

Court No. - 17

Case :- CONTEMPT APPLICATION (CIVIL) No. - 1335 of 2022

Applicant :- Committee Of Management , Sanjay Laghu Madhyamik Vidyalaya , Amethi Thru. Shri Ram Bahadur Dwivedi

Opposite Party :- Dr. Arvind Kumar Pathak, District Basic Education Officer, Amethi

Counsel for Applicant :- Akber Ahmad, Gaurav Mehrotra, Rani Singh

Counsel for Opposite Party :- Prashant Arora, Shailendra Singh Rajawat

Hon'ble Rajeev Singh, J.

1. On 03.07.2024 and 08.07.2024, following orders were passed:

Order dated 03.07.2024

"1. On 31.05.2024, following order was passed:

"1. Heard.

2. The present contempt application is filed with the prayer to summon the respondent for willful and deliberate disobedience in not complying the order dated 9.3.2022 passed by writ court in Writ C No.10123 of 2021 (C/M Sanjay Laghu Madhyamik Vidyalaya Vs. State of U.P. & Ors.).

3. Learned counsel for the applicant submits that in accordance with the provisions of Rule 13 of U.P. Recognized Basic Schools, Junior High School Recruitment and Conditions of Service of Ministerial Staff and Group D Employees Rules, 1984, advertisement was issued for filling up the vacancies of Class-III employees and the intimation was given to the District Basic Education Officer, Amethi on 22.9.2018 (copy of the letter dated 22.9.2018 is annexed as Annexure No.8 to the contempt application) but the said intimation was rejected by the then District Basic Education Officer, Amethi on 27.9.2018. He further submits that order dated 27.9.2018 was challenged in the Writ Petition No.31711 (S/S) of 2018, 'Committee of Management, Sanjay Laghu Madhyamik Vidyalaya Jorawarpur, Jamo, Amethi Vs. State of U.P. & Ors.', in which, order was passed on 1.11.2018 by setting aside the order of the District Basic Education Officer, Amethi, dated 27.9.2018. He further submits that thereafter, three weeks time was granted to District Basic Education Officer, Amethi but no order was passed then advertisement was issued and process was completed, thereafter, request of the applicant was rejected by the District Basic Education Officer, Amethi on 29.1.2019, which was challenged before the writ court in Writ Petition No.13556 (M/S) of 2020 'Committee of Management, Sanjay Laghu Madhyamik Vidyalaya Jorawarpur, Jamo, Amethi Vs. State of U.P. & Ors.', which was allowed vide order dated 27.8.2020 but in pursuance of order of the writ court, they did not take any decision. Thereafter, contempt application was filed and in the affidavit of compliance order dated 6.1.2021, was

annexed, which was again challenged in Writ C No.10123 of 2021 (C/M Sanjay Laghu Madhyamik Vidyalay Vs. State of U.P. & Ors.), which was allowed on 9.3.2022 and the said order was challenged in the Special Appeal (D) No.157 of 2022, which was admitted with the observation that there is no stay order, in the meantime, present contempt application is filed but respondent authorities are deliberately not complying the order of the writ court.

4. As it is evident from the record that this case is having different facts, accordingly, list this case on 3.7.2024 at 11:30 A.M. & delinked from Contempt Application (C) No.2553 of 2022."

5. Respondent no.3 is directed to ensure filing of affidavit of compliance, failing which, he shall appear before this Court. "

2. In compliance of the order dated 31.05.2024, opposite party is present but compliance affidavit is not filed.

3. List this case on 08.07.2024 at 11:30 AM.

4. On the next date, opposite party is directed to file affidavit of compliance, failing which, he shall appear in person before this Court for framing of charge. "

Order dated 08.07.2024

"1. On 3rd July, 2024, following order was passed:-

"1. On 31.05.2024, following order was passed:

"1. Heard.

2. The present contempt application is filed with the prayer to summon the respondent for willful and deliberate disobedience in not complying the order dated 9.3.2022 passed by writ court in Writ C No.10123 of 2021 (C/M Sanjay Laghu Madhyamik Vidyalaya Vs. State of U.P. & Ors.).

