

Court No. - 6

Case :- WRIT - A No. - 53043 of 2017

Petitioner :- Praveen Kumar

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

Counsel for Petitioner :- Ashish Pandey, Man Bahadur Singh, Raghavendra Singh, Ram Sumer Chaudhary, Suvarna Singh, Upendra Singh, Vinay Kumar Pathak

Counsel for Respondent :- C.S.C., Manu Singh, Sanjai Kumar Pandey

with

Case :- WRIT - A No. - 5639 of 2023

Petitioner :- Arun Kumar

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Grijesh Tiwari

Counsel for Respondent :- C.S.C., Raghavendra Singh, Rahul Sharma, Suvarna Singh, Upendra Singh, Vijit Saxena

with

Case :- WRIT - A No. - 8170 of 2023

Petitioner :- Arun Kumar

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Grijesh Tiwari

Counsel for Respondent :- C.S.C., Manu Singh, Raghavendra Singh, Suvarna Singh, Upendra Singh

and

Case :- WRIT - A No. - 11208 of 2018

Petitioner :- C/M Sardar Patel Awar Madhyamik Vidyalaya, Kali Jagdishpur And Another

Respondent :- State Of U.P. And 4 Ors.

Counsel for Petitioner :- Alok Mishra, Rahul Sharma, Vijit Saxena

Counsel for Respondent :- C.S.C.,Manu Singh,Sanjai Kumar Pandey

Hon'ble Saurabh Shyam Shamshery,J.

Writ A No. 53043/2017

1. Heard Sri Upendra Singh, learned counsel for petitioner in Writ A No. 53043/2017, Sri Griresh Tiwari, learned counsel for petitioner in Writ A Nos. 5639/2023 and 8170/2023 and Sri Alok Mishra, learned counsel for petitioner in Writ A No. 11208/2018, Ms. Shruti Malviya, learned counsel for State.

2. In Writ A No. 53043/2017, petitioner has impugned following order dated 31.03.2016 :-

"प्रेषक,

जिला बेसिक शिक्षा अधिकारी

संत कबीर नगर।

सेवा में,

प्रबन्धक,

सरदार पटेल अवर मा० वि०

काली जगदीशपुर, संत कबीर नगर।

पत्रांक: बे०/20742-45/2015-16 दिनांक 31.03.2016

विषय: सरदार पटेल अवर मा० वि०, काली जगदीशपुर, संत कबीर नगर के चयन समिति द्वारा प्रस्तावित 01 प्र०अ० पद के अनुमोदन के सम्बन्ध में।

महोदय,

उपर्युक्त विषय आपके पत्रांक मेमो०/2015-16 दिनांक 20 मार्च 2016 के साथ प्रबन्ध समिति द्वारा प्रस्तावित 01 प्र०अ० पद के अनुमोदन हेतु पत्रावली अधोहस्ताक्षरी कार्यालय में प्राप्त हुआ है, पत्रावली के अवलोकनोपरान्त प्रवीण कुमार पुत्र श्री राम सुमिरन के स्नातक के सत्यापन में डा० राम मनोहर लोहिया अवध विश्वविद्यालय फैजाबाद के पत्रांक लो०आ०वि०/गो०वि० 1871/2016 दिनांक 18.03.2016 द्वारा सत्यापन प्राप्त हुआ है जिसमें परीक्षा नियंत्रक द्वारा अनिवार्य विषय का अंक उपलब्ध न होने के कारण चयन समिति द्वारा वरीयता क्रम पर अंकित अभ्यर्थी का निम्न विवरण के अनुसार अनुमोदन प्रदान किया जाता है:-

क्र.सं.	अभ्यर्थी का नाम / पति / पिता का नाम	पद	जाति	जन्मतिथि	शैक्षिक योग्यता	चयन समिति द्वारा चयनित सूची	अभियुक्ति
1	अरूण कुमार पुत्र श्री राम सुमेर	प्र०अ०	अनुसूचित	15.06.79	एम.ए. बी०एड०, टी.ई.टी. अनुभव	चयनित	अनुमोदित

चयनित अभ्यर्थी द्वारा प्रस्तुत शैक्षिक प्रमाण पत्रों के सत्यापनोपरान्त कूटरचित पाये जाने पर अनुमोदन निरस्त करते हुए विभागीय नियमों के आलोक में कार्यवाही कर दी जायेगी, जिसका उत्तरदायित्व प्रबन्ध समिति के साथ साथ चयनित अभ्यर्थी का होगा।"

3. Petitioner has setup a case that basis of aforesaid impugned order i.e. a report dated 18.03.2016 submitted by Controller of Examination, Dr. Ram Manohar Lohiya Avadh University, Faizabad (Ayodhya) that records available with University do not indicate that petitioner Praveen Kumar has passed essential/mandatory subject in 2nd year of Bachelor of Arts from Navyug Mahavidyalaya, Ratanpurwari, Sultanpur could be belied on basis of documents brought on record.

