

Court No. - 20

Case :- WRIT - A No. - 6879 of 2012

Petitioner :- Shailendra Pratap Singh

Respondent :- State Of U.P. Through Its Secy. Basic Edu. U.P. And Others

Counsel for Petitioner :- G.C. Verma, Sharad Pathak

Counsel for Respondent :- C.S.C., Anurag Kumar
Singh, P.C. Chauhan, Pradeep Kumar Singh Bisen

Hon'ble Shree Prakash Singh, J.

1. Heard Sri G. C. Verma, learned counsel for the petitioner, Sri Ran Vijay Singh, learned counsel for the respondent no.2, Sri Anurag Kumar Singh, learned counsel for the respondent no. 4, i.e., Committee of Management, Sri Shailendra Kumar Singh, Chief Standing Counsel, Sri Vivek Shukla, additional chief standing counsel and Sri Piyush Kumar, learned Standing Counsel for the State.
2. Vide the instant petition, a challenge is made to the order dated 13.9.2012 passed by the District Basic Education Officer, Pratapgarh.
3. Factual matrix of the case is that a post of clerk became vacant due to retirement of regular clerk, namely, Mohan Lal Sharma in the Uchchatar Madhyamik Vidyalaya, Para Hamidpur Pratapgarh (hereinafter referred to as 'the institution'), on 30.9.2011. Thereafter, the then Manager of the Committee of Management moved an application on 4.11.2011, to the District Basic Education Officer (hereinafter, referred to as 'DBEO') for

granting permission for filling up the post of Clerk. On such application, the 'DBEO' granted permission and, thereafter, the post of Clerk (Class-III) was advertised in the newspaper as per the provisions of UP Recognised Basic Schools (Junior High Schools) (Recruitment of Conditions of Service of Ministerial Staff and Group D Posts), Rules 1984 (hereinafter referred to as 'the Rules 1984'). The qualification and other description as an eligibility criterion, was also mentioned in the advertisement and on 30.11.2011, the Manager i.e opposite party no.4 sent a letter to the 'DBEO' for providing Observer on 4.12.2011, i.e., the date fixed for interview but the same remained unheard. Again on 27.12.2011, a letter was sent for providing Observer/Nominee for 1st of January 2012 and in response, after the expiry of the aforesaid date, the DBEO informed to the opposite party no.5 that since, assembly election is notified, therefore, the appointment process would be conducted after the election is denotified. After the election was over again, the date of interview was fixed on 1st of April 2012 and it was intimated by the opposite party no.4, vide letter dated 3.3.2012 to the DBEO and, thereafter, on 29.3.2012, 28.6.2012, 11.7.2012 and 24.7.2012, the same request was repeated before the DBEO while fixing the dates for interview but, ultimately, when the Entire effort went unsuccessful, the interview was held on 29.7.2012 and the selection so made was placed before the Committee of Management, who sent the papers before the opposite party no.2 for approval, which was received in the office of opposite party no.2, on 14.8.2012, which is undisputed fact.

4. Thereafter, on 13.9.2012, after expiry of period of one month, the appointment letter was issued to the petitioner, while following the provisions of Rule 15 (5) (iii) of the Rules, 1984, which says about the deemed approval after expiry of period of one month. After the letter was issued on 14.9.2012, the petitioner submitted his joining on 20.9.2012 and he was allowed to join and was permitted to work since, 19.9.2012. On

13.9.2012, the impounded order was passed by the opposite party no. 2/DBEO and request for the approval of the appointment of the petitioner was rejected precisely, on the ground that the appointment of the petitioner is done by an unlawfully constituted selection committee.

5. Contention of the learned counsel for the petitioner is that there is no dispute that a substantive vacancy arose on the retirement of regular Clerk, Mohan Lal Sharma and, thereafter, the Manager, i.e., opposite party no.4, sent several letters, started from the month of November, 2011 till July 2012, wherein the repeated request was made for appointment of nominee. In response, only one letter is sent by opposite party no.3, i.e. dated 6.1.2012, whereby, he has directed that the nominee will be provided after finalization of the Assembly election and once the Assembly election was over, five letters were written to the opposite party no.2, with the request to provide a nominee, but no response was given.

