

Neutral Citation No. - 2025:AHC:73026

Reserved on : 28.04.2025

Delivered on : 07.05.2025

Court No. - 6

1. Case :- WRIT - A No. - 7382 of 2023

Petitioner :- Suresh Chand

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Pawan Giri

Counsel for Respondent :- Yatindra

2. Case :- WRIT - A No. - 29991 of 2015

Petitioner :- Suresh Chand

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

Counsel for Petitioner :- B.N. Upadhyay,Pawan Giri

Counsel for Respondent :- C.S.C.,Kuldeep Kumar,Yatindra

3. Case :- WRIT - A No. - 26330 of 2015

Petitioner :- Suresh Chand

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

Counsel for Petitioner :- B.N. Pathak,B.N. Upadhyay

Counsel for Respondent :- C.S.C.,Yatindra

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri H.N. Singh, learned Senior Advocate assisted by Sri Pawan Giri, learned counsel for petitioner and Sri Yatindra, Advocate for Respondents in all connected writ petitions.

2. It is not under dispute that petitioner was appointed on 14.03.1995 as Assistant Teacher in a Junior Basic School Pachauta Vikash Kshetra, Bulandshahr and was promoted in the year 2003 as Headmaster. Thereafter a dispute arose that since petitioner has passed certificate of Junior Basic Training (J.B.T.) issued from Government Educational Teachers Training Institute of the Delhi Administration in the year 1981-83,

which was not recognized in State of U.P., therefore, an inquiry was initiated.

3. The above dispute arose after 19 years and the petitioner was put under suspension by order dated 31.07.2014, which was challenged in a Writ Petition bearing No.42882 of 2014, wherein by an order dated 25.08.2014, the suspension order was stayed, though it was permitted that disciplinary proceeding may go on. The said writ petition was disposed of by following order dated 04.03.2024, since meanwhile, an order of termination was passed.

“1. Heard Sri Pawan Giri, learned counsel for the petitioner and Sri Yatindra, learned counsel for respondents.

2. In the present writ petition, challenge is to the suspension order. However, learned counsel for parties are not in dispute that petitioner's services has been terminated by subsequent order which is subject matter of Writ Petition Nos.26330 of 2015 and 29991 of 2015.

3. Considering the aforesaid submissions, this writ petition is disposed of.”

4. Meanwhile, in furtherance of above referred interim order, on 30.12.2014, a notice was issued to the petitioner that he has wrongly shown his training certificate. The notice was challenged by way of filing a Writ Petition bearing No.26330 of 2015 (first writ petition in this bunch).

5. In the aforesaid petition, an order dated 07.05.2015 was passed, whereby it was directed that no further action will be taken against petitioner till next date of listing. Meanwhile, though he may furnish explanation to the notice.

6. Thereafter, matter was considered by District Basic Education Officer, Bulandshahr and by order dated 06.05.2015, petitioner's appointment was cancelled *void ab initio* on a

ground that J.B.T. Training from the Institute at Delhi was not recognized in State of U.P., with a direction to recover entire salary paid i.e. paid for last 20 years as it was considered as a fraud. The relevant part of it is reproduced hereinafter :-

"मेरे द्वारा श्री सुरेश चन्द से सम्बन्धित प्रकरण का अवलोकन किया गया तथा श्री सुरेश चन्द द्वारा प्रस्तुत पत्राजातों का परीक्षण किया गया। स्थिति निम्नवत् पायी गयी।

श्री सुरेश चन्द की प्रथम नियुक्ति कार्यालय के आदेश संख्या प्रबन्ध / 5558-5900/94-95 दिनांक 14.03.1995 द्वारा सहायक अध्यापक परिषदीय प्राथमिक विद्यालय पचौता विकास क्षेत्र बुलन्दशहर में राज्य शिक्षा संस्थान, दिल्ली से प्राप्त जे०बी०टी० प्रशिक्षण योग्यता के आधार पर की गयी थी। सचिव, उ०प्र० बेसिक शिक्षा परिषद्, इलाहाबाद ने अपने पत्रांक: बे०शि०प०/17546/2013-14 दिनांक 25.03.2014 द्वारा अवगत कराया कि जे०बी०टी० प्रशिक्षण राज्य शिक्षा संस्थान दिल्ली से मान्यता प्राप्त करके कूटरचित तरीके से परिषदीय विद्यालयों में शिक्षक पद पर नियुक्त हुए हैं जिसके कारण श्री सुरेश चन्द की सेवायें समाप्त किये जाने योग्य हैं, तथा कपटपूर्ण तरीके से प्राप्त की गयी धनराशि वसूल किये जाने योग्य है। अतः सचिव, महोदय के उक्त पत्र दिनांक 25.03.2014 में दिये गये निर्देशों के अनुसार श्री सुरेश चन्द की नियुक्ति नियमानुसार नहीं है। ये नियुक्ति हेतु पूर्ण अर्हता नहीं रखते हैं।"

