



2026:AHC:191306

A.F.R.
Delivered On: 14.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 5628 of 1989

Anil Kumar Chaudhary

.....Petitioner(s)

Versus

The Zila Basic Shiksha Adhikari Gorakhpur And
Others

.....Respondent(s)

Counsel for Petitioner(s) :
Counsel for Respondent(s) :

Court No. - 52

HON'BLE MRS. MANJU RANI CHAUHAN, J.

1. Heard Mr. Kamlesh Kumar Tripathi and Mr. Ashutosh Tiwari, learned counsel for the petitioner as well as Mr. L.M. Singh, learned Standing Counsel for the State.

2. The petitioner has sought quashing of the advertisement published in the Hindi daily newspaper “Aaj” (Gorakhpur Edition) dated 1.02.1989, as well as the order dated 31.12.1988 passed by respondent no. 1. The petitioner has further sought a direction to the respondents to pay him salary as Assistant Teacher with effect from his appointment on 16/18.05. 1988, along with regular and continuous monthly salary thereafter. The reliefs were amended by order of this Court dated 31.07.2013.

3. Placing the brief facts of the case, learned counsel for the petitioner submits that a post of C.T. Grade Teacher in Kanhaiya Junior High School, Shahpur, Geeta Batika, District Gorakhpur (hereinafter referred to as the “Institution”), was created by the Assistant Director of Education, Seventh Region, Gorakhpur, vide letter dated 14.01.1988 addressed to the District Basic Education Officer, Gorakhpur.

4. Pursuant thereto, the Manager of the Institution advertised the said post and invited applications from eligible candidates through a publication in the Hindi daily newspaper “Aaj” dated 19.04.1988. In response thereto, eight candidates, including the petitioner, were called for interview before

the Selection Committee constituted by the Management of the Institution. The Selection Committee comprised the Manager, the Headmaster of the Institution and the nominee of the District Basic Education Officer, namely, Prem Narayan Pandey.

5. After the candidates were interviewed, the petitioner, having secured the highest marks, was selected by the Selection Committee. Consequently, the Manager of the Institution issued an appointment letter in favour of the petitioner on 16.05.1988. Upon receipt thereof, the petitioner submitted his joining report to the Manager on 17.05.1988 and joined the Institution on 18.05.1988.

6. It is further submitted that the Manager thereafter forwarded to the District Basic Education Officer, Gorakhpur, the list of candidates who had appeared in the selection process. However, respondent no. 1, namely, the District Basic Education Officer, Gorakhpur, neither communicated any approval nor expressed any disapproval with regard to the recommendation of the Selection Committee or the appointment of the petitioner by the Manager of the Institution.

7. Learned counsel for the petitioner submits that, in terms of Rule 10(5)(iii) of the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as the "Rules of 1978"), the approval of the concerned District Basic Education Officer to the petitioner's appointment was liable to be deemed to have been accorded upon expiry of the prescribed period, namely, on 20.06.1988. Consequently, the petitioner claims to have acquired the status of a duly appointed Assistant Teacher of the Institution with effect from the said date.

8. It is, however, contended that, for reasons not disclosed by the respondents, the petitioner was not paid salary from the date of his joining the Institution, i.e., 18.05.1988, or, in the alternative, from the date on which approval of his appointment was claimed to be deemed to have been accorded i.e. on 20.06.1988. The petitioner submitted a detailed representation to the Manager of the Institution on 3/4.07.1988 seeking payment of his salary and thereafter made repeated representations before the Manager as well as respondent no. 1. Despite the aforesaid

representations, no effective action was taken for release of the petitioner's salary.

9. Learned counsel for the petitioner further submits that the petitioner subsequently came to know from respondent no. 2, namely, the Committee of Management of the Institution, that the very same post against which the petitioner had been appointed as Assistant Teacher was re-advertised in the Hindi daily newspaper "Aaj" dated 01.02.1989, inviting applications from eligible candidates. The advertisement specifically indicated that the post was reserved for a candidate belonging to the Scheduled Caste category. The interview was initially scheduled to be held on 19.02.1989, which was subsequently postponed to 12.03.1989.

10. It is vehemently contended that the re-advertisement of the post against which the petitioner had already been appointed vide appointment letter dated 16.05.1988 is *ex facie* illegal, arbitrary and void, there being no subsisting vacancy against the said post. The petitioner continued to discharge his duties as Assistant Teacher pursuant to the aforesaid appointment and, admittedly, no order terminating or otherwise bringing his appointment to an end had been passed by any competent authority.