3. Learned counsel for the applicant submits that in accordance with the provisions of Rule 13 of U.P. Recognized Basic Schools, Junior High School Recruitment and Conditions of Service of Ministerial Staff and Group D Employees Rules, 1984, advertisement was issued for filling up the vacancies of Class-III employees and the intimation was given to the District Basic Education Officer, Amethi on 22.9.2018 (copy of the letter dated 22.9.2018 is annexed as Annexure No.8 to the contempt application) but the said intimation was rejected by the then District Basic Education Officer, Amethi on 27.9.2018. He further submits that order dated 27.9.2018 was challenged in the Writ Petition No.31711 (S/S) of 2018, 'Committee of Management, Sanjay Laghu Madhyamik Vidyalaya Jorawarpur, Jamo, Amethi Vs. State of U.P. & Ors.', in which, order was passed on 1.11.2018 by setting aside the order of the District Basic Education Officer, Amethi, dated 27.9.2018. He further submits that thereafter, three weeks time was granted to District Basic Education Officer, Amethi but no order was passed then advertisement was issued and process was completed, thereafter, request of the applicant was rejected by the District Basic Education Officer, Amethi on 29.1.2019, which was challenged before the writ court in Writ Petition No.13556 (M/S) of 2020 'Committee of Management, Sanjay Laghu Madhyamik Vidyalaya Jorawarpur, Jamo, Amethi Vs. State of U.P. & Ors.', which was allowed vide order dated 27.8.2020 but in pursuance of order of the writ court, they did not take any decision. Thereafter, contempt application was filed and in the affidavit of compliance order dated 6.1.2021, was annexed, which was again challenged in Writ C No.10123 of 2021 (C/M Sanjay Laghu Madhyamik Vidyalay Vs. State of U.P. & Ors.), which was allowed on 9.3.2022 and the said order was challenged in the Special Appeal (D) No.157 of 2022, which was admitted with the observation that

there is no stay order, in the meantime, present contempt application is filed but respondent authorities are deliberately not complying the order of the writ court.

4. As it is evident from the record that this case is having different facts, accordingly, list this case on 3.7.2024 at 11:30 A.M. & delinked from Contempt Application (C) No.2553 of 2022."

5. Respondent no.3 is directed to ensure filing of affidavit of compliance, failing which, he shall appear before this Court. "

2. In compliance of the order dated 31.05.2024, opposite party is present but compliance affidavit is not filed.

3. List this case on 08.07.2024 at 11:30 AM.

4. On the next date, opposite party is directed to file affidavit of compliance, failing which, he shall appear in person before this Court for framing of charge. "

2. The application for deferment of contempt application filed by learned counsel for the opposite party no.3- Sri Sanjay Tiwari, District Basic Education Officer, Amethi is taken on record. He submits that the aforesaid order dated 3rd July, 2024 passed in the present contempt application has already been challenged before the Hon'ble Apex Court in Special Leave Petition Diary No. 29399 of 2024 and prays that contempt proceedings may be deferred till the disposal of the aforesaid special leave petition.

3. Learned counsel for the applicant has submitted that this is third round of litigation as the officers are adamant to disturb the basic education in the college of the applicant and detailed order was passed by the writ court on 9th March, 2022. The order dated 9th March, 2022 is as under:-

"1. Heard Shri Akbar Ahmad, learned counsel for the petitioner, learned Additional Chief Standing Counsel appearing for the respondents no. 1 & 2 and Shri Prashant Arora, learned counsel appearing for the respondent no. 3.

2. The instant writ petition has been filed praying for following main relief(s):

"I. To issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 06.01.2021 issued by respondent no. 3, copy whereof is contained as annexure 1 to the writ petition.

II. To issue a writ, order or direction in the nature of mandamus commanding the respondents to accord approval for conducting interviews on the post of clerk in the petitioner institution in accordance with the Uttar Pradesh Recognized Basic School (Junior High School) (Recruitment and Condition of Service of Ministerial Staff and Group D Employees) Rules, 1984."

3. Shri Prashant Arora, learned counsel appearing for the respondent no. 3 informs that in pursuance of order dated 21.02.2022 regarding the judgment of this Court passed in Writ A No. 5418 of 2019 in re: Committee of Management Manorama Kanya Junior High School vs State of U.P. and others decided on 24.09.2021, Special Appeal (Defective) No. 30 of 2022 in re: State of U.P. and others vs Committee of Management Manorma Kanya Junior High School and another was filed. He submits that vide the order dated 22.02.2022 the appeal has been admitted for hearing but the judgment of the Hon'ble Single Judge dated 24.09.2021 has not been stayed.

