



A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
WRIT - A No. - 18486 of 2021

Shiv Narain Singh

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Ajay Kumar Sharma, Atul Sharma, Sr. Advocate
Counsel for Respondent(s)	: Archana Singh, C.S.C., Vikram Bahadur Singh

Court No. - 52

HON'BLE MRS. MANJU RANI CHAUHAN, J.

1. Heard Mr. Ajay Kumar Sharma and Mr. Atul Sharma, learned counsel for the petitioner, learned Standing Counsel for the State-respondents and Mr. Shivendra Singh Bhadauria, learned counsel for the respondent-BSA.

2. The present petition has been filed challenging the order dated 15.06.2021 and further seeking issuance of a writ, order or direction commanding the District Basic Education Officer Fatehpur, respondent no.3, to issue an appointment letter to the petitioner for appointment on the post of Assistant Teacher in accordance with availability of vacancies, particularly in the light of the preference exercised by the petitioner through the preference list dated 31.05.2020.

3. Placing the brief facts of the case, it is submitted that pursuant to the advertisement issued for engagement on the post of Shiksha Mitra for the year 2000, the petitioner submitted his application. Thereafter, on 27.01.2004, a select list containing the names of nine candidates was published, wherein the name of the petitioner also found place.

4. After assessing the comparative merit on the basis of quality point marks, an illegal resolution dated 25.02.2004 came to be passed by the Headmaster, Primary School, Lila, whereby one Vivek Singh was appointed on the post of Shiksha Mitra for Primary School, Lila. However, despite the petitioner having secured higher quality point marks, namely 54.98%, as against 53.4% obtained by Vivek Singh, the

name of the petitioner was neither forwarded nor considered by the Headmaster of Primary School, Lirla.

5. For engagement at the primary school Devlon, three names were proposed, namely, (i) Sanjay Kumar, having secured 55.41% quality point marks, (ii) Shiv Narain Singh (petitioner), having secured 54.98% quality point marks, and (iii) Mithilesh Kumari, having secured 46.79% quality point marks. However, Vivek Singh was appointed on the post of Shiksha Mitra at the primary school Lirla.

6. Challenging the appointment of Vivek Singh as Shiksha Mitra in Primary School, Lirla, the petitioner submitted a representation dated 25.09.2004 before the District Magistrate, Fatehpur. Thereafter, the petitioner filed Writ Petition No. 43667 of 2004, which came to be disposed of vide order dated 15.10.2004 with a direction to the District Magistrate, Fatehpur, being the Chairman of the District Selection Committee in matters relating to appointment of Shiksha Mitras, to decide the controversy in accordance with law.

7. In compliance with the aforesaid order, the District Magistrate passed an order dated 09.02.2005 directing appointment of the petitioner on the post of Shiksha Mitra in Primary School, Lirla, after considering the comparative merit of the candidates, and further directed cancellation of the appointment of Vivek Singh Pursuant to the aforesaid order dated 09.02.2005, the petitioner joined and started discharging duties on 19.03.2005 at Primary School, Lirla.

8. Challenging the order dated 09.02.2005, Vivek Singh filed Writ Petition No. 17429 of 2005, wherein the petitioner was impleaded as respondent no. 6. In the aforesaid writ petition, the Hon'ble Court called for affidavits; however, no interim order was granted. Subsequently, the aforesaid writ petition came to be finally decided on 26.02.2020.

9. The aforesaid writ petition came to be allowed vide judgment and order dated 26.02.2020, wherein it was observed that there existed no provision requiring a collective selection for different primary schools merely on the ground that vacancies in both the institutions had arisen simultaneously. Consequently, the order dated 09.02.2005, whereby the

appointment of Vivek Singh had been cancelled, was set aside. In the meantime, the State Government issued a circular dated 26.02.2010 declaring that no fresh appointments to the post of Shiksha Mitra in the State of Uttar Pradesh shall be made thereafter.

10. Against the order dated 26th February, 2020 passed in Writ–A No. 17429 of 2005, the petitioner, Shiv Narain Singh, preferred Special Appeal Defective No. 419 of 2020, which came to be disposed of by order dated 22nd October, 2020 with the observation that experience is the culmination of knowledge, skill, exposure to the nature of duties assigned, and procedural understanding acquired by actually discharging such duties. The Division Bench further observed that even if a person is not borne on a regular cadre or is not a regular member of a particular service, the work performed by such person confers practical insight and a profound understanding of the duties attached to the post. It was, therefore, held that the services rendered by the petitioner from the date of his appointment till the passing of the order by the learned Single Judge on 26th February, 2020 were not to be ignored and should be taken as valid experience gained by the petitioner.