6. He further argued that looking into the exigency of the services of the Clerk in the institution, under the compelling circumstances, the selection was held by a duly constituted selection committee, comprises of three members wherein, the then Manager, Head Master of the school and one other member was nominated by the Committee of Management, when no nominee was sent by opposite party no. 2, as per the provisions of Rule 14 of the Rules, 1984, and two members, i.e., the Manager and the Head Master, were present in selection committee and the Manager, who is one of the members, is of Scheduled Caste Category. Adding his arguments, he submits that time and again, in several verdicts, this Court has held that if out of three members, two were present in selection, the selection would be valid.

7. Further contention of counsel for the petitioner is that the Government Order dated 24.11.2001 provides that where, the aided Junior High School upgraded to High School/Intermediate (Un-aided), the administrative

control of DBEO would remain continue for the Junior High School including the payment of salary and subsequently, the said Government order is also considered while another order dated 09.05.2022 is issued.

8. In support of his contention, He has placed reliance on a judgement reported in 2019 (7) ADJ 250 (LB), Dhirendra Pratap Singh Vs. State of UP and others, and has referred paras 10 to 12 of the above said judgement. Paras 10 to 12 are extracted as under:-

“10. Learned counsel for the petitioner has also submitted that in the instant case, one nominee was sought from the office of the District Basic Education Officer for making selection on the post in question, but said nominee was not sent and the selection exercise was completed in absence of the nominee of the District Basic Education Officer. Learned counsel for the petitioner has cited judgment of this Court rendered in a batch of writ petitions, leading Writ Petition No. 5118 (S/S) of 2016, Sanjay Kumar Singh v. State of U.P. and others, MANU/UP/5726/2018 : 2019 (5) ADJ 583 (LB). In para-24 of the aforesaid judgment, it has been observed as under:

“(24) On overall consideration of the respective arguments advanced by the learned counsel for the parties, it is crystal clear that the main issue in rejecting the approval is that the nominee of the District Basic Education Officer was not present in the Selection Committee and in his absence, the Selection Committee was permitted to conclude the selection proceeding. It is recorded that in case one Member of the Selection Committee is absent and the decision has been taken by majority of Members including the Chairman of the Selection Committee in making selection, the same does not vitiate the selection made in absence of nominee of the District Basic Education Officer. Upon bare perusal of the judgment relied upon and after examination of the law laid down by the Division Bench of this Court in the case of District Basic Shiksha Adhikari, Ambedkar Nagar (supra) and Fateh Bahadur Singh (Supra), this Court holds that issue involved in the aforesaid judgments was in regard to the appointment on the post of Clerk, wherein in the selection proceedings nominee of the District Basic Education Officer did not participate. The learned Single Judge on the basis of material placed on record found that the District Basic Education Officer to send the nominee on the letter submitted by the Manager/Principal of the Institution, did not respond and in consequence thereto, the Selection Committee comprising of Manager and Headmaster met and made recommendation for the appointment and thereafter, the selection was made in absence of nominee of the District Basic Education Officer. Thus, in the present case, in case the same has been disapproved on the ground of non-appearance of nominee of the District Basic Education Officer, the impugned order appears to be not justifiable in law.”

11. Therefore, in view of the above, the approval of the appointment of the petitioner may not be denied for the reason that there was no nominee on behalf of the District Basic Education Officer at the time of selection.

12 . Considering the facts and circumstances of the issue in question and also considering the legal position, I am of the considered view that the District Basic Education Officer, Sitapur should accord formal approval of the appointment of the

petitioner w.e.f. 7.1.2017 after expiry of one month from the date of receipt of papers for approval.”