11. Learned counsel for the petitioner further submits that, after the Manager of the Institution had forwarded the requisite papers and the list of candidates to the District Basic Education Officer, Gorakhpur, for approval of the petitioner's appointment, no order either granting or refusing approval was communicated to the petitioner within the period prescribed under the applicable statutory provisions. Consequently, by virtue of the deeming provision contained in Clause 3 of Sub-Rule (5) of Rule 10 of the Rules of 1978, the petitioner's appointment stood deemed to have been approved upon expiry of the prescribed period of thirty days and he acquired the status of a duly appointed Assistant Teacher of the Institution.

12. It is, therefore, urged that, even on this count, no vacancy existed against the post in question on the date of its re-advertisement and the respondents had no lawful authority or jurisdiction to re-advertise the said post, much less to earmark it for a candidate belonging to the Scheduled Caste category.

13. Learned counsel for the petitioner further submits that it was only upon filing of the counter-affidavit on behalf of the District Basic Education Officer, Gorakhpur, that the petitioner came to know, for the first time, of the order dated 31.12.1988 passed by respondent no. 1, whereby the petitioner's appointment as Assistant Teacher of the Institution had been disapproved. The petitioner, therefore, sought amendment of the prayer clause to specifically challenge the said order, which was accordingly incorporated in the writ petition pursuant to the order of this Court.

14. Learned counsel for the petitioner submits that the order dated 31.12.1988 was passed by respondent no. 1 without affording the petitioner any opportunity of hearing, although the said order directly prejudiced his subsisting appointment. The impugned order is, therefore, assailed as being in flagrant violation of the principles of natural justice and liable to be set aside on this ground alone.

15. It is further submitted that the petitioner was selected by a duly constituted Selection Committee, which included the nominee of respondent no. 1 himself. Having participated in and acquiesced in the selection process through its duly nominated representative, the respondents cannot subsequently question the validity of the petitioner's selection and appointment without following due process of law. In any event, before disapproving the petitioner's appointment, respondent no. 1 was under an obligation to afford him a reasonable opportunity of hearing.

16. Learned counsel for the petitioner further contends that the order dated 31.12.1988 was admittedly passed beyond the statutory period of thirty days prescribed under Rule 10 of the Rules of 1978. Consequently, in view of the deeming provision contained therein, the petitioner's appointment stood automatically approved upon expiry of the prescribed period and the subsequent order of disapproval was without jurisdiction and legally unsustainable.

17. It is lastly submitted that there is no provision under the applicable statutory rules mandating reservation of a post of Assistant Teacher in an aided Junior High School for a candidate belonging to the Scheduled

Caste category. The subsequent re-advertisement of the post by treating it as reserved for a Scheduled Caste candidate is, therefore, contended to be wholly without statutory authority.

18. Learned counsel for the petitioner further contends that the post in question had already been duly filled by the management pursuant to the selection process. Notwithstanding the same, the management subsequently re-advertised the very same post vide advertisement dated 01.02.1989, treating it as a post reserved for a Scheduled Caste candidate, although, according to the record, the posts falling within the reserved categories of Scheduled Caste and Scheduled Tribe had also already been duly filled by the Management.

19. It is submitted that against the substantive post, the petitioner, namely, Anil Kumar Chaudhary, qualified at the first position, while Hari Om was placed at second and Shrimati Pushpalata Pandey secured the third position and the petitioner was duly selected on the aforesaid advertised post in the Institution. In these circumstances, once the posts had already been filled pursuant to a duly conducted selection process, there remained no vacancy warranting a fresh advertisement.

20. Learned counsel for the petitioner, therefore, submits that the subsequent re-advertisement dated 01.02.1989 in respect of the very post, against which the petitioner was already selected and functioning as Assistant Teacher, was wholly unwarranted, without jurisdiction and legally unsustainable. The respondents could not, by merely re-advertising an already filled post and subsequently earmarking it for a Scheduled Caste candidate, create a vacancy where none existed in law.

21. Learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in **State of Punjab and Others v. Rafiq Masih (White Washer)**, reported in **(2015) 4 SCC 334**, and submits that the Hon'ble Apex Court has carved out specific categories of cases in which recovery of excess payment is impermissible, particularly where such recovery is sought to be effected from a retired employee.