4. The instant writ petition has been filed praying for quashing of the order dated 06.01.2021 passed by the respondent no. 3, a copy of which is annexure 1 to the petition, whereby the request of the petitioner institution for sending of a specialist for making appointment on a class III post has been rejected. Learned counsel for the petitioner contends that as there

was a vacancy of a Clerk in the institution as such considering the rules which govern the appointment on a ministerial post namely Uttar Pradesh Recognized Basic School (Junior High School)(Recruitment and Condition of Service of Ministerial Staff and Group D Employees) Rules, 1984 (hereinafter referred to as "Rules 1984") an information was sent to the District Basic Siksha Adhikari (hereinafter referred to as BSA) on 22.09.2018 regarding the vacancy and seeking permission to fill in the vacancy of the Clerk. A copy of the said letter dated 22.09.2018 is annexure 9 to the petition. The said request was rejected by the BSA vide order dated 27.09.2018, a copy of which is annexure 10 to the petition.

5. Being aggrieved, Writ Petition No. 31711 (SS) of 2018 in re: Committee of Management, Sanjay Laghu Madhyamik Vidyalaya Jorawarpur, Jamo Amethi vs State of U.P. and others was filed and this Court vide order dated 01.11.2018, a copy of which is annexure 11 to the petition, quashed the said order and directed the BSA to pass appropriate orders on the application of the petitioner.

6. Subsequent thereto, considering Rule 13 of the Rules 1984 an advertisement was published by the institution in 2 newspapers namely (a) Swatantra Bharat and (b) Sahara Jeevan. It is claimed that in pursuance of the said advertisement, various applications were received on 08.01.2019. The institution vide letter dated 08.01.2019, a copy of which is annexure 13 to the petition, forwarded the said applications alongwith the advertisements etc to the BSA for sending of a specialist as provided under Rule 14(3) of the Rules 1984. The BSA vide order dated 29.01.2019, a copy of which is annexure 14 to the petition, rejected the said request keeping in view a government order which had been issued in the interregnum period dated 15.01.2019 which declared Group C and D posts as dead cadre. A copy of the Government Order dated 15.01.2019 is annexure 15 to the petition.

7. Being aggrieved the institution filed Writ Petition No. 13556 (MS) of 2020 in re: Committee of Management, Sanjay Laghu Madhyamik Vidyalaya Jorawarpur, Jamo Amethi vs State of U.P. and others and this Court vide order dated 27.08.2020, a copy of which is annexure 16 to the petition, quashed the aforesaid order and directed the competent authority to pass an order in accordance with law.

8. In pursuance thereto the BSA has proceeded to pass the order dated 06.01.2021, a copy of which is annexure 1 to the petition, whereby the claim of the petitioner institution for sending a specialist has again been rejected.

9. Learned counsel for the petitioner contends that the perusal of the impugned order dated 06.01.2021 indicates that three grounds have been taken by the BSA while passing the impugned order namely (a) there was no wide circulation of the newspapers in which the advertisement has been published (b) the Government Order dated 15.01.2019 has already declared all Group C and D posts as dead cadre and as such no appointment can be made on a Group C post and (c) upon permission and guidelines being sought by the BSA from the higher authorities for appointment and sending of a specialist, no permission and guidelines have been accorded by the higher authorities for appointment of a specialist.

10. Learned counsel for the petitioner argues that so far as ground (a) is concerned that there is no wide circulation of the newspapers in which the advertisements have been published, keeping in view the circulation figure, a copy of which is annexure 24 of the petition it is apparent that the aforesaid two newspapers are having wide circulation. It is also contended that with respect to another advertisement which has been

issued by another institution with respect to vacancy of a Teacher i.e. in the newspaper namely "Swatantra Bharat", a copy of which is annexure 25 to the petition, the specialist was duly sent by the BSA, a copy of which is part of annexure 25 (page 149) and thereafter the appointment of the Teacher had also been approved vide the order dated 11.06.2018 (page 150). It is thus contended that the BSA cannot be allowed to shift his stand more particularly when the same newspaper is involved.

