



2026:AHC:72583

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 68411 of 2015

Km. Ritu Mishra and 3 others

.....Petitioner(s)

Versus

State of U.P. and 5 others

.....Respondent(s)

Counsel for Petitioner(s)	: Sudeep Dwivedi
Counsel for Respondent(s)	: Arun Kumar, Ashish Kumar (nagvanshi), C.S.C., S.p.k. Tripathi

Court No. - 52

HON'BLE MRS. MANJU RANI CHAUHAN, J.

Order on Impleadment Application

1. Heard learned counsel for the petitioners and learned counsel for the respondents.
2. The impleadment application has been moved for impleading Manish Kumar and Durgesh Dhar as respondents No. 7 & 8 as they are the persons who participated in the selections, but have been declared unsuccessful and made a complaint regarding the selection proceeding. Therefore, as complainants, they cannot be permitted to be arrayed as party. They can also not be permitted on the ground that they have not challenged the appointment of the petitioners on any ground which was the option left to them.
3. Accordingly, the impleadment application is rejected.

Order on petition

1. Heard learned counsel for the petitioners and Mr. Shailendra Singh, learned Standing Counsel for the State-respondents.
2. The present petition has been filed, with a prayer to quash the orders dated 2.12.2015 and 10.12.2015, passed by respondents No. 3 & 4, respectively, with a further prayer to direct the respondents not to interfere in the peaceful functioning of the petitioners as Assistant Teachers in the concerned institution and also make payment as and when it comes due.
3. Learned counsel for the petitioner submits that the institution of respondent No.6, namely, Anglo Junior High School Persia, Gorakhpur is an institution, established up to Junior High School level and the said institution was recognized under U.P. Basic Education Act, 1972 (in short 'Act, 1972') and appointment of teachers are being made under the U.P. Recognized Basic Education (Junior High School) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (in short 'Rules, 1978').
4. The aforesaid institution came into grant-in-aid list in 1980-81 up to Junior High School. Initially one post of Head Master and four posts of Assistant Teachers were sanctioned. However, by order of respondent No.3 dated 31.3.2019, one extra post of Assistant Teacher was sanctioned. Accordingly, five teachers, namely, Radhey Shyam Mishra, Shiv Shankar, Moti Yadav, Ravindra Rai and Ram Kripal Maurya, who were getting salary under the Rules, 1978 in the Junior High School, retired in the year 2008, 2009, 2010, 2011 and 2012, respectively.
5. The institution was upgraded up to High School level under the U.P. Intermediate Education Act and was granted recognition up to the aforesaid level in the year 2006. After upgradation of the institution up to High School level, as there was no provision of creation of posts, therefore, in order to fill up the aforesaid vacant posts, due to retirement

of five teachers as named above, who were drawing salary under the Rules, 1978, a permission was taken for advertising the aforesaid posts of four teachers. The District Basic Education Officer granted permission for advertisement by order dated 25.6.2015. Accordingly, the advertisement was published in two newspapers, namely, Aaj and Swatantra Chetna on 27.6.2015.

6. The petitioners, being duly qualified with a Graduation degree, B.Ed. training qualification, and having also qualified the Teacher Eligibility Test (TET), were selected and appointed to the post of Assistant Teacher after undergoing due selection before the duly constituted Selection Committee. Their appointments were accorded approval vide order dated 25.08.2015, pursuant where to the Committee of Management issued formal appointment letters of even date, i.e., 25.08.2015, in favour of the petitioners.

7. Thereafter, the candidates who had applied appeared before the duly constituted Selection Committee, formed in accordance with the relevant statutory provisions. The Committee comprised the Manager, the Headmaster, and a nominee of the District Basic Shiksha Adhikari, Gorakhpur—namely, the Deputy Education Officer, Shri Parasnath Kushwaha.

8. Thereafter, the petitioners duly joined the institution as Assistant Teachers on 28/31.08.2015 and have been continuously discharging their duties since then.

