

Court No. - 29

Case :- SPECIAL APPEAL No. - 987 of 2024

Appellant :- Ashok Kumar Singh

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

Counsel for Appellant :- Rahul Jain

Counsel for Respondent :- C.S.C.,Ramesh Chandra Dwivedi

with

Case :- SPECIAL APPEAL No. - 989 of 2024

Appellant :- Ashok Kumar Singh

Respondent :- State Of Up And 3 Others

Counsel for Appellant :- Rahul Jain

Counsel for Respondent :- C.S.C.,Ramesh Chandra Dwivedi

with

Case :- SPECIAL APPEAL No. - 990 of 2024

Appellant :- Ashok Kumar Singh

Respondent :- State Of Up And 4 Others

Counsel for Appellant :- Rahul Jain

Counsel for Respondent :- G.A.,Ramesh Chandra Dwivedi

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Praveen Kumar Giri,J.

1. Heard learned counsel for the parties.
2. This bunch of appeals arises out of a judgment and order passed by the learned Single Judge dated 22.07.2024, in a batch of writ petitions holding the appellant to have obtained appointment on the post of Assistant Teacher L.T. Grade in agriculture on the strength of fraud. Learned Single Judge, therefore, has disentitled the appellant to the retiral benefits. The only protection granted to the appellant is that the salary paid to him would not be recovered. Thus, the aggrieved appellant is before this Court.
3. The undisputed facts of the case are that a short term vacancy had arisen on the post of L.T. Grade teacher in agriculture in Janta Inter College, Ramkola, Deoria (now Kushinagar) on account of a regular employee, Rakesh Govind Ram, going on leave. The appellant

claims to have been appointed against such vacancy, and his appointment was also approved by the District Inspector of Schools on 04.03.1993. The appellant joined and continued to work against the post. He was subsequently regularized on 15.09.2008. The petitioner continued to work in such capacity till the year 2020. Neither the appointment of the appellant was challenged, nor was there any challenge made to his regularization. It appears that in the year 2020, a Government order was issued requiring all teachers to upload their educational qualifications so that such qualification could be verified. It is the case of the respondent that the appellant also uploaded his B.Ed degree, which has been found to be forged. Once it was found that B.Ed. qualification was fraudulent, it was thereafter that orders were passed against him, objecting to his continuance. The Director issued notices under Section 16-E(10) to the appellant on 17.12.2020, and ultimately his services were terminated on 11.03.2022. Aggrieved by those orders, the appellant had approached this Court by filing three writ petitions, which have been finally decided by the learned Single Judge. It is the admitted case of the parties that pursuant to interim orders passed in the aforesaid three writ petitions, the appellant continued to work till he attained the age of superannuation on 31.03.2024. It is thereafter that all the three petitions have been decided.

4. Learned Single Judge has refused to come to the appellant's rescue after noticing the fact that the initial approval to his ad-hoc appointment vide order dated 04.03.1993, mentions the name of the appellant and his qualification is recorded as B.Sc. in Agriculture and B.Ed. Pursuant to this approval order granted by the District Inspector of Schools, the appointment order was issued to the appellant on 06.03.1993. Learned Single Judge has, therefore, observed that had it not been for the misrepresentation on the part of the appellant that he possessed B.Ed degree, he would not have been appointed. Learned Single Judge has also observed that the B.Ed degree has been found to

be forged. It is also observed that none else would have made such a misrepresentation and that the appellant, being the obvious beneficiary of misrepresenting that he possessed a B.Ed degree, the Inspector, in his approval order, would not have mentioned B.Ed. in front of the appellant's qualification.

5. Learned Single Judge has opined that at no stage appellant had clarified to any of the authorities that his qualifications did not include B.Ed. It is also noticed that B.Ed. qualification was uploaded by the appellant himself on the portal. This fact is, however, disputed by the counsel for the appellant.

6. This bunch of special appeals was entertained, and this Court on 02.04.2025 passed the following orders:

"1. In the instant appeal two questions are required to be adjudicated upon:

(i) whether in 1993, the petitioner was essentially required to be a Trained Teacher i.e. whether he was required to have a B.Ed degree,

(ii) whether the question of the qualification of the petitioner could be reopened in the year 2020 i.e. after 27 years of his appointment in view of decision of the Full Bench of this Court in the case of Asha Saxena (Dr.) Vs. S.K. Chaudhary reported in 1991 (1) UPLBEC 250.