9. Referring the aforesaid, he submitted that identical controversy has been dealt with, while answering that once the request of appointment of the nominee is ignored by the District Basic Education Officer, two member selection committee fulfills the quorum and there is no unlawfulness in selection proceeding by such selection committee.

10. He further placed reliance on judgment dated 7.3.2018 passed in Special Appeal No. 667 of 2014 (State of UP through Principal, Secretary, District Basic Education Officer, Lucknow Vs. Pravin Kumar Mishra and another and has referred para 14 of the judgment which is quoted as under:-

“A perusal of the impugned order, it reveals that learned Single Judge, after appreciating the submissions of the parties and Rule 15 (5) (ii) of the Rules, 1984, has recorded a clear cut finding that it is not in dispute that receipt of the letter dated 26.9.2006 has not been denied anywhere in the counter affidavit. In the said letter, the Institution had indicated that three dates have been fixed for holding the interview on which dates the Observer was not sent by the District Basic Education Officer, Raibareli and finally the selection was fixed for 30.9.2006. On 30.9.2006, also no Observer was sent and as such, the Selection Committee met and finalized the process in which the writ petitioner was selected for Class-IV post. The entire papers relating to the selection were forwarded to the District basic Education Officer, Raebareli, on 15.10.2006 as is evident from the letter of the Institution dated 17.11.2006. In these backgrounds, learned Single Judge opined that the District Basic Education Officer despite requests having been made by the Institution for forwarding the name of an Observer, did not do so and even after the selection papers were received in his office on 15.10.2006, he neither approved nor disapproved the same. In this situation, on the expiry of one month from the date of receipt of the papers, the selection would be deemed to have been approved by the District Basic Education Officer in view of the provisions of Rules 15(5) of the Rules, 1984. Accordingly, learned Single Judge rightly came to the conclusion that it is not open for the respondent now to take the stand that the selection suffers from the vice of illegality since no observer was present in the selection.”

11. He submitted that the aforesaid judgment also determine the question regarding non-appointment of nominee and with respect to the validity of the selection committee, which is decided positively in favour of the respondent while dismissing the special appeal.

12. Next contention is that the Government order dated 24.11.2001, contemplates the teacher and staff of junior high school/high school, whose services are governed by the provision of U.P. recognized basic schools (Junior High Schools)(Recruitment and conditions of Service of Teacher) Rules, 1978 (hereinafter referred as 'Rules 1978' and the 'Act 1978'). He added that the provisions of the act, 1978 as well as Rules 1984 shall also apply to an institution, which is upgraded up to the level of High School or Intermediate college.

13. Continuing with argument, he submits that Hon'ble Single Judge, while noticing judgment rendered in Ramesh Singh vs State of U.P. [(2020) 5 SCC 677] has held that 'upgradation of an Aided Junior High School as Un-Aided High School/Intermediate College' does not take away the institution from the financial control of the Basic Siksha Adhikari and the State Government is well within the authority to issue the Government Order invoking the powers under section 9(4) of the Act, 1921 and in order to remove difficulties and smooth functioning of the powers, the State Government can always fill in the gaps.

14. Concluding his arguments, he submits that the impugned order is totally perverse as the same is passed on the premises that the selection committee is not duly constituted. He added that the specific pleading of para 14 has not been controverted by the opposite party no. 2, in his counter affidavit dated 30.3.2013, as is evident from the para 15 of the counter affidavit that there is no specific denial regarding the letters which were issued for appointment of Nominee. He submits that the present Manager of Committee of Management is having anonymity with the petitioner, though, he has failed to demonstrate that the letters to the District Basic Education Officer were not duly sent. Therefore, submission is that the order impugned dated 13.9.2012 passed by the opposite party

no. 2, i.e., the District Basic Education Officer is erroneous and suffers from non-application of mind, thus, the same may be quashed and the opposite party no. 2 may be directed to make payment of salary to the petitioner treating approval of the appointment as deemed approval under the provisions of section 15 (2) of the Rules, 1984.