11. So far as ground (b) is concerned i.e. the Government Order dated 15.01.2019 having declared Group C and Group D posts in the institutions as dead cadre, learned counsel for the petitioner argues that the aforesaid government order has already been quashed by this Court so far as it pertains to Group C and D posts being declared as dying cadre in Writ A No. 5418 of 2019 in re: Committee of Management Manorama Kanya Junior High School vs State of U.P. and others decided on 24.09.2021 against which the Special Appeal (Defective) No. 30 of 2022 in re: State of U.P. and others vs Committee of Management Manorma Kanya Junior High School and another has been filed in which though the special appeal had been admitted yet no stay order has been granted. Reliance has also been placed on another judgment of this Court passed in Writ A No. 3975 of 2019 decided on 26.03.2019 in re: Committee of Mangement Karwal Devi Kanya Laghu Madhyamik Vidhayalaya, Gorakhpur and another vs State of U.P. & others to contend that even if for the sake of arguments, the said Government Order dated 15.01.2019 is considered valid the same would only have prospective effect in as much as in the instant case the advertisement had been issued on 22.12.2018 while the Government Order had been issued on 15.01.2019 and thus there cannot be any retrospective effect of the said Government Order.

12. So far as the ground (c) is concerned i.e. no permission and guidelines having been given by the higher authorities for sending of a specialist, reliance has been placed on Rule 14(3) of the Rules 1984 to contend that the specialist has to be nominated by the BSA and there would not be any occasion or question of the BSA to seek approval from higher authorities in as much as once the Rules categorically provide for appointment of a specialist to be made by the BSA as such no other authority can be expected to influence or dictate the decision of the BSA to do a thing which is contemplated under the Rules.

13. Learned counsel for the petitioner contends that accordingly all the three grounds which have been taken by the BSA while rejecting the claim of the petitioner are patently bad in the eyes of law which makes the impugned order dated 06.01.2021 patently bad in the eyes of law and thus the impugned order merits to be quashed.

14. On the other hand Shri Prashant Arora, learned counsel appearing for the BSA, on the basis of the averments made in the counter affidavit, argues that all the grounds which have been taken in the impugned order dated 06.01.2021 are valid in the eyes of law. Elaborating the same, he argues that both the newspapers in which the advertisements have been published were not having a wide circulation in the area for which the advertisement was published and accordingly it was felt that the necessary number of applications were not received which may thus prejudice the selection process.

15. So far as the Government Order dated 15.01.2019 is concerned, it is submitted that once the issue is subjudice before a Division Bench of this Court in the aforesaid Special Appeal as such the aforesaid Government Order would be applicable in the present case.

16. So far as seeking approval from the higher authority is concerned for the purpose of sending the specialist, it is contended that once the BSA

operates under the control of the State Government as such a request had been sent to the higher authorities for grant of approval for sending of a specialist which was not accorded and hence the BSA has correctly proceeded to reject the request of the petitioner institution.

17. Heard learned counsel for the parties and perused the record.

18. From the perusal of the record it is apparent that that an advertisement had been published in two newspapers on 22.12.2018 by the institution inviting applications for a ministerial post. Certain applications were received which in turn were forwarded to the BSA alongwith requisite papers for sending of a specialist in terms of Rules 1984. In the interregnum period the Government Order dated 15.01.2019 had also been issued whereby the Group C and Group D posts had been declared to be dead cadre. The BSA had passed an order of rejection dated 29.01.2019 placing reliance on the aforesaid Government Order regarding the request for sending of specialist by the petitioner institution. The said order, upon a challenge being raised by filing of Writ Petition No. 13556 (MS) of 2020 in re: Committee of Management, Sanjay Laghu Madhyamik Vidyalaya Jorawarpur, Jamo Amethi vs State of U.P. and others was quashed vide order dated 27.08.2020. Subsequent thereto the impugned order dated 06.01.2021 had been passed by the BSA again rejecting the request of the petitioner institution for sending of specialist. Three grounds have been taken while rejecting the request of the petitioner namely (a) there was no wide circulation of the newspapers in which the advertisement has been published (b) the Government Order dated 15.01.2019 has already declared all Group C and D posts as dead cadre and as such no appointment can be made on a Group C post and (c) upon permission and guidelines being sought by the BSA from the higher authorities for appointment and sending of a specialist, no permission and guidelines have been accorded by the higher authorities for appointment of a specialist.

