatant disregard of the well-settled principles of recruitment. The appointment of an ineligible person that too without declaration of result, was

clearly *dehors* the rules and has rightly been set aside as held by the learned Writ Court. The *modus operandi* of the competent authority being writ large on the face of record was rightly interfered by the learned Single Judge. In the interest of justice, we caution the Recruitment Agencies and competent authorities not to practice nepotism and favouritism in the matter of public employment as it would shake the very confidence and foundation of public faith in the rule of law.

- (32) Now coming to the ground of equity as raised on the basis of working for about more than six years, learned counsel for the respondent No.4/petitioner has relied upon the judgment passed by the Apex Court in *State of Madhya Pradesh and another v. Dharam Bir (supra)*, wherein it has been observed that the plea that a person appointed illegally is working on the post for more than a decade, his appointment should not be disturbed, cannot be accepted. Relevant paragraph Nos. 32 and 33 of the judgment are reproduced as under:-

“32. "Experience" gained by the respondent on account of his working on the post in question for over a decade cannot be equated with Educational Qualifications required to be possessed by a candidate as a condition of eligibility for promotion to higher posts. **If the Government, in exercise of its executive power, has created certain posts, it is for it to prescribe the mode of appointment or the qualifications which have to be possessed by the candidates before they are appointed on those posts. The qualifications would naturally vary with the nature of posts or the service created by the Government.**

33. The post in question is the post of Principal of the Industrial Training Institute. **The Government has prescribed a Degree or Diploma in Engineering as the essential qualification of this post. No one who does**

not possess this qualification can be appointed on this post. The educational qualification has direct nexus with the nature of the post. The principal may also have an occasion to take classes and teach the students. A person who does not hold either a Degree or Diploma in Engineering cannot possibly teach the students of Industrial Training Institute the technicalities of the subject of Engineering and its various branches.”

- (33) The appointment of persons who do not possess the minimum prescribed qualification, are illegal. In *State of Karnataka v. Gadilingappa & others (supra)*, the Apex Court in paragraph Nos. 6 and 7 observed as under:-

6. Admittedly, the respondents herein were working as Primary School Teachers for a long period of time and they had rendered service as such continuously without any break. However, after perusing the relevant documents on record what comes to light is the fact that none of the respondents had undergone the T.C.H. course, which was the minimum prescribed qualification at the relevant time for being appointed to the post of a teacher. Since the respondents did not possess the minimum prescribed qualification and because of which their appointment was in contravention of the Cadre and recruitment Rules, we are of the considered view that their appointments were illegal appointments.

7. Furthermore, neither has it been brought to our notice nor was it specifically stated before the High Court by the respondents in the Writ Petition Nos. 45859-891 of 2003 that the respondents belonged to the Scheduled Castes or Scheduled Tribes category, which was the case of the petitioners in Writ Petitions Nos. 33173-33220 of 2003 (S-KAT) as well the main factor taken into consideration by the High Court of Karnataka while allowing the claims of the petitioners therein for regularization of their services. Besides, the Constitutional Bench had, in Secretary, State of Karnataka

and Others v. Umadevi(3) and Others reported in (2006) 4 SCC 1, clarified in explicit terms that the decisions which run counter to the principles settled and the directions given in the Uma Devi's (supra) case will stand denuded of their status as precedents. Here, we also wish to point out that it is a well settled principle of law that even if a wrong committed in an earlier case, the same cannot be allowed to be perpetuated."

- (34) In the cases of ***State of Madhya Pradesh and another v. Dharam Bir (supra)*** and ***State of Karnataka v. Gadilingappa & others (supra)***, the facts of both cases are more or less similar. In the former case, the minimum essential qualification prescribed for the the post of Principal of Industrial Training Institute is Diploma in Engineering, whereas in the later case, the minim prescribed qualification is T.C.H. and they had worked for a long period of time. In both cases, since they were not having the minimum prescribed qualification, the Apex Court opined that their appointments were illegal appointments. Here in this case, since the appellant did not possess the minimum qualification prescribed for appointment on the post of Information Officer, the appointment offered to him on the basis of invalid relaxation is *dehors* the Rules and illegal.
- (35) Having considered the arguments putforth by learned counsel for the parties as well as the observations made by the Writ Court in its judgment, there is no escape to conclude that the opinion recorded by the learned Single Judge is the only view possible in the facts and circumstances of the case which deserves to be affirmed for all the more reasons recorded above.
- (36) For the aforesaid reasons, the answer to both questions is in negative as the power does not vest in the Hon'ble Speaker to relax the essential qualification and consequently, the appointment of the appellant *de hors* the Rules who is not at all

eligible to be considered for appointment is illegal and has rightly been set aside.

(37) In the result, the Special Appeal filed by the appellant fails and is **dismissed** accordingly.

[Attai Rahman Masoodi, J.] [Arun Bhansali, C.J.]

Order Date :- 06.3.2024
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Karmesh Pratap Singh v. State of U.P. and others