15. On the other hand, Sri Anurag Kumar Singh, counsel appearing for the private-respondent submits that the committee of management had never taken any decision for filling up the post in question which fell vacant on the superannuation of Mohan Lal Sharma and the documents which have been relied upon by the petitioner, is not in the knowledge of committee of management, as the alleged resolution dated 17.09.2011 under the signature of the then Manager, was never passed and the thumb impression is also forged as Sri Babu Lal Verma the then president stated on an affidavit dated 05.10.2018 that no meeting took place on 17.09.2011 and no decision has ever been taken for appointment of Amar Bahadur Singh (Assistant Teacher) as third member of selection committee.

16. Adding his arguments, he submits that the records, which has been appended by the petitioner along with writ petition, is evident that once the nominee was not appointed by the DBEO, the members of the selection committee themselves, have appointed a third member, which is impermissible under the law and thus, the selection committee vitiates in the eyes of law.

17. Further contention is that if any proceedings have been carried out by the then Manager, namely, Sitaram Saroj regarding the appointment of the petitioner, without the resolution of committee of management, the same is against the law. He also added that the letter dated 14.08.2012 was received in the office of opposite party no. 2 on 19.08.2012, therefore, no appointment letter could have been issued to the petitioner before 19.09.2012.

18. Further contended that vide Government Order dated 15.03.2012, the ban was imposed on all appointments in the aided Junior High School and that was lifted on 15.09.2014. Further the committee of management did not appoint third member of the selection committee and no advertisement was ever published in any newspaper.

19. In support of his contention, he has placed reliance on the judgments rendered in case of Manju Awasthi and Ors. Vs. State of U.P. and Ors. (MANU/UP/3739/2012), State of U.P. and Others Vs. District Judge, Varanasi and Others reported in 1981 SCC OnLine All 279, Dr. (Smt.) Sushila Gupta Vs. The Joint Director of Education, Kanpur and Ors. (2005 SCC OnLine All 1183) and Standard Intermediate College Mau-Aima and Ors. Vs. State of U.P. and Ors. (MANU/UP/2108/2019).

20. Finally, he submits that the appointment of the petitioner is not only de hors the rules, but the same is done while preparing the forged and fabricated documents, thus, submission is that the petitioner is not entitled for any relief.

21. Counsels appearing for the State submitted that so far as the contention of counsel for the petitioner is with respect to the Government Order dated 24.11.2001 read with section 9(4) of the Act, 1921 is concerned, the same speaks about 'modified, re-signed and make any regulation' which does not cover any 'order'. It is submitted that submits that the Rules, 1984 is not applicable to the institution in question and the Government Order dated 24.11.2001 is only clarificatory in nature and do not constitute any provision.

22. In support of contention, reliance is placed on judgement reported in 2001 (1) UPLBEC 131, Rakesh Chandra Sharma Vs. State of U.P. and others, and has referred paras 6 and 7 of the abovesaid judgement. It has been held that once the institution is upgraded up to intermediate level, the

Rules 1984 will not attract as the provision of Intermediate Education Act, 1921 read with the Regulations will come into force in such institutions.

23. Paragraphs 6 and 7 are extracted as under:-

“6. The first question which arises for consideration is whether after upgradation of the institution to High School if a vacancy of clerk occurs in the institution, it has to be filled under the provisions of the Act, 1921 and Regulations framed thereunder or under the provisions of the U. P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984 (in brief Rules, 1984). It is not disputed that the institution was upgraded from Junior High School to High School on 24.8.1993. A clerk of the institution was dismissed from service after the institution was upgraded and this vacancy was sought to be filled by the management through an advertisement made on 2.4.1999. Section 2 (e) of Rules, 1984 defines a Junior High School to mean an institution other than High School or Intermediate College imparting education to boys and girls or both from class VI to VIII. Therefore, Rules, 1984 would apply to the institutions where education is imparted from class VI to VIII but it shall not apply to the institutions which impart education from classes IX and X. Since the institution was upgraded as High School in 1993, Rules, 1984 ceased to apply to the institution. And the only provision to fill the non-teaching post of clerk was Regulation 101 of Chapter III of the regulations. Under Regulation 101 prior approval of District Inspector of Schools had to be obtained before making appointment on a class-III post. It has been held by this Court In Civil Misc. Writ Petition No. 50266 of 2000, Amit Kumar v. District Inspector of Schools, Jaunpur and another decided on 21.11.2000, that provisions of Regulation 101 are mandatory. Therefore, appointment of the petitioner on the post of clerk could not be made by the management without obtaining prior approval of the District Inspector of Schools. BSA had no power to grant approval to the appointment of the petitioner. Thus, the approval granted to the petitioner's appointment on 20.4.1999 by BSA was void. It has rightly been cancelled by BSA.