22. Learned counsel for the petitioner submits that, subsequent to the petitioner's retirement, the Manager of the Institution issued a

communication addressed to the petitioner. The said communication has been placed on record along with the written submissions filed on behalf of the petitioner and is relied upon in support of his case.

23. Learned Standing Counsel for the State on the other hand submits that the petitioner continued to discharge his duties as Assistant Teacher and remained in service until attaining the age of superannuation, solely by virtue of the interim order passed by this Court. It is, therefore, contended that the petitioner has no vested right to claim any retiral or post-retirement benefits which have not been sanctioned in accordance with the applicable rules.

24. In the counter-affidavit filed on behalf of the District Basic Education Officer, Gorakhpur, it has been stated that the writ petition has been instituted by concealing material facts, allegedly with the intention of obtaining an order for payment of salary. It is further stated that, in the circumstances, an order dated 14.03.1989 came to be passed.

25. It has been averred that one post of C.T. Grade Teacher, carrying the pay scale of Rs. 450–720, was sanctioned by the Assistant Director of Education (Basic), Seventh Region, Gorakhpur, vide letter dated 14.01.1988. In paragraph 7 of the said sanction letter, it was specifically stipulated that the reservation applicable to candidates belonging to the Scheduled Caste category was to be strictly adhered to, in accordance with the instructions issued by the State Government.

26. Accordingly, permission to advertise the post was granted by the office of the District Basic Education Officer vide letter dated 02.03.1988. However, according to the respondents, the Committee of Management acted in disregard of the aforesaid direction and published an advertisement without indicating the reservation applicable to the Scheduled Caste category, as is evident from the relevant record dated 21.03.1988.

27. It is further stated that, since the instructions contained in the letter dated 02.03.1988 had not been complied with and the nominee of the District Basic Education Officer was not deputed for the selection process. The Committee of Management was instead directed, vide office

letter dated 30.04.1988, to re-advertise the post afresh, in accordance with the conditions stipulated in the earlier communication dated 02.03.1988.

28. Pursuant thereto, the Institution published a fresh advertisement in the newspaper on 19.04.1988, indicating that preference was to be accorded to a candidate belonging to the Scheduled Caste category, in accordance with the reservation policy. It was further stipulated that in the event of non-availability of a suitable Scheduled Caste candidate, the post could be filled by a candidate from the general category possessing Science and Mathematics as subjects.

29. Thereafter, the Committee of Management, vide its letter dated 02.05.1988, requested the District Basic Education Officer to nominate a representative for the purpose of conducting the selection. Upon scrutiny of the matter, the office of the concerned District Basic Education Officer, vide communication dated 10.05.1988, called upon the Committee of Management to explain the basis and authority under which the conditional advertisement had been issued.

30. It has been further stated in the counter-affidavit filed by respondent no. 1, the District Basic Education Officer, Gorakhpur, that the Committee of Management, vide its letter dated 11.05.1988, acknowledged that the error in the advertisement had occurred on account of lack of proper knowledge of the applicable reservation provisions. Thereafter, the nominee of the District Basic Education Officer was deputed for participating in the selection process vide office letter dated 11.05.1988.

31. It is averred that, despite the aforesaid reservation requirement, the Selection Committee proceeded to select a candidate belonging to the general category, ignoring the Scheduled Caste reservation, although two Scheduled Caste candidates, namely, Hari Om and Ram Priti, were available and had appeared before the Selection Committee.

32. The papers relating to the selection were thereafter forwarded by the Institution to respondent no. 1. It is stated that, upon scrutiny of the said papers, certain queries were raised by respondent no. 1 vide letter dated 31.05.1988. The Committee of Management submitted its reply vide letter

dated 06.06.1988, which was received in the office of the District Basic Education Officer on 08.06.1988.

33. Upon consideration of the material placed on record, respondent no. 1 formed the view that the reservation applicable to Scheduled Caste candidates had not been duly implemented in the Institution and that eligible Scheduled Caste candidates, though available, had not been considered in the selection process. Consequently, the proposal for approval of the selection was not accepted. The entire set of papers relating to the proposed appointment was returned to the Committee of Management vide communication dated 07.07.1988, informing that approval could not be accorded to the selection in question. The said communication was also forwarded to the Institution on the same date.