9. Upon a complaint lodged by one Udhay Narayan Mishra, who had earlier instituted proceedings before the court below, the Commissioner, Gorakhpur Mandal, Gorakhpur, initiated an enquiry and, vide order dated 24.11.2015, directed the Assistant Director of Education (Basic) to submit a report with respect to the said complaint.

10. Pursuant thereto, the Assistant Director of Education (Basic) called for a report from the District Basic Education Officer, who, in turn,

submitted the same. Relying upon the said report, the Assistant Director of Education, Mandal, thereafter passed an order dated 02.12.2015 directing the District Basic Education Officer, Gorakhpur, to take steps for removal/termination of the petitioners from service. Subsequently, the District Basic Education Officer has passed the impugned order dated 10.12.2015, whereby the services of the petitioners have been terminated; in effect, their appointments have been cancelled.

11. The aforesaid orders have been assailed, inter alia, on the ground that the Commissioner lacked inherent jurisdiction to issue directions to the Assistant Director of Education to initiate or pass such orders, thereby impermissibly interfering in the statutory functioning of the educational authorities governing appointments made under the provisions of the Act. It is contended that such interference is wholly without authority of law and renders the impugned orders *ex facie* illegal and without jurisdiction.

12. In support of the aforesaid submission, reliance has been placed upon the judgment rendered in **Sunil Kumar Dubey v. State of U.P., Writ-A No. 23887 of 2009, decided on 06.04.2015**, wherein it has been observed that the State Government does not possess any direct role or authority in matters pertaining to recruitment of teachers, non-teaching staff, or Class-IV employees, as such powers are statutorily vested in the competent educational authorities designated for the said purpose.

13. The learned counsel for the petitioners further submits that the impugned orders have been passed in flagrant violation of the principles of natural justice, inasmuch as no notice was ever issued nor any opportunity of hearing was afforded to the petitioners prior to the passing of the said orders.

14. It is further contended that the petitioners were duly appointed as Assistant Teachers strictly in accordance with the procedure prescribed under law. However, their services have been dispensed with without

conducting any regular or detailed inquiry, as mandatorily required, before taking such an adverse action.

15. In view thereof, it is urged that the impugned orders, having been passed in breach of the settled legal principles and without adherence to the due process of law, are wholly arbitrary, unsustainable, and liable to be set aside as being bad in the eyes of law.

16. The impugned orders are wholly non-speaking in nature, bereft of any reasons whatsoever as to why the appointments of the appellants have been cancelled. Such orders, passed without disclosing the basis or rationale, fail to meet the essential requirement of reasoned decision-making.

17. Furthermore, the same have been issued without affording any proper notice or opportunity of hearing to the appellants, thereby rendering the action in clear violation of the principles of natural justice.

18. In consequence, the impugned orders, being arbitrary, unreasoned, and procedurally infirm, are unsustainable in the eyes of law and cannot be allowed to stand.

19. It is submitted by the learned Standing Counsel that it is an admitted position on record that the institution in question stood upgraded to a High School in the year 2006. Consequently, any appointment made thereafter could not have been governed by the provisions of the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978, which are applicable only to institutions imparting education up to the Junior High School level.

20. He further submits that the controversy involved in the present case is no longer *res integra* and stands squarely covered by the judgment of this Court in **Manju Awasthi v. State of U.P. reported in 2013 (3) ADJ 64 (DB)**, wherein it has been categorically held that the applicability of recruitment rules is dependent upon the status of the institution on the

date of appointment. It has been authoritatively laid down that upon upgradation, the earlier statutory framework stands eclipsed and the field becomes governed by the provisions of the Uttar Pradesh Intermediate Education Act, 1921 and the Uttar Pradesh Secondary Education Services Selection Board Act, 1982.

21. Learned Standing Counsel further contends that the determinative factor is the date of appointment and not the stage at which the selection process may have been initiated. Thus, any appointment made subsequent to upgradation, by invoking the provisions of the 1978 Rules, is wholly without jurisdiction. Such an appointment, being in clear contravention of the statutory mandate, is void ab initio and confers no legal right upon the appointee.