7. The next question is what would be the effect of payment of salary, etc., to the teachers and staff from the grant-in-aid received from the Government as Junior High School under interim order passed by this Court and whether services of such teachers and staff would be governed by Basic Education Act and Rules or U. P. Intermediate Education Act, 1921 and Regulations framed thereunder. I have earlier held that after upgradation of the institution to High School, the provisions of Act, 1921 and Regulations would apply and the provisions of Rules, 1984 would not be applicable for recruitment on the non-teaching post. If teachers and non-teaching staff of the institution are receiving salary from grant-in-aid which was earlier payable to the institution prior to its upgradation as High School. Even then, fresh appointments in unaided recognised High School would be governed by the provisions of Act, 1921 and Regulations. A Division Bench of this Court (Lucknow Bench) in Shiksha Prasara Samiti, Babhnan, District Gonda v. State of U. P. and others 1986 UPLBEC 477, has held that the provisions of U. P. Intermediate Education Act, 1921, apply to a recognised institution. It is not necessary that the institution should be receiving grant-in-aid. Therefore, even though the institution is not receiving grant-in-aid from the Government and has been granted recognition as unaided High School. The management could fill vacancy of clerk, only by following the provisions of recruitment as provided under the U. P. Intermediate Education Act, 1921 and Regulations framed

thereunder. Since the management did not appoint the petitioner under Act, 1921 and Regulations, therefore, no relief could be granted to the petitioner."

24. Again reliance is placed in a case reported in 2002 (49) ALR 800, Sharda Prasad Yadav and others Vs. District Inspector of Schools, Deoria and others, and paras 16 to 19 are referred.

25. Paragraphs 16 to 19 are quoted hereinunder:-

16. The second contention of the petitioners that Annexure-C.A-1 is an exparte report as no point of time the petitioners were ever associated in the enquiry and as such the salary of the petitioners cannot be withheld, is also misconceived. It is admitted to the petitioners that either appointments were made by the Principal of the institution and according to them, he had forwarded the papers to the D.I.O.S., Deoria for grant of financial sanction for payment of their salary. The District Inspector of Schools, Deoria, respondent No. 1 has categorically denied that no such papers had ever been received in his office for granting financial sanction. On the contrary it has been stated that these appointments are FARZI and the State is not liable to pay salary to the petitioners. In so far as the enquiry is concerned, D.I.O.S. has rightly based his conclusion on the papers and submitted to the interrogatories submitted by the Principal. It has nothing to do with the petitioners, it cannot be said that the report of the D.I.O.S. is an exparte without hearing the necessary parties, and even otherwise also whatever the petitioners could have shown, they have stated in the rejoinder affidavit, which has been examined by this Court.

17. As regards the third contention of the petitioners, it is apparent from the records of this case as well as from the contention of the parties that the appointments of the petitioners were not as per Rules. There were only fourteen sanctioned posts of class-IV employee and the District Inspector of Schools, Deoria was not at all applied to grant financial sanction for four additional posts, which has been made against the rules. The contention of the petitioners that their appointments have been made on the posts in accordance with law by the Principal of the institution, is not correct.