34. It has been further stated by respondent no. 1, the District Basic Education Officer, Gorakhpur, that, instead of making a fresh selection in accordance with the advertisement dated 19.04.1988 and from amongst the eligible Scheduled Caste candidates, the Committee of Management proceeded to submit a proposal dated 11.05.1988 seeking approval of the selection already made by altering the conditions stipulated in the advertisement. According to the respondents, the Committee of Management had no authority to unilaterally alter the terms of the advertisement or to depart from the reservation requirement prescribed by the competent authority.

35. In view of the aforesaid circumstances, and for the reasons recorded by respondent no. 1, the complete papers relating to the proposed selection were again returned to the Committee of Management vide communication dated 20.08.1988. It is further averred that, despite the aforesaid communication, the Committee of Management did not proceed to make the selection, in accordance with the prescribed reservation policy and instead proposed the ad-hoc appointment of the petitioner, who is a general category candidate.

36. The said proposal was rejected by respondent no. 1 vide order dated 31.12.1988 on the ground that the post in question was reserved for a Scheduled Caste candidate and that the petitioner's appointment against the said post could not be made without obtaining prior written approval

of the concerned District Basic Education Officer.

37. It is further stated that, notwithstanding the aforesaid disapproval, the Committee of Management again proceeded to re-advertise the post on 01.02.1989. According to respondent no. 1, the petitioner had been appointed by the Committee of Management without obtaining the requisite prior written approval of the District Basic Education Officer and, therefore, such appointment could not confer any enforceable right upon the petitioner to claim salary or other consequential benefits from the State authorities.

38. On these premises, respondent no. 1 submits that the petitioner's appointment was contrary to the prescribed procedure and reservation policy and was made without the mandatory approval of the competent authority. Consequently, the petitioner is not entitled to any relief from this Court.

39. It is further submitted on behalf of the respondents that the petitioner's appointment was made in breach of the procedure prescribed under the Rules of 1978 and, consequently, no enforceable right accrued in his favour to claim any relief from this Court.

40. Learned Standing Counsel for the State submits that upon receipt of the papers relating to the petitioner's appointment for approval, the District Basic Education Officer had raised specific queries with regard to the irregularities and deficiencies in the selection process. The Committee of Management furnished its reply thereto. Thus, both the petitioner and the Committee of Management were aware of the objections raised by the competent authority and of the fact that the selection had not been conducted in conformity with the applicable rules.

41. It is further contended that the advertisement pursuant to which the petitioner was selected did not incorporate the mandatory reservation condition, notwithstanding the specific directions issued by the competent authority. The petitioner's appointment was, therefore, made on an ad-hoc basis, against a post reserved for a Scheduled Caste candidate and the proposal for approval of such appointment was expressly declined by the District Basic Education Officer.

42. In these circumstances, the petitioner's appointment, having been made contrary to the prescribed statutory procedure and without the requisite approval of the competent authority, cannot be treated as a lawful appointment. The petitioner, therefore, has no vested or enforceable right to claim salary or any other consequential benefit on the strength of such appointment and is not entitled to the reliefs sought in the writ petition.

43. Learned Standing Counsel for the State further submits that the petitioner continued in service only by virtue of the interim order passed by this Court and not pursuant to any valid and substantive appointment. It is contended that the interim order was obtained without disclosure of the complete and material facts, concerning the validity of the petitioner's appointment. Consequently, the period during which the petitioner continued to work under the protection of the interim order, cannot confer upon him any substantive right to claim retiral or post-retirement benefits. The petitioner, therefore, is not entitled to claim any retiral benefits on the basis of such continuance in service.

44. Having bestowed my anxious consideration to the rival submissions advanced by learned counsel for the parties and having perused the material available on record, the principal question that falls for consideration is whether the appointment of the petitioner as Assistant Teacher against the post in question was made in accordance with the statutory procedure prescribed under the Rules of 1978 and, consequently, whether the petitioner can claim salary and retiral benefits on the strength of such appointment and his subsequent continuance pursuant to the interim order passed by this Court.