22. The learned Standing Counsel has placed reliance upon the judgment rendered in **Shailendra Pratap Singh vs. State of U.P., Writ A No. 6879 of 2012, decided on 3rd March, 2024 (Neutral Citation No. 2024 AHC-LKO-41360)**. In the said case, the impugned order arose out of a procedural irregularity in the appointment of a clerk, wherein the provisions of the Rules, 1984 were invoked for making such appointment.

23. The Court, upon due consideration, dismissed the petition holding that the provisions of the Rules, 1984 governing such appointments would not be applicable to an institution that had already been upgraded to the level of a High School. It was categorically observed that, upon such upgradation, the field stood occupied by the provisions of the U.P. Intermediate Education Act, 1921, and the appointments were required to be made strictly in accordance therewith.

24. Consequently, it was held that any appointment made dehors the applicable statutory framework, i.e., by erroneously invoking the Rules, 1984, stood vitiated in the eyes of law. Thus, in light of the settled legal position, the entire proceedings culminating in such appointment were rendered unsustainable.

25. He further submits that a batch of Special Appeals, the leading one being **Special Appeal No. 503 of 2019 (Committee of Management, Standard Intermediate College, Mau, Aima and others vs. State of U.P. and others)**, has authoritatively delineated the statutory provisions applicable to institutions which were initially Junior High Schools but were subsequently upgraded to High Schools.

26. It is contended that the Court, in the aforesaid judgment, has clearly held that upon such upgradation, the earlier regulatory framework ceases to operate and the appointments are thereafter required to be made strictly in accordance with the provisions governing High Schools under the relevant Act and Rules.

27. On the strength of the said pronouncement, it is urged that if the applicable statutory scheme is correctly applied to the facts of the present case, the appointments of the petitioners are *ex facie de hors* the prescribed rules. Consequently, it is submitted that the petitioners are not entitled to any relief from this Court.

28. Heard learned counsel for the parties and perused the records.

29. The petitioner asserts that his appointment was made against vacancies arising on account of the retirement of four teachers, and that the entire selection process was conducted strictly in accordance with the provisions of the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978.

30. He further submits that the vacancies in question were duly advertised and the selection was conducted strictly in accordance with the provisions of the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978. It is contended that the competent authority, namely the Committee of Management, having adhered to the prescribed procedure, the appointment in question cannot be faulted.

31. It is next submitted that the Commissioner lacked jurisdiction to interfere in the functioning of the institution or to direct cancellation of the appointment in question.

32. Learned counsel further submits that the impugned order has been passed without holding any proper inquiry and without affording the petitioner an adequate opportunity of hearing, thereby being in clear violation of the principles of natural justice.

33. Lastly, it is urged that the impugned order is a non-speaking one, as it fails to disclose any cogent reasons, and is therefore liable to be set aside on this ground alone.

34. The principal submission advanced on behalf of the petitioner, that since the procedure prescribed under the 1978 Rules was duly followed, the appointment deserves protection, does not merit acceptance. The issue is not merely whether a procedure has been followed, but whether the correct statutory procedure has been adhered to. Once it is found that the 1978 Rules themselves were inapplicable, any adherence to the procedure prescribed thereunder becomes wholly inconsequential.

35. Compliance with a procedure under an inapplicable statutory framework does not cure the inherent lack of jurisdiction. The Hon'ble Supreme Court in **State of Karnataka v. Umadevi** reported in (2006) 4 SCC 1 has clearly held that appointments made in contravention of statutory provisions are illegal and do not confer any enforceable right.

36. Thus, even if the entire procedure under the 1978 Rules was meticulously followed, the same would not validate an appointment which ought to have been made in accordance with the statutory regime governing secondary institutions.

