



2026:AHC-LKO:56604

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 3012 of 2014

Mahendra Kumar Yadav

.....Petitioner(s)

Versus

State Of U.P.Thr.Secy.Basic Education U.P.Civil
Sectt.And Ors.

.....Respondent(s)

Counsel for Petitioner(s)	: Girish Chandra Verma, Arun Kumar Singh, Chandresh Mani Shukla, Gaurav Upadhyay, Panna Lal Gupta, Subrat Gupta, Vijay Kumar Bajapai
Counsel for Respondent(s)	: C.S.C., Rajeev Singh, Rishabh Tripathi

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Sri Alok Sharma, learned counsel for the petitioner, Sri Rishabh Tripathi, learned counsel for respondent Nos.2 & 3 and learned Standing Counsel for respondent No.1 - State.

2. The short supplementary counter affidavit filed today in court is taken on record.

3. The present writ petition has been filed on following prayer:

"(i) issue a writ order or direction in the nature of Mandamus commanding the opposite party no.2 & 3 to make the payment of salary to the petitioner w.e.f. 18.10.13 on class IV post.

(ii) issue a writ order or direction in the nature of Mandamus commanding the opposite parties to make the regular payment of salary to the petitioner every month without any interruption.

(iii) issue a writ order or direction in the nature and manner which deemed just and proper in the circumstances of the case.

(iv) allow the writ petition with costs."

4. Factual matrix of the case is that respondent No.4 (Manager) intimated

the vacancy to respondent No.2 vide letter dated 23.07.2013. An advertisement for the vacant post was published by respondent No.4 in accordance with Rule 13 of Rules of 1984 on 04.08.2013. In pursuance to the advertisement, the petitioner submitted his application on 12.08.2013. The selection was scheduled for 21.08.2013 but was postponed to 09.09.2013 due to non availability of nominee / observer of respondent No.2.

5. On 27.08.2013, the management requested respondent No.2 to nominate its representative so that the selection process could be conducted but nominee of the District Basic Education Officer (DBEO) - respondent No.2 was not sent to be present in the selection. The duly constituted selection committee conducted the selection, wherein the selection committee recommended the name of the petitioner being placed at Sr. No.1.

6. The selection proceeding was forwarded by respondent No.4 to respondent No.2 for approval but no decision was communicated within the prescribed period provided under 1984 Rules. Consequently, the approval stood deemed to have been granted on 11.10.2013.

7. In pursuance to the deemed approval, the appointment letter was issued to the petitioner on 15.10.2013, who joined the duties on 18.10.2013 and has been working in the institution since then. The management informed to respondent No.2 regarding deemed approval and requested to release salary of the petitioner vide application dated 21.10.2013. Due to non payment of salary to the petitioner, the present writ petition has been preferred before this Court.

8. Submission of learned counsel for the petitioner is that the institution is a recognized and aided Junior High School governed by U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Ministerial Staff and Group D Employees) Rules, 1984 (for short "Rules of 1984"). A Class-IV vacancy became available upon retirement of last incumbent. The committee of management resolved to file the vacancy on 08.07.2013. The vacancy was duly intimated to the DBEO on 23.07.2013. Thereafter, an advertisement was published on

04.08.2013 strictly in accordance with Rule 13 of Rules of 1984.

9. The management requested the DBEO to nominate his representative for the selection committee vide letters dated 12.08.2013 and 27.08.2013 but no nominee was sent. Owing to the failure of the DBEO to nominate his representative, the interview was fixed for 21.08.2013 had to be postponed. On 09.09.2013 the selection committee proceeded with the selection in accordance with Rule 14 and the petitioner was selected.

10. He submitted that the selection proceedings were forwarded to the DBEO on 12.09.2013 for approval. No order approving or rejecting the selection was communicated within the statutory period prescribed under Rule 15(5). Consequently, the petitioner's appointment stood deemed approved. The petitioner was issued appointment letter on 15.10.2013 and joined the duties on 18.10.2013 and has been continuously discharging duties on the post of Peon.

11. He submitted that the vacancy was duly notified, advertisement was published, eligible candidates were invited and the selection committee was constituted in accordance with statutory provisions. He submitted that the DBEO repeatedly failed to nominate his representative despite requests made by the management. The respondents cannot frustrate the recruitment process by remaining inactive and thereafter questioning the validity of the selection.

12. He further submitted that once the proposal was forwarded on 12.09.2013 and no decision was communicated within prescribed period of one month, the statutory fiction of deemed approval under Rule 15(5) automatically came into operation. After joining on 18.10.2013, the petitioner has worked continuously on the post of Peon and having accepted his services, the respondents cannot deny payment of salary to the petitioner, therefore, non payment of salary to the petitioner is wholly illegal and unjustified in law.

13. He further submitted management of the institution informed to the DBEO in regard to deemed approval and requested to release payment of salary to the petitioner but no order whatsoever has been passed till date.

14. He submitted that the management informed the respondent No.2 regarding the deemed approval and requested to release the petitioners salary, however, in spite of repeated representations dated 21.10.2013, 09.12.2013, 31.01.2014 and 10.06.2014, no salary has been released in favour of the petitioner.

15. He lastly submitted that the entire selection process was conducted strictly in accordance with Rules of 1984. The vacancy was advertised / notified informing eligible candidates inviting them to appear in the selection proceeding in accordance with statutory provisions. The authorities cannot take advantage of their own fault in not sending nominee / representative by the DBEO in spite of repeated requests made by the committee of management to send nominee.