18. Apart from the above, under Regulation 101 it is mandate upon the appointing authority not to pay the non-teaching staff except without prior approval of the District Inspector of Schools. The use of word shall in the Regulation 101 makes it obligatory upon the appointing authority to obtain prior approval from the D.I.O.S. before filling any vacancy of non-teaching post in the institution. Further use of word 'except' with prior approval of the D.I.O.S. do not give discretionary power to the appointing authority, Regulation 101 is as under:

"101. The appointing authority shall not fill any vacancy in the non-teaching staff of a recognized aided institution except with the prior approval of the inspector."

19. In Amit Kumar v. D.I.O.S., Jaunpur [2001 (42) ALR 153.] , it has been held by a Single Judge of this Court that the Regulation 101 cannot be treated to be directory and this interpretation would result in giving power to the appointing authority for making appointment and thereafter obtain financial sanction. This Court held:

“If Regulation 101 is treated to be directory then the appointing authority could make appointment on non-teaching post even without prior approval of the DIOS. It would result in giving power to the appointing authority to make appointment first and thereafter obtain financial approval. This was not the intention of legislature or the Rule making authority. And it clearly intended that before making any appointment the appointing authority must obtain prior approval of the DIOS. The legislative intent has to be given effect to while interpreting regulatory provisions of Regulation 101. Regulations 103 to 106 further make it clear that the Regulation 101 cannot be construed as permissive or directory. Further the procedural safeguard contained in Regulation 101, making it obligatory for the appointing authority in matter of making appointment on non-teaching post, not to fill the vacancy except with the prior approval of the DIOS, has an element of public interest.”

26. He next submits that school is upgraded uptill high school in year, 1982 vide letter no. I.B.Recognitaion/96 dated 02.11.1982, which is an undisputed fact and thus, thereafter, the provisions of the Act, 1921 shall apply therefore, any appointment following the provisions of the Act 1978 or Rule 1984, would apparently be against the settled law, thus, submission is that the petitioner is not entitled for any relief.

27. Considering upon contentions of counsels for the parties and after perusal of material placed on record, it transpires that the institution was upgraded as high school on 02.11.1982 and once, one of the regular class III employee namely, Mohan Lal Sharma retired, several request were made by the Committee of Management for appointed on the post of Clerk, but when, no nominee was sent by the District Basic Education Officer, the other members of the selection committee, nominated the third member and held the selection, wherein, the petitioner was declared successful and got joined on the post of clerk, but once it was send for the financial concurrence, the same was denied by the District Basic Education Officer vide letter dated 13.09.2012 with the observations that ‘appointment of the petitioner is done by unlawfully constituted a selection committee.’

28. Having perused the impugned order dated 13.09.2012, it emerges that the District Basic Education Officer has passed the order, on the premises that the selection committee is not constituted lawfully, meaning thereby,

that the provision which is prescribed under Rule 15 of the Rules, 1984 meant for the appointment of Non-Teaching Staff in the Recognized Basic Schools (Junior High Schools).

29. For ready reference, the provisions of rules 14, 15 and 16 of Rules, 1984 are quoted hereinafter:-

“14. Selection Committee.- (1) Manager

(2) Headmaster of the recognised School in which the appointment is to be made:

(3) A specialist nominated by the District Basic Education Officer who will be from amongst minority in respect of a school established and administered by a minority or from amongst Scheduled Castes in respect of any other school.

15. Procedure for selection.- (1) The Selection Committee shall, after interviewing such candidates as appear before it on a date fixed by it in this behalf, of which due intimation shall be given to all the candidates, prepare a list containing as far as possible the names, in order of preference, of three candidates found to be suitable for appointment.

(2) The list prepared under Clause (1) shall also contain particulars regarding the date of birth, academic qualifications of the candidates and shall be signed by all the members of the Selection Committee.

(3) The Selection Committee shall as soon as possible forward such list, together with the minutes of the proceedings of the Committee to the Management.

(4) The Manager shall, within one week from date of receipt of the papers under Clause (3), send a copy of the list to the District Basic Education Officer.