7. The aforesaid order was challenged in Writ Petition bearing No.29991 of 2015 (second writ petition of this bunch), wherein by an order dated 21.05.2015, impugned order dated 06.05.2015 was stayed. It is not under dispute that petitioner has served on basis of aforesaid interim order and has also retired recently i.e. on 31.03.2022 and when his pension papers were not prepared, he has filed third writ petition bearing No. 7382 of 2023.

8. Learned Senior Counsel for petitioner submitted that petitioner after serving for 27 years has retired and that it is not disputed that petitioner has passed J.P.T. Certificate from S.C.E.R.T., Delhi, an Institute established by Delhi Administration and he referred a Government Order dated 16.03.1973, issued by Uttar Pradesh that a certificate issued by any Institute established by Central or State could be

considered to be recognized for appointment of a teacher in the State of U.P. if established under any Central or State Act or recognized by UGC or conducted by any Deemed University.

9. Learned Senior Counsel for petitioner submitted that course of J.P.T. was equal to B.T.C. which is recognized in State of U.P. Learned Senior Counsel refers judgment passed by this Court in **Ram Prakash Vs. State of U.P. and others, 2023 (12) ADJ 224, Shambhu Rao Vs. State of U.P. and 3 others, 2022:AHC:224898, Committee of Management of Rajendra Prasad Intermediate College, Bareilly Vs. District Inspector of Schools Bareilly and anothers, (1990) 1 UPLBEC 189 and Man Singh Vs. The State of Uttar Pradesh Thru. Secretary and Ors., Civil Appeal No(s). 7841 of 2011** that such long period of service be protected. The petitioner may not be unsuited at this stage. Order of recovery of salary was also bad in law.

10. Per contra, learned counsel for respondents has submitted that J.P.T. was never recognized in the State of U.P., therefore, petitioner's appointment was cancelled though he has not disputed that petitioner has served till the age of superannuation on basis of interim order passed in present case. Learned counsel referred judgment passed by this Court in **Shiv Datt Sharma Vs. State of U.P. and Ors, 2024 0 Supreme(All) 472** that an appointment based on fraud has no legal status and could be cancelled *void ab initio* even after many years. Learned counsel for respondents further submitted that **Shiv Datta Sharma (supra)** was upheld by a Division Bench of this Court.

11. I have considered the above submissions and perused the record. As referred above, petitioner has served for 27 years and has retired. A dispute in regard to J.P.T. Certificate was raised for the first time after about 19 years and only on ground that Institute at Delhi was not recognized by State of U.P. an order that petitioner's services was *void ab initio* was passed and further order of recovery of salary of about 20 years was also passed.

12. No document was placed by respondent to show how J.B.T. Training from an Institute at Delhi was not recognized in State of U.P., whereas petitioner's counsel has shown a G.O. dated 16.03.1973 that a certificate issued by Institution of another State under certain conditions could be accepted in State of U.P.

13. In the aforesaid circumstances, the Court also takes note that petitioner has already served about 27 years and has retired also, therefore, taking note of Man Singh (*supra*), wherein it was held that if the employee has discharged the duties and even if his appointment was irregular, his salary cannot be stopped, whereas in present case, it is not very clear whether J.P.T. issued by S.C.E.R.T. Delhi was specifically not recognized since in impugned order, no G.O. was referred that how recognition was made or not by State of U.P. in regard to certificate passed from any Institute, established by other States.

14. In above referred peculiar circumstances, to cancel the appointment of petitioner *void ab initio* after 20 years being against the interest of justice is unsustainable, therefore,

impugned termination order dated 06.05.2015 is set aside and its legal consequence shall follow. Accordingly, Writ Petition No.29991 of 2015 is disposed of.

15. On basis of above referred circumstances, Writ Petition No. 26330 of 2015 is disposed of.

16. Accordingly, Writ Petition No.7382 of 2023 is also disposed of with a direction that since termination order is set aside, therefore, its legal consequence shall follow, including fixation of pension, if there is no other legal impediment.

17. Accordingly, All writ petitions are finally **disposed of**.

Order Date :- 07.05.2025

P. Pandey