2. The appellant was appointed on an ad-hoc basis in the L.T. Grade(Agriculture) in a short term vacancy in the year 1993. It is the contention of learned counsel for the appellant that as per the Appendix-A of U.P. Intermediate Education Act, 1921, the essential qualification for a teacher in the L.T. Grade for the subject of Agriculture was B.Sc in Agriculture and that a desirable qualification was that he could also be a Trained Teacher. It is further the case of the appellant that the appellant never had claimed himself to be a Trained Teacher having a B.Ed degree.

3. Learned counsel for the appellant Shri Rahul Jain states that when the matter with regard to the regularisation was sent to the relevant committee, the qualification of the appellant was shown as B.Sc (Agriculture). It is further the case of the appellant that after the appellant was regularized in the year 2015, in the month of September 2020 the matter was referred by the District Inspector of Schools to the Director of Education under Section 16-E (10) of U.P. Intermediate Education Act, 1921 for taking action against the appellant for having submitted a forged B.Ed degree.

4. It is still further the case of the appellant that the appellant categorically filed his reply before the Deputy Director of Education stating that the appellant was not a Trained Teacher and he also submitted that no action could be taken against the appellant after the passage of 27 years. He states

that illegally the impugned order in the writ petition was passed stating that the petitioner had produced a B.Ed degree which was a forged one and, therefore, he was guilty of producing a forged degree.

5. Learned counsel for the appellant has stated that the essential qualification for being appointed on the post of L.T. Grade teacher in the subject of Agriculture was that the appellant had to be a B.Sc in Agriculture and that being a B.Ed was only desirable.

6. When the writ petition filed against the order of the Director of Education dated 11.03.2022 was ultimately dismissed, the instant Special Appeal has been filed.

7. In reply however, learned counsel appearing for the Committee of Management Shri Ramesh Chandra Dwivedi has submitted that the essential qualification at the time when the appellant was appointed in the year 1993 was that the appellant had also to be a Trained Teacher. This aspect of the matter is required to be ascertained.

8. Learned Additional Chief Standing Counsel Shri Devesh Vikram may ascertain as to whether the qualification that the appellant had in the year 1993 entitled him to be a teacher in L.T. Grade (Agriculture). Further, learned counsel for the State may also look into the case from the view point of the Full Bench decision of this Court in the case of Asha Saxena (Dr.) Vs. S.K. Chaudhary reported in 1991 (1) UPLBEC 250.

9. Put up this case as fresh on 25.04.2025. "

7. The two issues which have been crystallized for consideration by the previous Bench have been examined by us with the assistance of the learned counsel for the parties. There was an issue as to whether B.Ed. is a preferential qualification or an essential qualification for appointment to the post in question. We have called upon the State Counsel to produce the original text in order to ascertain the position, as different books indicate the qualifications differently. The Schedule 'A' to Chapter II Regulation 1 contains the qualifications for the appointment of teachers in secondary institutions. The qualification is prescribed subject-wise and is contained in a chart. Column- 3 contains the educational qualifications required for the post, whereas column 4 stipulates training. Column- 7 contains preferential qualifications. The chart continues up to item No. 19 and from item No. 20 onwards, the prescription of qualifications is not specified in the chart. The training qualification, however, is in the last column. It is not indicated as to whether this qualification is an essential

qualification or a preferential qualification. Though the tabular chart does not specify it but we are inclined to accept the appellant's submission that mere omission to specify subjects after serial No. 20 in the tabular chart would not mean that the serial number under which items are specified are at variance from what is mentioned upto serial No.19. Agriculture as a subject is item No. 47. For high school classes, the educational qualification prescribed is B.Sc. in agriculture. It is only at the end that the training is mentioned. The pattern in which qualification is mentioned at item No. 47 is similar to the pattern in which qualifications are specified from serial No.1 onwards.

8. We are, therefore, inclined to hold that the training qualification i.e. B.Ed. is only a preferential qualification and is not an essential qualification for appointment to the post of L.T. Grade teacher in agriculture.

