



2026:AHC:191314

**A.F.R.
RESERVED**

**HIGH COURT OF JUDICATURE AT ALLAHABAD
WRIT - A No. - 20118 of 2019**

Anil Kumar

.....Petitioner(s)

Versus

State of U.P. and 3 others

.....Respondent(s)

Counsel for Petitioner(s)	:	Amit Kumar Singh, Paras Nath Singh, Parmatma Nand Ojha
Counsel for Respondent(s)	:	C.S.C., Manu Singh

Court No. - 52

HON'BLE MRS. MANJU RANI CHAUHAN, J.

1. Heard Mr. S.K. Shukla, Advocate, holding brief of Mr. Amit Kumar Singh, learned counsel for the petitioner, Mr. Arun Kumar Tripathi, learned counsel for the respondent-BSA and Mr. Shailendra Singh, learned Standing Counsel for the State-respondents.
2. The present petition has been instituted assailing the order dated 20.04.2019, passed by respondent No.4, the District Basic Education Officer, Sant Kabir Nagar.
3. Learned counsel for the petitioner submits that, pursuant to the advertisement issued in the year 2015 for appointment to the

post of Assistant Teacher in the subjects of Science and Mathematics, the petitioner, being duly qualified, applied for appointment. He was called for counselling, whereupon his original educational testimonials were duly verified and deposited in the office of the District Basic Education Officer, Sant Kabir Nagar.

4. Thereafter, an appointment letter dated 21.09.2015 was issued by the District Basic Education Officer, Sant Kabir Nagar, appointing the petitioner as an Assistant Teacher (Mathematics) in a Basic School. In pursuance thereof, the petitioner joined his duties on 24.09.2015. His services were subsequently confirmed upon completion of the prescribed period of one year.

5. It is submitted that, after a lapse of nearly three years, the Block Education Officer, Mehndawal, Sant Kabir Nagar, by letter dated 18.04.2018, informed the petitioner that a complaint had been submitted by one Umesh Kumar Bhatt on 31.03.2018 alleging that the petitioner had secured his appointment on the basis of forged educational certificates. The petitioner was consequently directed to produce his original certificates for verification.

6. In compliance with the aforesaid communication, the petitioner submitted his self-attested educational testimonials by letter dated 23.04.2018, specifically stating that his original academic documents had already been deposited at the time of counselling and continued to remain in the custody of the office of the District Basic Education Officer, Sant Kabir Nagar. Photostat copies of his educational certificates, commencing from the High

School examination up to the TET qualification, were also furnished for the purposes of verification and inquiry.

7. However, on 07.05.2018, the District Basic Education Officer, Sant Kabir Nagar, purportedly acting on the basis of the aforesaid complaint, directed stoppage of the petitioner's salary, without conducting any inquiry or recording any finding regarding the genuineness or otherwise of his educational certificates.

8. Aggrieved thereby, the petitioner submitted an application dated 07.07.2018, duly supported by an affidavit, before the District Basic Education Officer, categorically asserting that all his educational testimonials were genuine and that the complaint lodged against him was false and baseless. It was further stated that the process of verification of his certificates was still pending and, therefore, there was no justification for withholding his salary. The petitioner accordingly prayed for release of his salary.

9. As no effective action was taken on the aforesaid representation, the petitioner was constrained to institute Writ Petition No.23822 of 2018, Anil Kumar v. State of U.P. and others, before this Court, challenging the order dated 07.05.2018 whereby payment of his salary had been stopped.

10. This Court, by order dated 14.11.2018, after taking note of the fact that the inquiry into the genuineness of the petitioner's certificates was still pending, found no justification for stoppage of his salary merely on that account. Accordingly, until further orders, the effect and operation of the order dated 07.05.2018 were stayed.