11. The learned counsel appearing on behalf of the petitioner in the aforesaid special appeal had specifically contended that the services rendered by the petitioner from the date of his appointment till the passing of the order dated 26.02.2020 by the learned Single Judge were not being reckoned as valid experience for the purposes of grant of the requisite bonus marks while determining merit for appointment on the post of Assistant Teacher against the notified 69,000 vacancies, despite the fact that the petitioner had already been called for counselling in the said selection process.

12. Thereafter, a list dated 4th December, 2020 was published indicating the corrections made and the status thereof in respect of the candidates mentioned therein, wherein the name of the petitioner finds place at Serial No. 11. It has been stated that Writ–A No. 17429 of 2005, in which the order dated 26th February, 2020 whereby petitioners appointment made by the District Magistrate was cancelled. It has further been submitted that the petitioner had been called for counselling on 14th October, 2020

and 15th October, 2020 in the Shiksha Mitra quota; however, since the matter was *sub judice* and related to court proceedings, the issue was referred by the Committee to the Secretary, Parishad, for appropriate consideration and decision.

13. When the claim of the petitioner for appointment on the post of Assistant Teacher, in accordance with law, was not considered despite the orders passed by this Hon'ble Court, the petitioner instituted Writ-A No. 14171 of 2020, (Shiv Narain Singh v. State of U.P. and others). The said writ petition was disposed of by order dated 18th January, 2021, whereby the Secretary Basic Shiksha was directed to conclude the proceedings pertaining to adjudication of the petitioner's claim for appointment as Assistant Teacher strictly in accordance with law, after taking into consideration the judgment of the Division Bench relied upon by the petitioner. The Court further directed that the aforesaid exercise be completed within a period of two months from the date of production of a certified copy of the order.

14. Having heard learned counsel for the parties and upon perusal of the material brought on record, this Court finds that the controversy involved in the present writ petition lies within a narrow compass.

15. The foundational facts are not in dispute. The petitioner had initially been appointed and had continuously discharged duties on the post of Shiksha Mitra for a considerable period. It is also not disputed that in the recruitment process for appointment on the post of Assistant Teacher against 69,000 vacancies, the petitioner had participated and was even called for counselling on 14.10.2020 and 15.10.2020. The grievance of the petitioner arose only on account of denial of the benefit of experience and the consequential bonus marks, despite the fact that the petitioner had actually rendered service and discharged duties for a substantial period of time.

16. The records further reveal that against the order dated 26.02.2020 passed in Writ-A No. 17429 of 2005, the petitioner preferred Special Appeal Defective No. 419 of 2020, which was disposed of by the Division Bench by judgment and order dated 22.10.2020. The observations made by the Division Bench assume immense significance

and have a direct bearing on the controversy involved herein. The Division Bench unequivocally observed that experience is not a mere nomenclature attached to a post, but is the culmination of knowledge, skill, procedural understanding and practical exposure acquired by actually discharging duties attached to the office concerned. The Court further held that even if a person is not borne on a regular cadre or is not a regular member of a particular service, the duties discharged by such person bestow upon him practical insight and profound understanding of the nature of work performed.

17. The Division Bench, therefore, categorically recognized that the services rendered by the petitioner from the date of his appointment till the passing of the order by the learned Single Judge on 26.02.2020 were liable to be treated as valid experience gained by the petitioner. The aforesaid pronouncement has attained finality and binds the authorities concerned.

18. This Court further finds from the record that a list dated 04.12.2020 was published indicating the status of corrections and claims pertaining to various candidates, wherein the name of the petitioner appeared at Serial No. 11. The said list itself reflects that the petitioner's claim was kept under consideration on account of pendency of the court proceedings. Significantly, the respondents have nowhere stated that the vacancy against which the petitioner had staked his claim was ever filled up by appointing any other candidate. On the contrary, the materials on record unmistakably indicate that the petitioner's candidature remained subject to adjudication owing to the pending litigation and was consciously kept open by the authorities themselves.

19. Once the respondents had preserved the vacancy awaiting adjudication of the petitioner's entitlement, and the petitioner has now succeeded in establishing his lawful claim for grant of experience and consequential bonus marks, there remains no legal impediment in extending the benefit of appointment to him. The respondents cannot now be permitted to defeat the legitimate claim of the petitioner by taking recourse to technicalities, particularly when the delay occasioned in finalization of his candidature arose solely due to pendency of

proceedings before competent courts of law.