9. This takes us to the next question as to whether there has been any misrepresentation on the part of the appellant in informing his qualification as a result of which he has gained employment. We have gone through the records, but we do not find that the original proceedings relating to ad-hoc appointment of appellant have been placed on record by either side. It is not shown anywhere that the appellant was appointed on ad-hoc basis against the short term vacancy on account of his having acquired B.Ed. Qualification. In the absence of any records produced in that regard, we can only draw inferences from the facts on record. We find that learned Single Judge has inferred misrepresentation on the part of the appellant since the documents on record, including the approval order as well as stipulation in the service book, do record appellant's qualifications as B.Sc. and B.Ed. The inference drawn by the learned Single Judge on facts cannot be denied. However, we are not persuaded to entirely endorse the reasoning adopted by the learned Single Judge in peculiar facts and circumstances of the present case. We may record that the appellant was not only appointed in 1993 and approval to it was also

granted, yet, none questioned his appointment; his services were also regularized in 2008, and that regularization order was also not challenged by anyone. The issue relating to appellant having secured appointment on the strength of misrepresentation has surfaced for the first time in the year 2020, when the B.Ed. qualification of the appellant was found to be manipulated.

10. Once we come to the conclusion that B.Ed. was not an essential qualification for the post in question, we are of the view that mere error in describing the appellant to be possessing B.Ed. qualification ought not to be taken as a ground to set aside his appointment after such a long lapse of time. We say so because the essential qualification for the post was possessed by the appellant. Such qualification is also undisputed. After having worked for more than 30 years, it would be harsh to deny the retiral benefits to the appellant or to set aside his appointment.

11. The respondents do not dispute that the appellant has satisfactorily worked as a teacher for 31 years and no complaint was ever made with regard to his work and performance in the institution. Appellant having worked for so long, we are of the view that the issue ought to have been examined in the peculiar facts of this case rather than the way it is done by the Director.

12. On the second aspect as well, we find substance in the argument of the appellant that the power under Section 16-E(10) ought not to have been exercised at such a belated stage, in peculiar facts of this case.

13. The full Bench of this Court in **Dr. Asha Saxena vs. Smt. S.K. Chaudhary and others; (1991) 1 UPLBEC 250**, observed as under in paragraph No.16:

"16. If that be so, the controversy regarding seniority of the three lecturers was determined by the Managing Committee on 29.4.1976. The aforesaid seniority list had remained in existence since then. The

argument raised by the learned counsel for Dr. Asha Saxena that she got a right to file objections only when the seniority list was prepared in the year 1985-86 is not tenable. This argument is also not tenable because it has come on the record that the seniority list gradewise was prepared even earlier to the year 1985 and no objection had been filed. The law is well settled that the Court will not interfere with a seniority list which had remained in existence for a long time and which had become final. In the present case the Management had determined the seniority on 29.4.1976. This decision had been taken after affording opportunity to Dr. Asha Saxena. She did not file any appeal against the decision of the Committee of Management even though an appeal may have been preferred. Objections by Dr. Asha Saxena had been filed after a lapse of nearly 15 years. In the objections, which have been filed an Annexure "3" to the writ petition, of Dr. Asha Saxena, she has not taken a ground that seniority list was not prepared every year. The only objection raised was that she did not know about the insertion of provisions of Section 3(l)(bb) in Chapter II and she filed the objections after coming to know of the aforesaid provisions. The seniority list has been existing since the year 1975-76 and we are not prepared to quash seniority list after a lapse of nearly 15 years. The Supreme Court in the case of Malcom Lawrence Cecil D'Souza v. Union of India A.I.R. 1975 SC 1269 = 1975 LIC 816 (Paras 8 and 9) has held:

"The matter can also be looked at from another angle. The seniority of the petitioner qua respondents 4 to 26 was determined as long ago as 1956 in accordance with 1952 Rules. The said seniority was reiterated in the seniority list issued in 1958. The present writ petition was filed in 1971. The petitioner, in our opinion, cannot be allowed to challenge the seniority list after lapse of so many years. The fact that a seniority list was issued in the year 1971 in pursuance of the decision of this Court in Karnik's case, AIR 1970 SC 2092 (supra), would not cloth the petitioner with a fresh right to challenge the fixation of his seniority qua respondents 4 to 26 as the seniority list of 1971 merely reflected the seniority of the petitioner qua those respondents as already determined in 1956. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants because of stale claims made after lapse of 14 or 15 years. It is essential that any one who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. No satisfactory explanation has been furnished by the petitioner before us for the inordinate delay in approaching the Court. It is no doubt true that he made a representation against the seniority list issued in 1956 and 1958 but that representation was rejected in 1961. No cogent ground has been shown as to why the petitioner became quiescent and took no diligent steps to obtain redress. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of seniority. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for

once should not be liable to be reopened after lapse of many years at the instance of the party who has during the intervening period chosen to keep quiet. Baking of old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."