19. So far as the circulation of the newspapers is concerned, the circulation figures as have been annexed in the petition, a copy of which is annexure 24, would indicate that both the newspapers are having a wide circulation. However the said fact may not detain the Court in as much as with respect to the advertisement in Swatantra Bharat with regard to another institution, a copy of which is annexure 25 to the petition, the BSA had sent specialist and had also approved the appointment of the said Teacher. Thus, it is apparent that the BSA cannot be allowed to take a differential stand from what he has already taken earlier with respect to the advertisement in the same newspaper and accordingly the said ground of rejection in the impugned order would not be legally valid in the eyes of law.

20. So far as the Government Order dated 15.01.2019 is concerned suffice to say that this Court in the case of Committee of Management, Manorama Kanya Junior High School (supra) has already quashed the Government Order dated 15.01.2019 in so far as it declares Group C and Group D posts in Junior High School to be a dead cadre. The said judgment has not been stayed admittedly. For the sake of convenience, the relevant paragraph of the judgement is quoted below:

"34. Consequently, the Government Order dated 15.01.2019, insofar as it declares Class-III and Class-IV posts in junior high schools to be a dead cadre, is found to be wholly arbitrary, irrational, suffering from non application of mind and violative of Articles 14 & 21-A of the Constitution of India as also in teeth of the Act of 2009. The Government Order to that extent, accordingly, stands quashed."

21. Even otherwise keeping in view the judgment of this Court in the case

of Committee of Management, Karwal Devi Kanya Laghu Madhyamik Vidhyalaya (Supra) the aforesaid Government Order has only prospective effect and would not be operative in the instant case where the advertisement had been issued on 22.12.2018 and the Government Order having been issued on 15.01.2019. For the sake of convenience, the relevant paragraphs of the judgement are quoted below:

"5. Learned counsel for the petitioners relied upon a judgement delivered by coordinate Bench of this Court in the case of Writ A No.2569 of 2019 (Committee of Management Seth Teerath Prasad Rameshwar And Another Vs. State Of U.P. And 4 Others). The order passed in the aforesaid case is reproduced hereinbelow:-

"Heard Mr. Pradeep Kumar Upadhyay, learned counsel for the petitioner, the learned Standing Counsel appearing for the respondent nos. 1, 2, 3 and 5 and Mr. Rajesh Khare, the learned counsel appearing for the opposite party no.4.

The issue raised in the present writ petition lies in a narrow compass.

It is an undisputed fact that the proceedings for selection for the post of principal commenced in the year 2017 and ultimately, culminated in the year 2018, i.e., on 06.12.2018, where-after, the proceedings of the Selection Committee were transmitted to the respondent no.4, the District Basic Education Officer, Chitrakoot vide letter dated 10.12.2018. Upon receipt of the aforesaid letter alongwith recommendation of the Selection Committee, an objection was raised by the respondent no. 4 that the papers relating to the educational qualification of the empanelled candidate has not been appended alongwith the same. This objection raised by the respondent no.4 was redressed vide letter dated 11.01.2019 sent by the petitioner no.1 appending alongwith the same the record pertaining to the Educational qualification of the empanelled candidates. It is at this juncture that the respondent no.4 has now passed an order dated 25.01.2019 whereby a request has been sent to the Director, Basic Education, U.P. Lucknow, respondent no.2, for seeking his guide lines in the matter as to whether the approval should be granted or a decision should be taken in the light of the Government Order dated 15.01.2019 (Annexure 9 to the writ petition). The Government Order dated 15.01.2019 stipulates that as per the policy decision taken by the State Government, the post of principal can be sanctioned only in such institution where the number of students exceeds hundred. The applicability of the Government Order dated 15.01.2019 to the selection proceedings to the institution is also disputed by the learned counsel for the petitioners on the ground that since the selection proceedings had commenced already in the year 2017 and came to an end on 06.12.2018, the Government Order dated 15.01.2019 shall not apply. It is further urged that old vacancies are governed by old rules and new vacancies are governed by new rules. Since, the policy decision formulated vide Government Order dated 15.01.2019 is prospective in nature, therefore, the same shall not apply with retrospective effect to the institution in question.