45. The record reveals that the post in question was sanctioned subject to the express stipulation that the reservation policy applicable to Scheduled Caste candidates was to be scrupulously followed. The competent authority had accordingly granted permission for its advertisement, subject to the said condition. The initial advertisement, however, did not incorporate the prescribed reservation condition. The Committee of Management was consequently directed to undertake a fresh selection in conformity with the applicable reservation requirements. Although a

subsequent advertisement was issued indicating the reservation, the management did not proceed in accordance therewith and instead sought to alter the conditions and secure approval of the selection already made.

46. It is not in dispute that Scheduled Caste candidates were available and had participated in the selection process. Nevertheless, the petitioner, who is a general-category candidate, came to be selected. The concerned District Basic Education Officer, upon scrutiny of the papers submitted for approval, raised specific objections and afforded the Committee of Management an opportunity to explain the deficiencies. After considering the reply furnished by the management, the competent authority declined to approve the proposed selection and returned the papers. The subsequent proposal for appointment of the petitioner was also expressly disapproved by order dated 31.12.1988.

47. In these circumstances, the contention that the petitioner's appointment stood automatically approved by virtue of the deeming provision cannot be accepted in isolation from the admitted and undisputed deficiencies in the selection process. A deeming provision cannot be invoked to validate an appointment which, at its inception, was made in disregard of the mandatory conditions governing the recruitment and reservation process. The statutory fiction of deemed approval cannot be permitted to operate as an instrument for legitimising an appointment made contrary to the very statutory framework within which the power of appointment was required to be exercised.

48. Equally, the fact that the nominee of the District Basic Education Officer participated in the selection process does not, by itself, cure the foundational illegality in the selection. The participation of the nominee cannot dispense with compliance with the mandatory reservation requirement, nor can it confer validity upon an appointment which was subsequently found, upon scrutiny of the relevant record, to be contrary to the prescribed procedure.

49. The plea founded upon violation of the principles of natural justice also does not advance the petitioner's case. The material on record indicates that the District Basic Education Officer had raised specific queries concerning the irregularities in the selection and the Committee of

Management had furnished its response thereto. The petitioner, therefore, cannot legitimately contend that the competent authority was required to afford him a separate opportunity before refusing approval to an appointment which itself had not been made in accordance with the prescribed procedure. In any event, an opportunity of hearing cannot be invoked for perpetuating an appointment which suffers from a fundamental statutory infirmity.

50. The subsequent re-advertisement of the post, therefore, cannot be characterised as creating an artificial vacancy. Once the petitioner's appointment itself was not approved and was found to have been made contrary to the prescribed reservation requirements, his continuance could not have the effect of extinguishing the substantive vacancy or preventing the competent authority from requiring its lawful filling.

51. The further circumstance that the petitioner continued to discharge duties under the protective umbrella of an interim order passed by this Court stands on an entirely different footing. An interim order is necessarily interlocutory in character and does not, by itself, adjudicate upon or confer substantive validity upon an appointment which is ultimately found to be contrary to the statutory rules. The petitioner's continuance pursuant to such interim protection, therefore, cannot be treated as equivalent to service rendered pursuant to a valid substantive appointment for the purpose of conferring a vested right to retiral benefits.

52. At the same time, the respondents cannot be permitted to derive any advantage from their own administrative lapses, if any, in dealing with the petitioner's service after the interim order. The question of salary for the period during which the petitioner actually discharged duties under the orders of this Court would, however, have to be examined separately in accordance with law and in the light of the precise terms of the interim order and the applicable statutory provisions. Mere invalidity of the appointment cannot, without examining the relevant circumstances, be treated as an automatic answer to every claim arising from actual service rendered under judicial protection.

53. For the foregoing reasons, the petitioner's appointment cannot be held to have acquired statutory validity merely by reason of his selection by

the Committee of Management or his subsequent continuance in service under the interim order. The order dated 31.12.1988, whereby approval to the petitioner's appointment was declined, does not warrant interference. Consequently, the challenge to the subsequent re-advertisement of the post also fails.

54. The petitioner, having continued in service pursuant to an interim order and his underlying appointment having not been established to be a lawful appointment under the Rules of 1978, cannot claim a vested right to retiral or post-retirement benefits flowing from a substantive appointment. The writ petition is, accordingly, liable to be dismissed, subject to such consideration of salary, if any, as may independently arise from the actual service rendered by the petitioner pursuant to the interim order and the terms thereof.

55. In view of the aforesaid, the present writ petition is **dismissed**, accordingly.

(Mrs. Manju Rani Chauhan,J.)

September 14, 2026

K.N.