Learned counsel appearing for Dr. Asha Saxena has also urged before us that the Regional Inspectress of Girls Schools has found the appointment of the three teachers invalid as on the date of appointment none of them had the requisite qualifications for being promoted to the post of lecturer in the College. It has been urged that the Full Bench on an earlier occasion relying on the decision of the Supreme Court in the case of Ram Sarup v. State of Haryana AIR 1978 SC 1536 = 1978 L.L.C. 1535 has held that the three teachers should be deemed to have been appointed from the date on which they would acquire qualifications for being promoted to the post of lecturers. At the very outset it may be mentioned that the earlier writ petition of Dr. Asha Saxena had been allowed inasmuch as complete material had not come before the Full Bench regarding the fact that Dr. Asha Saxena had filed objections immediately after her promotion which had been rejected and had become final. It has also not been brought to the notice of the Full bench that seniority list grade-wise was prepared every year after the incorporation of Chapter III in the year 1976. It may also be noted that Dr. Asha Saxena has not challenged the validity of the appointment and had only made a challenge to the seniority list. One fails to understand that after a lapse of nearly 17 years the Regional Inspectress of Girls Schools referred the matter to the Director of Education for adjudicating the question as to whether the appointments were valid or not. In our opinion, the exercise of power by the Regional Inspectress of Girls Schools on the facts and circumstances of the case is wholly arbitrary as that power could not be exercised after lapse of 17 years. The objections filed by Dr. Asha Saxena in the year 1986 which are contained in Annexure "3" to the writ petition are liable to be rejected inasmuch as the ground that she did not know the provision of Clause 3(1)(bb) in Chapter II was of no avail to her. The seniority lists were being prepared year after year after 1975-76 and the objection filed by Dr. Asha Saxena after the lapse of nearly 11 years was not liable to be entertained as has been held by the Supreme Court in the case of Malcom Lawrence Cecil D'Sousa (1975 L.I.C. 816) (supra). In any view of the matter, the appointments which were existing for the last 17 years could not be set aside after a lapse of such a long period. Even the earlier Full Bench had quashed the order of the Regional Inspectress of Girls Schools referring the matter under Section 16-E(10) of the Act we are also of the opinion that the aforesaid order is liable to be quashed. It is true that there is power under Section 16-E (10) of the Act to cancel the appointments but the power has to be exercised within a reasonable time. The appointments had been made in the year 1973 and by no stretch of imagination it can be said that the exercise of that power after the /apse of 17 year by the Director of Education under Section 16-E(10), on the facts and circumstances of the case can be said to be exercise of a power within a reasonable time. In our opinion, the order of the Regional Inspec-tress of Girls Schools referring the matter to the Director of Education under Section 16-E(10) is thus liable to be quashed. "

14. Learned Single Judge has distinguished the full Bench judgment in the case of **Dr. Asha Saxena** (supra) on the ground that the issue before the full Bench related to a dispute of seniority and the same would not have any applicability where the appointment itself is obtained by fraud.

15. The reasoning adopted by the learned Single Judge though appears to be well-founded, but we cannot endorse it for the simple reason that the plea of fraud specifically attributed to the appellant has not been made out on the facts. We have also observed that the B.Ed. qualification in respect of which the dispute is raised, is not an essential qualification for appointment to the post but a preferential qualification. We have also found that the records do not indicate that the appointment was obtained by the appellant only because his qualification was found higher by the selection committee. In such circumstances, we are of the view that at this late stage, when the appellant has otherwise retired, it would not be prudent to reopen the issue, nor would the Director be justified in invoking his powers under Section 16-E(10). On facts, therefore, we find that the order passed by the Director cancelling the appointment of the appellant cannot be sustained.

16. For the reasons stated above, we interfere in the present appeal and set aside the judgment of the learned Single Judge, insofar as the order of the Director has been sustained and the appellant has been denied his retiral benefits. To that extent, the judgment of the learned Single Judge dated 22.07.2024 is modified.

17. The order of the Director dated 11.03.2022 and the order of the District Inspector of Schools dated 09.10.2020 are set aside for the aforesaid reasons.

18. The appellant shall be entitled to the retiral benefits along with other service benefits which are found due and payable to him in

accordance with law, within a period of three months from the date of presentation of a copy of this order.

19. With the observations aforesaid, this bunch of Special Appeals are disposed of.

Order Date :- 2.5.2025

K.Tiwari