On the aforesaid factual premise, it is thus urged that the respondent no.4, the District Basic Education Officer, Chitrakoot, is liable to be directed by this Court to decide the issue regarding the grant of approval for the post of principal in question.

Admittedly, the respondent no.4 has not taken any decision till date. The matter requires to be adjudicated by the respondent no.4 at the first instance.

Having heard the learned counsel for the petitioner, the learned Standing Counsel appearing for the respondent nos. 1, 2, 3 and 5 and Mr. Rajesh

Khare, the learned counsel appearing for the opposite party no.4, this Court is of the considered view that in case a direction is issued to the respondent no.4, the District Basic Education Officer, Chitrakoot to decide the issue qua the grant of approval/applicability of the Government Order dated 15.01.2019.

Consequently, this writ petition stands finally disposed of with a direction to the respondent no.4 to take a decision on the aforesaid issues within a period of two months from the date of production of a certified copy of this order.

It is made clear that this Court has not expressed any opinion on the merits of the matter."

6. From perusal of the Government Order dated 15.1.2019 it is clear that the policy decision formulated vide Government Order dated 15.01.2019 is prospective in nature, therefore, the same shall not apply with retrospective effect to the institution in question.

7. Learned counsel for the petitioner further relied upon a judgement of the Supreme Case in the case of A.A. Carton Vs. Director of Education reported in LAWS (SC) 1983 3 15 :: 1983 AWC 368 SC. He relied upon paragraph 5 of aforesaid judgement, which is quoted hereinbelow:-

"....But it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect."

8. In view of the facts and circumstances, the order dated 18.2.2019 passed by the respondent no.3/District Basic Education Officer, Gorakhpur, is liable to be quashed and as such same is hereby quashed."

22. So far as no approval and guidelines having been given by the higher authorities to the BSA for sending of a specialist, suffice to say that once under Rule 14(3) of the Rule 1984 the specialist is to be nominated by the BSA as such it is the BSA who has to send the specialist in pursuance of the request made by the institution concerned and there would not be any question of seeking approval from the higher authority, more particularly when no requirement of approval from higher authorities is provided under the said rules.

23. Considering the aforesaid, the writ petition deserves to be allowed and is allowed. A writ of certiorari is issued quashing the order dated 06.01.2021, a copy of which is annexe 1 to the writ petition.

24. A writ of mandamus is issued directing the BSA District Amethi i.e. the respondent no. 3 to pass a fresh order in the light of the discussions made above. Let such decision be taken in accordance with law and the relevant rules within a period of six weeks from the date of receipt of a certified copy of this order. "

4. Thereafter, present contempt application was filed, then the opposite parties filed Special Appeal Defective No. 157 of 2022 and requested before the Division Bench of this Court that the controversy in the writ court of the present case was identical which is under challenge in Special Appeal Defective No. 30 of 2022 in re: State of U.P. and others vs Committee of Management Manorma Kanya Junior High School and another. This was the wrong fact as in the aforesaid appeal, the controversy was related to one Government Order dated 15.01.2019, which has no concern with the present case but on the request of counsel for the respondent, the aforesaid special appeal was connected with the Special Appeal Defective No. 102 of 2022 after the decision of Special Appeal Defective No. 30 of 2022 and in the last paragraph, the request of interim order/ stay order was declined by the Division Bench of this Court.

5. The order dated 2nd September, 2022 passed in Special Appeal Defective No. 157 of 2022 is as under:-

" Order on Condonation of Delay Application

Heard learned counsel for the appellants/State authorities Sri Anand Kumar Singh and Sri Gaurav Mehrotra, learned representing sole respondent.

Having heard the learned counsel for the parties and having considered the averments made in the application seeking condonation of delay, we are satisfied that delay has sufficiently been explained.

Accordingly, the application is allowed and delay in filing the special appeal is hereby condoned.