37. As regards the submission advanced by learned counsel for the petitioner on the alleged violation of the principles of natural justice, this Court finds that it is a settled proposition of law that such principles are not to be applied in a straitjacket formula. Where the admitted or

undisputed facts lead to only one inevitable conclusion, and no prejudice is demonstrably caused, the requirement of affording a prior opportunity of hearing may be dispensed with.

38. In the present case, the foundational facts, namely the upgradation of the institution to a High School and the consequent applicability of a different statutory regime, are not in dispute. Once the institution stood upgraded, the field stood governed by the statutory provisions applicable to High Schools, and not by the Rules of 1978. The appointments of the petitioners, having been made *dehors* the governing statutory framework, are thus rendered *ex facie* illegal. In such circumstances, no useful purpose would have been served by affording an opportunity of hearing. The plea of violation of natural justice, therefore, does not persuade this Court to interfere.

39. As regards the contention pertaining to lack of jurisdiction of the Commissioner, the same is equally devoid of merit. The impugned action reflects an exercise of supervisory and corrective jurisdiction to rectify a patent illegality in the matter of appointment. It is well settled that where an appointment is *ex facie* contrary to statutory provisions, the competent authority is not rendered powerless to annul the same. The petitioners have failed to demonstrate any statutory embargo restraining such exercise of power. Even assuming, for the sake of argument, that the Commissioner could not have interfered in matters strictly governed by the applicable statutory rules, the present case does not fall in that category, as the very foundation of the appointments is contrary to the statutory scheme.

40. So far as the submission regarding the impugned orders being non-speaking is concerned, this Court finds that the basis of cancellation, namely non-adherence to the applicable statutory provisions, is clearly discernible from the record. Mere brevity of the order does not render it invalid when the underlying illegality is apparent. The impugned orders sufficiently indicate that the appointments were not made in accordance with the statutory provisions applicable to institutions governed by the

relevant enactments, including the U.P. Intermediate Education Act, 1921 and the U.P. Secondary Education Services Selection Board Act, 1982.

41. The contention sought to be raised on behalf of the petitioners, attempting to justify the appointments under an inapplicable statutory regime, cannot be sustained. Once the institution stood upgraded, all appointments were necessarily required to be made strictly in accordance with the statutory provisions governing such upgraded institutions. Any deviation therefrom vitiates the very foundation of the appointment.

42. In the present case, it is evident that the procedure adopted for appointment of the petitioners is traceable to the rules governing Junior High Schools, which, in view of the upgradation, had already lost their applicability. Thus, the very foundation of the appointments stands vitiated, being dehors the statutory provisions in force.

43. In such circumstances, even though certain grounds have been urged with regard to lack of jurisdiction and the impugned order being non-speaking in nature, the same pale into insignificance and do not merit adjudication. It is well settled that where the substantive action itself is contrary to the governing statute, this Court would be loath to exercise its discretionary writ jurisdiction to grant relief on technical or procedural grounds.

44. Ultimately, this Court is of the considered opinion that the appointments of the petitioners have been made under the provisions of the Rules of 1978, which are wholly inapplicable to the institution in question. Upon its upgradation, the institution is governed by the provisions of the U.P. Intermediate Education Act, 1921 read with the Rules of 1982, and any appointment was required to be made strictly in accordance therewith.

45. This position stands settled by the judgment of this Court in **Manju Awasthi v. State of U.P. reported in 2013 (3) ADJ 64 (DB)**, wherein it

has been categorically held that the applicability of recruitment rules is dependent upon the status of the institution on the date of appointment.

46. Thus, in light of the settled proposition of law, the entire proceedings culminating in the appointments of the petitioners stand vitiated in the eyes of law, being *dehors* the applicable statutory framework.

47. In view of the aforesaid discussion, this Court is of the considered opinion that no illegality or infirmity can be said to exist in the impugned orders warranting interference under Article 226 of the Constitution of India.

48. Accordingly, the writ petition, being devoid of merit, is liable to be and is hereby **dismissed**. No order as to costs.

(Mrs. Manju Rani Chauhan,J.)

April 02, 2026

Vandana