4. In support of aforesaid case, Sri Upendra Singh, learned counsel for petitioner has referred photocopy of mark-sheet of B.A. 1st, 2nd and 3rd Year annexed along with impleadment application filed in connected Writ A No. 8170/2023 as well as two supplementary affidavits filed in present writ petition on 28.01.2018 and 17.07.2024 that petitioner got 51 marks in Environmental Studies in B.A. 2nd Year (Theory – 30 marks and

Practical – 21 marks). A scanned copy of said mark-sheet is pasted hereinafter :-

क्रम सं. : 140159

2006

डॉ. राम मनोहर लोहिया अवध विश्वविद्यालय
फैजाबाद (उ.प्र.)

नामांकन संख्या : 266615

वर्ग : सस्थागत

अंक-पत्र

महाविद्यालय का नाम/केंद्र नवयुग महाविद्यालय, रतनपुरवारी, सुल्तानपुर

नाम प्रवीन कुमार पिता/पति का नाम रामसुमिरन

अनुक्रमांक 145674 परीक्षा बी० ए० द्वितीय वर्ष विषय

संयोजित विषय/प्रश्न पत्र	अधिकतम अंक	प्राप्तांक						विशेषी
		I प्रथम प्रश्न पत्र	II द्वितीय प्रश्न पत्र	III तृतीय प्रश्न पत्र	IV चतुर्थ प्रश्न पत्र	योग लिखित परीक्षा	प्रयोग-त्मक	
हिन्दी	200	33	53			86		86
समाज शास्त्र	200	34	50			84		84
प्राचीन इतिहास	200	36	43			79		79
TOTAL	600							249
इनवाउन्समेंटल अध्ययन	100	30					21	51
							उत्तीर्ण	मान अंक
								3
कुल योग : Two Hundred Forty Nine 249								
प्रथम		द्वितीय		अंतिम		महायोग		परीक्षाफल/श्रेणी
पूर्णांक	600	600						उत्तीर्ण
प्राप्तांक	290	249		539/1200				

जोषकर्ता

22 JUL 2006

फैजाबाद दिनांक :

परीक्षा नियंत्रक

8. Learned counsel also fairly submits that Registrar, Dr. Ram Manohar Lohiya University is not arrayed as a party-respondent in present writ petition, therefore, its stand is not before this Court which was essential.

9. Ms. Shruti Malviya, learned counsel for State fairly submits that on basis of aforesaid documents, a thorough inquiry is required to be conducted so that documents placed on record could be verified. She further submits that in case documents are found to be genuine, legal consequence will follow in favour of petitioner Praveen Kumar, however, if the documents placed on record are not correct or found to be not genuine, its legal consequence will fall against petitioner i.e. he could suffer with criminal proceedings.

10. On basis of above documents, this Court is of prima facie view that a thorough scrutiny is required in which concerned college i.e. Manager or Principal of Navyug Mahavidyalaya, Ratanpurwari, Sultanpur and concerned Controller of Examination of University i.e. Dr. Ram Manohar Lohiya Avadh University, Faizabad (Ayodhya) are required to be present to scrutinize the documents of petitioner Praveen Kumar available in college as well as in University since at this stage, photocopies of document annexed by petitioner Praveen Kumar at first glance do not appear to be forged documents.

Writ A No. 5639/2023 and 8170/2023

10. Sri Grijesh Tiwari, learned counsel for petitioner submits that petitioner Arun Kumar was constrained to approach this Court by way of filing present writ petition as the District Basic Education Officer has issued a notice dated 16.05.2023 whereby petitioner was called for placing his submissions to a complaint

made against him on basis of directions passed by Commissioner taking cognizance of a complaint made by petitioner in other writ petition in regard to his experience certificate.

11. Learned counsel further submits that in this writ petition, this Court has passed following interim order on 03.04.2023 :-

“Heard Shri Girjesh Tiwari, learned counsel for the petitioner and learned Standing Counsel, who has put in appearance on behalf of the respondent nos. 1 to 3.