Order on Appeal

It has been argued by learned counsel for the appellant that almost same controversy is engaging the attention of this Court in Special Appeal Defective No. 30 of 2022, (State of U.P. and others vs. Manorma Kanya Junior High School and another) which has been admitted for hearing by Division Bench of this Court at Allahabad on 22.02.2022. Taking note of the said order dated 22.02.2022 passed in Special Appeal Defective No. 30 of 2022 this Court in Special Appeal Defective No. 102 of 2022 has passed an order on 21.07.2022 directing the Registry to list this special appeal after the decision in Special Appeal Defective No. 30 of 2022.

Accordingly, it has been prayed by learned State Counsel representing appellants that this appeal may also be admitted and be heard along with Special Appeal Defective No. 102 of 2022.

On the other hand, Sri Gaurav Mehrotra, learned counsel representing respondent submits that the ground on which the prayer made by the respondent/Committee of Management of Institution for appointment of an expert as a member of Selection Committee was rejected by the Basic Shiksha Adhikari in this case is based on certain provisions of the Government Order dated 15.01.2019 which stands quashed by this Court by means of the Judgment and order dated 24.09.2021 passed in Writ A No. 5418 of 2019. He has further stated that though against the judgment dated 24.09.2021, Special Appeal Defective No. 30 of 2022 has been admitted, however, no interim order has been passed by the Division Bench in this special appeal.

It has also been argued by Sri Gaurav Mehrotra that so far as the instant case is concerned, even if ultimately the validity of Government Order dated 15.01.2019 is upheld, the same will not affect the selection process for the reason that vacancy against which selection process is being undertaken by the respondent/Committee of Management had arisen prior to issuance of the Government Order dated 15.01.2019. Submission is that any provision contained in the Government Order dated 15.01.2019 will operate prospectively and, hence, the said Government Order will not govern the case of the respondent/Committee of Management. It has also been argued by learned counsel representing the respondent that so far as the issue relating to initiation of selection process for appointment to the post in question in this particular case is concerned, the same stands decided in an earlier round of litigation, namely, by means of the judgment and order dated 27.08.2020 passed in Writ Petition No. 13556 (MS) of 2020.

All these issues require consideration.

Accordingly, this special appeal is admitted.

Office is directed to list this special appeal along with Special Appeal Defective No. 102 of 2022, after decision of Special Appeal Defective No. 30 of 2022.

Learned counsel for the parties will intimate the Registry once Special

Appeal Defective No. 30 of 2022 is finally decided.

We however, make it clear that we have not passed any interim order/stay order in this special appeal. "

6. Sri Gaurav Mehrotra, learned counsel for the applicant has further submitted that the aforesaid order dated 2nd September 2022 was never challenged and the opposite parties are only misleading the Court. Therefore, the affidavit for deferment of contempt application is liable to be dismissed.

7. It is undisputed fact by the opposite parties as well as his counsel that the process of appointment in the institution of applicant was initiated in the month of November, 2018 and admittedly the Government Order dated 15.01.2019 was passed thereafter. As this fact was also considered and dealt by the writ court in paragraph no. 20 and 21 of the aforesaid order dated 9th March, 2022, therefore the application for deferment of contempt application is hereby rejected with the cost of Rs. 25,000/-

8. List this case on 15th July, 2024 at 11:30 am for framing of charges.

9. On the next date, the officer, who is present today, shall again appear before this Court and he shall also file an affidavit stating the fact that the cost amount has been handed over to the applicant. "

2. Learned counsel for the applicant submits that against the order dated 03.07.2024, Special Leave to Appeal No.14268/2024 was filed by opposite party no.3- Shri Sanjay Tiwari, District Basic Education Officer, Amethi and the aforesaid appeal was dismissed.

3. In pursuance of earlier order, opposite party no.3 is present before this Court along with affidavit of compliance which is taken on record. He informed that order of writ court has already been complied with as formal order has been passed on 18.07.2024, therefore, the present contempt application may be dismissed.

4. Learned counsel for the applicant does not dispute on the contents of affidavit of compliance.

5. Considering the submission of counsel for the parties, contents of affidavit of compliance filed today as well as order dated 18.07.2024 passed by opposite parties, no contempt is made out against the opposite parties.

6. Accordingly, the present contempt application is hereby **dismissed**.

7. Presence of officer is hereby discharged.

Order Date :- 19.7.2024

V. Sinha