11. Thereafter, the petitioner was constrained to institute contempt proceedings alleging non-compliance with the order

passed by this Court. Learned counsel for the petitioner submits that, during the pendency of the matter, the Block Education Officer, Mehndawal, Sant Kabir Nagar, conducted an inquiry into the complaint and submitted a report dated 31.12.2018, wherein it was recorded that the academic certificates produced by the petitioner, Anil Kumar, had been examined and his High School certificate of the year 1992, Intermediate certificate of the year 1994 and B.Sc. certificate were found to be genuine. However, with regard to the B.Ed. marksheet for the academic session 2011-12, stated to have been issued by Jodhpur Rashtriya Vishwavidyalaya, Jodhpur, Rajasthan, the report of the Vice-Chancellor was still awaited.

12. It is submitted that, notwithstanding the fact that the verification process had not attained finality and the report with respect to the B.Ed. qualification was still awaited, respondent No. 4 proceeded to pass the impugned order dated 20.04.2019, whereby the services of the petitioner were terminated.

13. Aggrieved by the aforesaid action, the petitioner submitted a representation dated 22.04.2019 before the Upper-Mukhya Sachiv, Basic Education, Government of Uttar Pradesh, Lucknow. In the said representation, the petitioner explained that he had initially been appointed as a teacher in a primary school in the year 2004 and had worked for approximately five years without payment of salary. Subsequently, his B.Ed. certificate of the year 2000 was found to be forged, pursuant to which his services were terminated in the year 2010 and an FIR was lodged against him, with further proceedings being stated to be pending before the competent criminal court.

14. The petitioner further stated that, thereafter, he obtained his B.Ed. and TET qualifications in the year 2011-12 and, on the strength of the said qualifications, applied afresh pursuant to the recruitment process initiated in the year 2015. Having been duly selected, he was appointed as an Assistant Teacher (Mathematics) and joined at Primary School, Tulsipur, Block Mehndawal, Sant Kabir Nagar, on 24.09.2015. According to the petitioner, despite the fact that his certificates and testimonials furnished during the recruitment process of 2015 had been duly verified and found genuine, payment of his salary was stopped for a period of ten months merely on the basis of a complaint, without conclusion of any lawful and comprehensive inquiry.

15. The petitioner asserted that, notwithstanding the absence of any final determination regarding the genuineness of his B.Ed. qualification for the session 2011-12, respondent No. 4 proceeded to terminate his services without affording him an effective opportunity of hearing and without conducting a full-fledged departmental inquiry. It is further submitted that the petitioner came to know of the termination of his services through reports published in the newspapers Hindustan and Dainik Jagran, rather than through formal service of the impugned order.

16. The petitioner, therefore, requested the competent authority to reconsider the order of termination, contending that the adverse action had its genesis in an alleged mistake committed in the year 2004, when he was approximately 20-21 years of age, and that the subsequent appointment obtained by him in the year 2015 was pursuant to a fresh selection process in which his educational qualifications and testimonials had been duly scrutinised.

17. Learned counsel for the petitioner further submitted that, being a confirmed teacher in the Basic Education Department, his services could not be dismissed or terminated without a departmental and full-fledged inquiry. According to him, the termination order passed by the Basic Education Officer was merely a camouflaged punishment actuated by malice and bias. He asserted that he had obtained his B.Ed. degree from Jodhpur National University, Rajasthan, in the year 2011-12, thereafter passed the TET examination, and was a science graduate, rendering him equally competent to teach Mathematics as an Assistant Teacher in a primary school. It was, therefore, contended that any error or mistake allegedly committed approximately ten years earlier could not be permitted to prejudice his subsequent merit and service, and that any such mistake in his past career was liable to be condoned by the competent authority.

18. Learned counsel for the petitioner submits that the petitioner is a confirmed teacher under the Basic Education Department and, therefore, his services could not have been brought to an end by way of a punitive order without following the procedure prescribed by law and without conducting a regular and full-fledged departmental inquiry. It is contended that the impugned order has been passed in utter disregard of the principles of natural justice and the settled position of law governing disciplinary action against a confirmed employee.