Issue notice to the respondent no. 4.

Steps within a week.

The petitioner, who is functioning as Headmaster in Sardar Patel Avar Madhyamik Vidyalaya, Kali Jagdishpur, Sant Kabir Nagar, has approached this Court assailing the proceedings, initiated by the Commissioner, Basti Division, Basti, against the petitioner on a complaint filed by one Praveen Kumar whom the petitioner claims to be a busy body.

Learned counsel for the petitioner contends that the said Praveen Kumar, had raised complaint against the petitioner, that his selection on the post of Headmaster, in the institution in question, is not genuine, before the educational authorities. The Educational Authorities, after due consideration of the complaint and holding a detailed enquiry, held that the appointment of the petitioner was in accordance with law. Learned counsel for the petitioner has filed the said orders along with the present petition. It is also contended that the said Praveen Kumar has also approached this Court by filing a writ petition however, no orders have been passed in the said writ petition and the writ petition is stated to be pending.

An issue, as regards, the Commissioner having jurisdiction to initiate the

proceedings against the petitioner, has been raised. The decisions have been cited to demonstrate that the Commissioner, lacks the jurisdiction to deal with any enquiry, in respect of the appointment and working of the petitioner and the domain lives only with the educational authorities.

Reliance has been placed on a decision passed in Writ A No. 5540 of 2020, which decision has also been upheld in special Appeal. Reliance has also been placed on interim order granted by this Court in Writ A No. 50954 of 2011, wherein, identical issue was raised, the writ petition was entertained and the Court was proceeded to stay further proceedings, before the Commissioner.

The Court has gone through the decisions cited above at the bar, on behalf of the petitioner, and has also gone through the interim order passed by this Court in Writ A No. 50954 of 2011, which has been filed as Anneuxre 14 to the writ petition. In the opinion of the Court the Commissioner of the Division does not have any jurisdiction to make any enquiry regarding the appointment of the Assistant Teachers in Junior High Schools and the domain lives only with the educational authorities.

Prima-facie a case for indulgence is made out.

The matter requires consideration.

Learned Standing Counsel prays for and is allowed 4 weeks' time to file counter affidavit.

Respondent no. 4, if so desires, may also file counter affidavit, in the aforesaid period.

A week thereafter is granted to the learned counsel for the petitioner to file rejoinder affidavit.

List this petition on 8th May, 2023.

Considering the submissions advanced by the learned counsel for the petitioner and taking into consideration the issue regarding the jurisdiction of the Commissioner of the Division in the matter of appointment of Assistant Teachers, is no longer res integra and interim orders have also been passed by this Court, it is provided that until further orders, the further proceedings, before the Commissioner, Basti Division, Basti, consequent to the complaint lodged against the petitioner, shall remain stayed."

12. Learned counsel further submits that despite above referred interim order was passed by this Court, the B.S.A. concerned continued with an inquiry and passed the order dated 28.04.2023 whereby the appointment of petitioner (Arun Kumar) was cancelled on a ground that experience certificate submitted by him was not genuine, therefore, petitioner (Arun Kumar) has filed another Writ A No. 8170/2023.

13. Learned counsel further submits that in Writ A No. 8170/2023, following interim order was passed on 10.05.2023 :-

"Vakalatnama as preferred by learned counsel for respondent no. 6 is taken on record.

Heard Sri Griresh Tiwari, learned counsel for the petitioner and Sri Vijit Saxena learned counsel appearing on behalf of the respondent no. 6 and Sri Sunil Kumar, learned Standing counsel appearing on behalf of the respondent no. 1 to 5.

It is the case of the petitioner that he has been appointed over the post of Headmaster after adopting the due process of selection and joined over the same post on dated 12.05.2016 after being approved by the competent authority and rendering his services to the highest satisfaction of the superior authorities. Certain complaints have been made by an outsider who was the aspirant over the same post

whereupon the selection has been finalised in favour of the petitioner but all were culminated into frivolous in nature and the appointment whatsoever has been confirmed in favour of the petitioner has been proved valid.

The same complainant put forward a complaint before the Divisional Commissioner Basti, District Basti, whereupon certain enquiry has been initiated, having being aggrieved by the same petitioner challenged the motion initiated by the Divisional Commissioner, Basti by way of filing Civil Misc. Writ A no. 5639 of 2023 wherein the indulgence has been drawn by this Court by passing interim order dated 03.04.2023 and the same is still pending for final adjudication.

