

Court No. - 29

Case :- SPECIAL APPEAL No. - 96 of 2025

Appellant :- Dr. Jay Shankar Mishra

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

Counsel for Appellant :- Bhawesh Pratap Singh

Counsel for Respondent :- C.S.C.,Gautam Baghel,Om Prakash Singh

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Praveen Kumar Giri,J.

1. The appellant is aggrieved by the order of the learned Single Judge dated 20.1.2025 passed in a writ petition filed by one Ranjeet Singh. The issue before the learned Single Judge was as to who would officiate as Principal of the Institution i.e. S.K.P. Inter College, Azamgarh. The Institution is recognised under the provisions of U.P. Intermediate Education Act, 1921 and teaching and non teaching staff of the Institution is receiving salary from the State fund under the Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and other Employees) Act, 1972.

2. Regular vacancy on the post of Principal had arisen on 1.4.2018. On the date when the vacancy arose, Shardindu Kumar Singh was the senior most Lecturer in the Institution. He was allowed to officiate as Principal. It transpires that an issue arose with regard to payment of salary to a Class IV employee in the Institution. The District Inspector of School, Azamgarh, (for short 'DIOS) passed an order on 29.8.2023 offering charge of the office of Principal to writ petitioner, Ranjeet Singh, by dislodging Shardindu Kumar Singh. The writ petitioner at that stage refused to take charge and observed that the next senior most lecturer, namely, Dr. Jay Shanker Mishra be given the charge. Jay Shanker Mishra is the appellant before us.

3. The appellant accordingly was given charge of the office of the Principal. It is thereafter that Shardindu Kumar Singh came to this Court by filing a Writ Petition No. 6988 of 2024. The writ petition was allowed by the learned Single Judge, as a result of which Shardindu Kumar Singh was reinstated as officiating Principal. He was again placed under suspension on 30.11.2024. It is thereafter that an issue arose as to who would be handed over the charge of the office of Principal. The claim of the writ petitioner was resisted on the ground that he had earlier refused to take over the charge and, therefore, he cannot now ask for charge to be given to him. It is in this context that the learned Single Judge has made following observations relying upon a previous judgment in the case of *Sundershan Kumar Vs. State of UP* decided on 21.07.2006:

"7. Heard learned counsel for parties and perused the material available on record.

8. It is not under dispute that petitioner himself has forego to become Officiating Principal and now he has withdrawn his earlier decision and is claiming for the post of Officiating Principal. It is not under much dispute that a person can withdraw his earlier refusal to become Officiating Principal, subject to a condition that he will be considered only if vacancy arose afresh.

9. Now the question before this Court is, whether the above referred vacancy can be considered as a fresh vacancy or not.

10. Earlier vacancy was arose only when existing Officiating Principal was put under suspension and in similar circumstances present vacancy arose when again earlier Officiating Principal was put under suspension whereon Respondent-7 is now appointed as Officiating Principal. Therefore, according to this Court, it can be considered a fresh vacancy.

11. Despite above observation, a fact remains that suspension of earlier Officiating Principal is under consideration and outcome of it would be an important factor. Therefore, without interfering with impugned order dated 06.12.2024 at this stage, this writ petition is disposed of with direction that District Inspector of Schools, Azamgarh will take a decision on suspension of Sri Shardindu Singh within a week and on basis of its outcome claim of petitioner and Respondent-7 will be considered afresh for the post of Officiating Principal, if circumstances so warrant, taking note of above referred observations."

4. Learned Counsel for the appellant places reliance upon a Division Bench judgment of this Court in Special Appeal No. 959 of 2006 decided on 15.9.2006 whereby the judgment of the learned Single Judge dated 21.07.2006, passed in Writ Petition No. 35562 of 2006 (**Sundershan Kumar Vs. State of U.P. and Others**) was quashed. It is, therefore, submitted that once the judgment of learned Single Judge has been set aside in special appeal, the same could not have been relied upon to resist the claim of the appellant.

5. We have heard learned counsel for the parties and perused the materials on record. The issue as to whether a person who has declined the charge of the office of Principal can subsequently claim such office, is not the issue that arises here. In the facts of the present case, Ranjeet Singh was only offered the charge of Officiating Principal by DIOS vide his order dated 29.8.2023. The officiating charge was not given to Ranjeet Singh either by the Committee of Management or by the authorised Controller. The right of appointment vests only in the Committee of Management or the authorised Controller. The fact that the DIOS for certain exigency had offered charge to Ranjeet Singh, which he declined, would not be a handicap in his claiming such office, if the post of principal has fallen vacant and officiating charge is to be given to the senior most lecturer. This is so as the DIOS is not the appointing authority for the post of Principal nor can he offer charge of the office to the respondent. Denial of taking charge to the DIOS cannot be equated with the denial of officiating appointment to the appointing authority. To such extent, we find that the claim of the writ petitioner is liable to be considered. The position in law is clarified accordingly.

6. We may, however, clarify that the vacancy on the post of Principal will not be treated as fresh vacancy for the purpose of consideration. The view that we take finds support from the following observation made by the coordinate Bench of this Court in **Smt. Vijay Rani Vs. Regional Inspectors of Girls Schools, 2007 (2) ADJ 473 (DB) :**

"16.....But such a course of mere handing over charge would not result in promotion of such senior most teacher as officiating Principal unless and until an order to this effect is passed. Taking charge of a higher office and discharge its function; and to discharge function of a higher office after promotion pursuant to an order of promotion, whether on regular or ad-hoc or officiating basis, are two different things. In the former, the incumbent continue to possess the status and position of the office in which he/she is appointed substantively but look after the duties of the office of which charge has been handed over in addition to her substantive duties, but it does not result in a vacancy of any kind to the post/office, the incumbent is substantively holding, but, in the later case, the incumbent vacates his substantive office and discharge function of higher office by occupying the higher post. If the promotion is officiating or ad hoc such occupancy may be temporary, but the fact remain that it result in a vacancy in the lower post, may be short-term and temporary."

7. In view of the observation made above, this special appeal is disposed of.

Order Date :- 12.5.2025

DKS