19. It is further submitted that all the educational certificates and testimonials furnished by the petitioner pursuant to the recruitment process of the year 2015, under which he was selected for appointment to the post of Assistant Teacher (Mathematics) in a

primary school, were duly scrutinised and verified. His appointment itself was founded upon the said qualifications and documents, which were accepted by the competent authority at the time of selection and appointment. Having entered service through a duly conducted selection process and having thereafter continued in service as a confirmed teacher, the petitioner could not, according to learned counsel, be deprived of his service on the basis of an allegation subsequently raised against him, particularly when the alleged misconduct or deficiency was not established through a legally permissible enquiry.

20. Learned counsel thus submits that the impugned order of termination, having been passed without issuance of a proper charge-sheet, without affording an effective opportunity of defence, without recording evidence or conducting a regular departmental inquiry, and without arriving at a reasoned finding on the alleged misconduct, is legally unsustainable. It is, therefore, urged that the impugned order be quashed and the petitioner be accorded all consequential benefits in accordance with law.

21. Learned counsel for the petitioner further submits that the impugned order has been passed principally on the ground that the petitioner was ineligible for appointment under Rule 11 of the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981. It is contended that the respondents have proceeded on the premise that the petitioner had suppressed the fact that his earlier appointment as Assistant Teacher had been cancelled on the ground that the B.Ed. marksheet relied upon at that stage was allegedly forged and that an FIR had also been lodged in connection therewith.

22. Learned counsel submits that the mere non-disclosure of the aforesaid facts, even assuming the same to have been established, could not by itself furnish a lawful basis for terminating the petitioner's subsequent appointment without first determining whether the conditions prescribed under Rule 11 were attracted to the petitioner's case and, more importantly, without affording him an opportunity to explain the alleged suppression. It is further submitted that the petitioner's subsequent appointment in the year 2015 was pursuant to an independent selection process, in which his educational qualifications and testimonials were scrutinised and accepted by the competent authorities.

23. For facility of reference, Rule 11 of the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981, reads as under:

“11. Character. The character of a candidate for direct recruitment must be such as to render him suitable in all respects for employment in the service. The appointing authority shall satisfy itself on this point.”

24. From the aforesaid provision, it is manifest that Rule 11 of the Rules of 1981 renders a person ineligible for appointment where he has been dismissed from service by the State Government or where he has been convicted of an offence involving moral turpitude. In the present case, however, the petitioner's appointment has merely been cancelled with retrospective effect from the date of his initial appointment; no order of dismissal from service has ever been passed against him. The cancellation of an appointment, even if made retrospectively, cannot, in the absence of an order of dismissal, be equated with dismissal from service for the purposes of Rule 11. Consequently,

the disqualification contemplated under Rule 11 is not attracted to the petitioner's case.

25. Learned counsel for the petitioner submits that the action taken against the petitioner is also contrary to the procedure prescribed for disciplinary inquiry under the Uttar Pradesh Basic Educational Staff Rules, 1973. In this regard, reliance has been placed upon Rule 3 thereof, which prescribes the procedure to be followed in disciplinary matters and reads as under:-

“Rule- 3. Punishment.

The appointing authority may, for good and sufficient reasons, impose the following penalties upon the officers, teachers and other employees of the Board: (i) Censure; (ii) withholding of the increments including stoppage at an efficiency bar; (iii) Reduction to a lower post of time scale, or to a lower stage in a time scale; (iv) Recovery from pay of the whole or part of any pecuniary loss caused to the Board by negligence or breach of orders; (v) Removal from the service of the Board which does not disqualify him from future employment; (vi) Dismissal from the service of the Board which ordinarily disqualifies from future employment.”

26. Learned counsel for the petitioner submits that, on a plain reading of Rule 11 of the Rules of 1981, a person is rendered ineligible for future appointment only where he has been removed or dismissed from service. In the present case, the petitioner has neither been removed nor dismissed from service. His earlier appointment was cancelled with retrospective effect from the date of his initial appointment on the ground that the appointment had been secured on the basis of a B.Ed. mark-sheet which was subsequently found to be forged. Thus, according to the learned

counsel, the statutory disqualification contemplated under Rule 11 is not attracted.