During pendency of the above mentioned writ petition a superfast motion has been adopted by respondent no. 4 by way of conducting enquiry behind the curtain which culminated into order dated 28.04.2023 through which the approval as granted in favour of the petitioner after being duly selected over the post of Headmaster has been suo motu withdrawn by way of taking shelter of the enquiry which has never been served upon the petitioner. Moreover at the time of raising arguments it has been emphatically stated by learned counsel for the petitioner that the entire action whatsoever has been initiated by respondent no. 4 is not in the knowledge of the petitioner. More so no opportunity of hearing has ever been afforded to the petitioner before passing the order which impugned the present petition.

Matter needs consideration.

All learned counsels for the respondent may file counter-affidavit within four weeks.

Two weeks time thereafter is granted for filing Rejoinder affidavit, if any. List

before Registrar for completion of pleadings.

It is made clear that not more than three opportunity may be provided for exchange of pleadings to either of the learned counsels and thereafter list before appropriate Bench.

Connect this petition along with writ petition no. 5639 of 2023 and writ petition no. 11208 of 2013.

Meanwhile, operation of the order dated 28.04.2023 shall remain stayed till next date of listing."

14. Learned counsel further submits that a document placed along with counter affidavit in leading Writ A No. 53043/2017 shows that later on, an objection was also found against appointment of petitioner (Praveen Kumar) that his experience certificate does not appear to be based on correct facts.

15. I have considered aforesaid submissions and perused the record.

16. Claim of petitioner (Arun Kumar) in two writ petitions is essentially based on outcome of inquiry as directed by this Court in present order. If the documents filed by petitioner (Praveen Kumar) are found to be correct, claim of other petitioner (Arun Kumar) would possibly not legally survive but in contrary position, his grievance will be required to be considered.

17. Court also takes note of subsequent objection made against appointment of petitioner i.e. Praveen Kumar about his experience certificate, however, since it was a subsequent event i.e. after appointment of petitioner was cancelled, therefore, it has no legal consequence at this stage and in case mark-sheets of said petitioner (Praveen Kumar) are found to be genuine after inquiry, concerned B.S.A. will be at liberty to verify other

certificates also in accordance with law after adhering principles of natural justice.

18. Now Court proceeds to consider case of other petitioner (Arun Kumar).

19. This Court has stayed proceedings initiated on instructions of Commissioner as well as stayed impugned order dated 28.04.2023 whereby approval was rejected and Court finds that since they were passed without adhering principles of natural justice, therefore, a case of interference is made out.

21. Accordingly, impugned proceedings of Writ A No. 5639/2023 and impugned order dated 28.04.2023 passed in Writ A No. 8170/2023 are hereby set aside with liberty to concerned respondents to initiate fresh inquiry, if so advised, and conclude the same after adhering principles of natural justice.

22. So far as directions passed in Writ A No. 53043/2017 is concerned, it is also added that Committee of Management of concerned college along with relevant records and B.S.A., Sant Kabir Nagar shall appear before Registrar of University on 24.04.2025 at 10.00 AM and documents shall be verified in presence of petitioner Praveen Kumar. The inquiry shall be concluded within three weeks thereafter.

23. On basis of outcome of inquiry, if the documents of petitioner Praveen Kumar are found to be genuine, its legal consequence shall follow and thereafter, there would be no need to verify documents of other petitioner i.e. Arun Kumar.

24. In the event, if documents of Praveen Kumar are found to be disputed, its legal consequence shall follow which is also referred above and subsequent to that order, a fresh inquiry shall

be conducted, so far as other petitioner is concerned, after adhering principles of natural justice and on basis of outcome, its legal consequence shall follow.

25. Accordingly, Writ A No. 53043/2017, Writ A No. 5639/2023 and 8170/2023 are **disposed of** with above observations.

Writ A No. 11208/2018

26. Sri Alok Mishra, learned counsel for petitioners in Writ A No. 11208/2018 submits that this writ petition may be disposed of in terms of order passed in above referred three writ petitions.

27. Learned counsel for respondents has no objection if such prayer is considered.

28. Accordingly, Writ A No. 11208/2018 is also **disposed of** in terms of judgment passed in Writ A No. 53043/2017, Writ A No. 5639/2023 and 8170/2023.

Order Date :- 10.4.2025
Sinha_N.

[Saurabh Shyam Shamshery, J.]