20. This Court finds that the impugned order proceeds on an entirely erroneous premise that since the appointment of the petitioner on the post of Shiksha Mitra had ceased to exist, the experience acquired by him also stood obliterated for all purposes. Such reasoning is manifestly unsustainable in the eyes of law.

21. Experience is a matter of factual attainment and practical acquisition. Once duties have actually been discharged over a period of time, the experience so gained cannot be retrospectively erased merely because the appointment subsequently ceased to subsist. The cessation of appointment may have consequences concerning continuity in service, but it cannot annihilate the experience already earned by actual discharge of functions. To hold otherwise would amount to treating years of service rendered by an individual as non est, which would be wholly arbitrary and contrary to settled principles governing service jurisprudence.

22. Experience is not a fictional or artificial concept dependent solely upon continuance of appointment. Once duties have in fact been discharged over a substantial period, the knowledge, exposure and practical understanding acquired thereby become an irreversible factual attainment. Subsequent cancellation or cessation of appointment may terminate service, but it does not obliterate the experience already earned through actual discharge of duties.

23. In **Bachhittar Singh v. State of Punjab**, reported in AIR 1963 SC 395, the Hon'ble Supreme Court recognized that rights and consequences flowing from acts performed during the subsistence of an order cannot be ignored merely because such order is subsequently altered or withdrawn. Likewise, in **Union of India v. Bikash Kuanar**, reported in (2006) 8 SCC 192, the Supreme Court observed that once a person has actually discharged duties and civil consequences have accrued, the same cannot be retrospectively obliterated by subsequent administrative action. The Kerala High Court, in **Soman v. State of Kerala**, reported in (2013) 2 KLT 215, categorically held that the service rendered by an employee prior to cancellation of appointment "cannot be said to be wiped out", and the actual duties discharged during the subsistence of appointment remain

a relevant factor for determining consequential service benefits. Similarly, this Hon'ble Court in **Manju Singh v. State of U.P., reported in 2004 SCC OnLine All 1247**, recognized the distinction between cessation of appointment and the factual rendering of service, holding that actual experience gained by discharge of duties constitutes a substantive and irreversible factual attainment. The same principle stands authoritatively reiterated in the petitioner's own case in **Special Appeal Defective No. 419 of 2020, Shiv Narain Singh v. State of U.P. and others, decided on 22.10.2020**, wherein the Division Bench expressly observed that "experience is knowledge, skill, exposure and procedural understanding gained by discharging duties and even if a person is not a regular member of service, the work performed by him gives profound understanding of the job concerned"; consequently, the Court held that the services rendered by the petitioner from the date of his appointment till the passing of the order dated 26.02.2020 were liable to be treated as valid experience. These pronouncements unequivocally establish that once duties have actually been discharged for a considerable period, the experience so gained cannot be obliterated merely because the appointment subsequently ceased or came to be cancelled.

24. What is of greater significance is that the precise issue already stood answered by the Division Bench while disposing of the petitioner's special appeal. The authorities, while passing the impugned order, were under a bounden obligation to faithfully abide by and give effect to the observations and directions issued by the appellate court. Instead thereof, the respondents have proceeded in complete disregard of the binding observations made by the Division Bench and have virtually sat in appeal over the judgment of a superior court, which is plainly impermissible.

25. This Court is also unable to loose sight of the fact that in Writ-A No. 14171 of 2020, this Court had specifically directed the District Basic Education Officer to adjudicate the claim of the petitioner in accordance with law while taking into consideration the judgment of the Division Bench relied upon by the petitioner. The impugned order, however, reflects no meaningful consideration of the law laid down by the appellate court and has been passed in a mechanical and cursory manner.

26. In view of the above, the respondents are directed to grant the benefit of experience and consequential bonus marks to the petitioner in terms of the observations made by the Division Bench in Special Appeal Defective No. 419 of 2020 and to issue appointment to the petitioner on the post of Assistant Teacher against the vacancy which had remained subject matter of consideration during pendency of the litigation, provided the petitioner is otherwise eligible and fulfils all other requisite conditions.

27. On the aforesaid, learned counsel for the respondent-BSA, Mr. Shivendra Singh Bhadauria, prays for and is granted a week's time for compliance with the directions mentioned above.

28. List this case on 20.05.2026, showing the name of Mr. Shivendra Singh Bhadauria as counsel for the respondent-BSA.

(Mrs. Manju Rani Chauhan,J.)

May 12, 2026

Jitendra/-