16. In support of his submissions, he placed reliance upon a judgment in the case of **State of U.P. through Principal Secretary Basic Education Lko. and others Vs. Praveen Kumar Mishra and another; Special Appeal No.667 of 2014** and in the case of **State of U.P. and 2 others Vs. Gunjan Singh and another; Special Appeal No.1014 of 2024**, wherein in a similar set of facts where no representative was sent by the DBEO as prescribed in Rule 15(5)(ii) of Rules of 1984, merely non presence of nominee will not vitiate the entire proceeding and it cannot be said that the selection suffers from the vices of illegality.

17. On the other hand, learned counsel for the respondent Nos.2 & 3 submitted that in view of provisions contained under Rules of 1984, the DBEO did not send nominee / representative to be present in the selection proceeding and therefore, if any selection is held, that vitiates in law and is not will recognized selection proceeding in the eyes of law.

18. His next submission is that non payment of salary to the petitioner does not vitiate in law and he has rightly been not paid salary in the circumstances stated above. He submitted that the action of the DBEO, does not warrant interference by this Court in exercise of power under Article 226 Constitution of India.

19. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as law reports relied

upon by learned counsel for the petitioner.

20. To resolve the controversy involved in the matter, relevant portion of the judgments relied upon by learned counsel for the petitioner is being quoted below:

a) U.P. through Principal Secretary Basic Education Lko. and others (Supra):

"14) A perusal of the impugned order, it reveals that learned Single Judge, after appreciating the submissions of the parties and Rule 15 (5) (ii) of the Rules, 1984, has recorded a clear cut finding that it is not in dispute that receipt of the letter dated 26.9.2006 has not been denied anywhere in the counter affidavit. In the said letter, the Institution had indicated that three dates have been fixed for holding the interview on which dates the Observer was not sent by the District Basic Education Officer, Raibareli and finally the selection was fixed for 30.9.2006. On 30.9.2006, also no Observer was sent and as such, the Selection Committee met and finalized the process in which the writ petitioner was selected for Class-IV post. The entire papers relating to the selection were forwarded to the District basic Education Officer, Raebareli, on 15.10.2006 as is evident from the letter of the Institution dated 17.11.2006. In these backgrounds, learned Single Judge opined that the District Basic Education Officer despite requests having been made by the Institution for forwarding the name of an Observer, did not do so and even after the selection papers were received in his office on 15.10.2006, he neither approved nor disapproved the same. In this situation, on the expiry of one month from the date of receipt of the papers, the selection would be deemed to have been approved by the District Basic Education Officer in view of the provisions of Rules 15(5) of the Rules, 1984. Accordingly, learned Single Judge rightly came to the conclusion that it is not open for the respondent now to take the stand that the selection suffers from the vice of illegality since no observer was present in the selection."

b) State of U.P. and 2 others (Supra):

"7. Though we find substance in the argument of the State Counsel that the composition of selection committee consisted of a nominee of the District Basic Education Officer and since such nominee was not sent, therefore, the recruitment cannot be treated to be in accordance with the rules, yet, in the facts of this case, the Court cannot be oblivious to the circumstances as also the statutory scheme which

obligates the managing committee to conclude the selection proceedings in a given time frame. This is particularly so as unless the teacher is appointed the cause of education itself would suffer. We also cannot be unmindful of the fact that the vacancy was duly notified to the District Basic Education Officer and with his permission the vacancy was published in two newspapers. The Committee of Management proceeded to intimate the officer concerned and made a request to send his nominee. The selection proceedings has to be deferred twice only because a nominee was not sent. The Managing Committee, therefore, had two options. Either, to have allowed the vacancy to subsist and approach this Court for an appropriate direction or to have proceeded further to make selection, by the majority of members of the selection committee present. In our view much will depend upon the reason which impelled the officer concerned not to send his nominee. In case if there is a genuine or bonafide reason for not sending the nominee the action of the officer can be defended. However, when there is absolutely no reason forthcoming as to why a nominee is not being sent and the recruitment is being adjourned successively, we are of the view that the Managing Committee otherwise being enjoined by the Rules to conclude recruitment within a stipulated period by virtue of rule 3, could proceed with the recruitment and make appointment. No exception to it can be taken in the facts of the case. The writ petitioner otherwise possesses requisite qualification and no illegality or irregularity in the process of recruitment has been pointed out. For such reasons, the view taken by learned Single Judge cannot be faulted."

21. On perusal of the judgments relied upon, it is apparent on the face of it as per Rule 15(5)(ii) of Rules of 1984, merely non presence of nominee / representative of the DBEO does not vitiate the selection proceeding conducted in absence of the nominee. Similar proposition of law has been held by the Division Bench of this Court that in absence of nominee to be present the selection proceeding does not vitiate in law and in case by majority of members of the selection committee decision has been taken, it is valid one and no payment of salary can be estopped on this ground alone.

22. In view of aforesaid facts and circumstances of the case and reasons recorded above, the writ petition deserves to be allowed and is hereby **allowed**.

23. A writ of mandamus is issued commanding respondent No.2 pass

appropriate order to pay current salary of the petitioner month by month and disbursement of salary shall be made by respondent No.3. Respondent No.2 is directed to permit the petitioner to discharge duties on the post of Peon in the institution in question. The arrears of salary shall be released to the petitioner w.e.f. 18.10.2013 till payment of current salary on the interest of 8%. The said exercise shall be completed within a period of two months from the date of production of a certified copy of this order.

(Irshad Ali,J.)

August 11, 2026

Adarsh K Singh