(5) (i) The District Basic Education Officer is satisfied that-

(a) the candidates recommended by the Selection Committee possess the minimum qualification prescribed for the post:

(b) the procedure laid down in these rules for the selection of Ministerial staff and Group 'D' employees, as the case may be, has been followed, he shall accord approval to the recommendations made by the Selection Committee and shall communicate his decision to the management within two weeks from the date of receipt of the papers under Clause (4).

(ii) If the District Basic Education Officer is not satisfied as aforesaid, he shall return the papers to the management with the direction that the matter shall be reconsidered by the Selection Committee.

(iii) If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of the papers under Clause (4), he shall be deemed to have accorded approval to the recommendations made by the Selection Committee.

16. Appointment- Appointment by the management.- III On receipt of communication of approval or as the case may be, on the expiry of the period of one month under Clause (iii) of sub-rule (5) of Rule 15, the management shall first offer appointment to the candidate given the first preference by the Selection Committee and, on his failure to join the post, to the candidate next to him in the list prepared by the

Selection Committee, and on the failure of such candidate also, to the last candidate mentioned in such list.

(2) (a) The appointment letter shall be sent under the signature of the Manager, by registered post to the selected candidate.

(b) The appointment letter shall clearly specify the name of post, the pay scale and the nature of appointment, whether permanent or temporary and shall also specify that if the candidate does not join within 15 days from the date of receipt of the appointment letter, his appointment shall be cancelled.

(c) A copy of the appointment letter shall also be sent to the District Basic Education Officer.”

30. As per the rule 14, the selection committee consists of three members i.e. Manager, Headmaster and an Specialist nominated by the DBEO and at the same time, Rule 15(5)(iii) provides that if, the DBEO does not communicate his decision on the due intimation by the Committee of Management, within one month form the date of receipt of the papers under clause 4, he shall be deemed to have accorded approval to the recommendations made by the selection committee. One of the exigencies has also been dealt with that in case, the DBEO did not sent his nominee, the committee of management shall appoint third member.

31. It is an undisputed fact that the third member has been appointed by two other members of the selection committee and not by the Committee of Management, which vitiates the constitution of the selection committee. Further the appointment of the petitioner is done without waiting for completion of a month and therefore, the same is not in-consonance with the provisions of Rules 15(5)(iii) of Rules, 1984.

32. Now the question crops up that whether, the institution in question is governed with the provisions of Rules, 1984 or the same is governed with the provision of the Act, 1921. The undisputed fact is that uptill 01.11.1982, the institution was running at the level of Junior High School and by virtue of an order dated 02.11.1982, this has been upgraded, however, there is no overt provision in the Rules, 1984 for appointment of Group D posts, in such institution, but time and again this issue was brought up before this Court and ultimately, this was decided in the case of

Manju Awasthi and Ors. Vs. State of U.P. and Ors, reported in Manu/UP/3739/2012 wherein, in the paragraphs 77,78 and 82, the Division Bench has very categorically held that the ‘Government Order dated 24.11.2001 can be supported only to the extent of payment of salary at the Junior High School level and the ancillary power thereunder, but the Basic Siksha Adhikari cannot exercise any administrative control over the institution, except to the extent of payment of salary.’ Paragraphs 77, 78 and 82 of the abovesaid judgment are extracted as under:-

“We are of the view that the Government Order dated 24.11.2011 can be supported only to the extent of payment of salary of teachers at the Junior High School level and ancillary power thereunder. However, the Basic Shiksha Adhikari cannot exercise any administrative control over the institution except to the extent of payment of salary nor can make any appointment in view of the applicability of 1921 and 1982 Acts. The judgment of Hon'ble Single Judge in Committee of Management Beni Singh Vaidic Vidyawati Inter College, Baluganj, Agra and others (supra) to that extent cannot be approved. It is relevant to note that against the judgment of Hon'ble Single Judge dated 7.9.2005 in Committee of Management Beni Singh Vaidic Vidyawati Inter College, Baluganj, Agra and others (supra) special appeal No. 1419 of 2005, Agam Prakash Deepak. State of U.P., was filed, which appeal was also dismissed on 29.11.2005.