27. It is further submitted that the petitioner himself was a victim of fraud perpetrated by the college affiliated to Veer Bahadur Singh Purvanchal University. He had been admitted to the B.Ed. course beyond the sanctioned strength, pursuant to which a forged mark-sheet was issued in his favour. On the strength of the said mark-sheet, he subsequently applied for Special B.Ed. training in the year 2004. The petitioner, having subsequently become aware of the discrepancy, himself approached the competent authority seeking verification of his academic record. It is, therefore, urged that he had no knowledge of the alleged forgery at the relevant time and cannot be attributed with fraudulent intent. It is further submitted that the petitioner thereafter secured the subsequent appointment on the basis of a genuine educational qualification.

28. Learned counsel further submits that the petitioner has been accused of suppressing material facts by not disclosing the earlier cancellation of his appointment with retrospective effect, as well as the lodging of an FIR against him. It is contended that neither the advertisement nor the prescribed application form contained any specific requirement or column requiring an applicant to disclose the cancellation of any previous appointment or the pendency of any criminal case. The petitioner, therefore, cannot be faulted for non-disclosure of information which he was never specifically called upon to furnish.

29. Lastly, it is submitted that the petitioner had already suffered the consequence of cancellation of his earlier appointment, which, according to him, was itself attributable to the fraud committed by the concerned college in admitting him beyond the sanctioned intake and thereafter issuing a forged mark-sheet. The subsequent cancellation of his appointment, it is urged, constitutes sufficient punishment for the circumstances in which the earlier appointment came to be made, and the petitioner ought not to be subjected to a further disqualification from future employment in the absence of any order of removal or dismissal from service.

30. Learned counsel appearing for the respondent, the District Basic Education Officer, on the other hand, submits that the petitioner was appointed as an Assistant Teacher in the year 2015 pursuant to his selection against the recruitment of 29,334 posts of Assistant Teachers (Science and Mathematics) in Junior High Schools. It is, however, contended that the petitioner had secured the said appointment on the basis of forged and fabricated educational certificates and, consequently, payment of her salary was stopped by order dated 7.05.2018.

31. It is further submitted that the petitioner had earlier been appointed pursuant to the Special BTC Selection, 2004, but the said appointment was subsequently cancelled on the ground of forgery in his educational testimonials. The fact of such cancellation is stated to be borne out from the letter dated 19.04.2018 issued by the Block Education Officer, Mehndawal, Sant Kabir Nagar. Accordingly, it is submitted that the petitioner had obtained his subsequent appointment by suppressing material

facts relating to his earlier appointment and the cancellation thereof.

32. Learned counsel appearing for the respondents further submits that a complaint was received alleging that the petitioner had secured appointment on the strength of forged and fabricated educational certificates. Pursuant thereto, a detailed inquiry was conducted, in which it was found that the petitioner had earlier been appointed as an Assistant Teacher in a Junior Basic School, but his said appointment was subsequently cancelled on the ground that it had been obtained by producing a forged and fabricated B.Ed. examination certificate.

33. It is submitted that, notwithstanding the cancellation of his earlier appointment, the petitioner subsequently participated in the recruitment for 29,334 posts of Assistant Teachers and, in the declaration furnished by him, failed to disclose the material fact that his earlier appointment had been cancelled on account of the use of a forged educational certificate. The inquiry further revealed that the petitioner had thereby secured his subsequent appointment by suppressing a material fact, rendering such appointment contrary to Rule 11 of the U.P. Basic Education Teachers Service Rules, 1981. Accordingly, it is contended that the impugned order suffers from no illegality or infirmity warranting interference by this Court.

34. Learned counsel further submits that the competent authority, after conducting a detailed inquiry, recorded a categorical finding that the petitioner had deliberately failed to disclose the cancellation of his earlier appointment. Such non-disclosure, according to the respondents, constituted misconduct

and demonstrated that the petitioner was not entitled to continue in service. On the basis of the findings recorded in the inquiry, his services were accordingly terminated.