78. The Special Appellate bench considered the submissions of the appellant only qua the qualifications of the Assistant Teacher and laid down that Assistant Teacher must possess the training course recognised by the State Government hence, the appellant could not have been appointed as Assistant Teacher hence, the appeal was dismissed. No other ratio was laid down in the said judgment.

82. The selections made by the Basic Shiksha Adhikari under the provisions of U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978, have rightly been quashed in the writ petitions by Hon'ble Single Judge on the ground that after up-gradation of a Junior High School, selection/appointment is to be made in accordance with 1921 Act and U.P. Act No. 5 of 1982. As noticed above, we have found that the State Government as well as the educational authorities have not been properly construing the provisions of Section 7A and under the misconception, they have granted recognition to the institution under Section 7A, for the first time whereas recognition under Section 7A is to be granted to an existing recognised institution within the meaning of Section 2(b). We thus, feel that certain directions are necessary to be issued in this context. We have already observed that our observations and interpretation of Section 7A in no manner shall affect any recognition already granted to an institution under Section 7A and institution which has been granted recognition shall be treated to be duly recognised but necessary action which has not yet been taken with respect to the said institution is required to be taken by the educational authorities as per our observation. The appeals are disposed of with following directions:

- 1. The judgment of Hon'ble Single Judge Impugned in the appeal holding that after up-gradation of a Junior High School to High School, appointment and selection on the post of Head Master shall be made in accordance with 1921*

Act and U.P. Act No. 5 of 1982 are upheld and prayer of the appellant to set aside the judgment of Hon'ble Single Judge is refused.

2. The recognition/permission under Section 7A shall be granted to an institution which is already recognised institution within meaning of Section 2(b) of 1921 Act.

3. Recognition to a junior high school as High School is to be granted in accordance with the provisions of Section 7(4) of 1921 Act.

4. The State is fully empowered to grant recognition under Section 7(4) or Section 7A without finance (Vitta vihin).

5. After an institution is granted recognition for the first time as a High School minimum necessary post of teachers and Head Master is contemplated to be created even though without finance (Vitta Vihin) so as to fill up those posts in accordance with 1921 Act and 1982 Act.

6. Against the recognition/permission granted under Section 7A, the appointment of a part time teacher or instructor as contemplated under Section 7A(a) shall be continued to be made by the management as per the Government Orders issued from time to time regulating their terms and conditions.

All the appeals are disposed of accordingly.

Parties shall bear their own costs."

33. While dealing with the aforesaid issue, the coordinate division bench of this Court at Allahabad has also sketched out the difference in the judgment and order passed in earlier Special Appeal, thereby holding that the same considered the qualification of Assistant Teacher and no other ratio was laid down in the said judgement and therefore, this was open to the coordinate bench to dealt with the issue, regarding the applicability of the other provisions. The law laid down in the case of Manju Awasthi and Ors. Vs. State of U.P. and Ors still holds filled and therefore, the institution in question is covered with the provisions of the Act, 1921.

34. It has been argued by the petitioner that the approval of the appointment of the petitioner is declined on the sole ground that the appointment is done by an unlawfully constituted selection committee, whereas, it is undisputed that the third member is nominated by the member of the selection committee itself which is impermissible under the law and thus, it is wrong to say that the order impugned do not stand on its own legs.

35. Ultimately this Court is of considered opinion that, the appointment of the petitioner is done under the provision of the Rules, 1984 whereas, the provisions of the Act, 1921 would apply to the institution in question thus, in view of the settled proposition of law, the whole proceedings of the said appointment vitiates in the eyes of law.

36. Consequently, the writ petition lacks of merit, hence, the same is **dismissed.**

37. No order as to costs.

Order Date : 30.05.2024

Mayank