35. In view of the foregoing discussion and the findings recorded hereinabove, this Court finds no illegality, infirmity or jurisdictional error in the impugned order warranting interference in exercise of its writ jurisdiction. The writ petition is, accordingly, devoid of merit and is liable to be dismissed.

36. Having considered the rival submissions in the light of the statutory scheme, this Court finds considerable force in the submission that Rule 11 of the Rules of 1981 has been invoked on an erroneous premise. The disqualification contemplated thereunder is attracted in the case of a person who has been dismissed from service by the State Government; the petitioner, however, was not dismissed or removed from service pursuant to any disciplinary order. His earlier appointment was cancelled with retrospective effect from the date of his initial appointment. Such cancellation, though it may have the effect of obliterating the appointment from its inception, cannot, without anything more, be equated with dismissal from service so as to attract a statutory disqualification expressly founded upon dismissal.

37. Equally significant is the allegation of suppression. The respondents have proceeded on the premise that the petitioner was under an obligation to disclose the cancellation of his earlier appointment and the criminal proceedings. However, before a person can be held guilty of suppression of a material fact, it must first be established that disclosure of such fact was specifically required under the advertisement, application form, declaration,

verification form or the governing rules. The Constitution Bench in **Avtar Singh v. Union of India, (2016) 8 SCC 471**, has made it clear that the verification form must contain a specific requirement and that a candidate cannot ordinarily be fastened with the charge of suppression in respect of information which he was never called upon to disclose.

38. The matter assumes still greater significance where the respondents seek to attribute fraud to the petitioner on account of the alleged forged B.Ed. certificate. The mere fact that the certificate was subsequently found to be forged cannot, by itself, conclude the question whether the petitioner had knowledge of the forgery or had consciously participated in procuring or using a forged document. The petitioner's specific defence that the college had admitted him beyond the sanctioned strength, that the educational record was subsequently found to be fabricated, and that he himself sought verification of his academic record, was required to be objectively examined before drawing an adverse conclusion against him.

39. Furthermore, if the subsequent appointment is sought to be terminated on the ground that the petitioner committed misconduct by deliberately suppressing material information, the authority cannot circumvent the disciplinary procedure prescribed by the applicable service rules merely by describing the action as cancellation of appointment. The substance of the action, and not its nomenclature, must determine the procedure to be followed.

40. Accordingly, the impugned order, insofar as it proceeds on the assumption that cancellation of the petitioner's earlier appointment amounted to dismissal from service and thereby

attracted Rule 11 of the Rules of 1981, cannot be sustained. The allegation of suppression and the petitioner's alleged knowledge of the forged certificate are matters which require an independent determination in accordance with law. The respondents have completely failed to appreciate the decisive circumstance that the earlier false certificate was neither relied upon nor utilised by the petitioner in securing the appointment presently under consideration. The present appointment rests upon genuine educational certificates and independently established qualifications, and there is no finding that the earlier false certificate had, in any manner whatsoever, facilitated, influenced or contributed to the petitioner's subsequent appointment. The mere non-disclosure of the cancellation of the earlier appointment, without establishing that such disclosure was a material condition of the subsequent appointment or that the alleged suppression had any nexus with the petitioner's eligibility or selection, cannot furnish a sustainable ground for cancellation of an otherwise valid appointment. The petitioner cannot be visited with the extreme consequence of termination for an act which neither procured the appointment nor affected his eligibility for the post. In the absence of a demonstrable and proximate nexus between the alleged suppression and the acquisition of the present appointment, cancellation of the appointment on that ground would amount to imposing a punishment wholly disproportionate to, and legally unconnected with, the alleged omission. An appointment secured on the strength of genuine qualifications cannot be annulled merely because the appointee had failed to disclose an antecedent

event which had no bearing upon his eligibility or selection for the post.

41. In view of the aforesaid submissions, this Court is of the considered opinion that the impugned order cannot be sustained in law and is, accordingly, liable to be set aside. Accordingly, the impugned order dated 20.04.2019 is **quashed**, and the writ petition stands **allowed**.

(Mrs. Manju Rani Chauhan,J.)

September 14, 2026
Rahul Goswami