

**2023 LiveLaw (SC) 9**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
J.K. MAHESHWARI; J., K.V. VISWANATHAN; J.**

January 03, 2024.

CIVIL APPEAL NOS. 20-21 OF 2024 (@ SPECIAL LEAVE PETITION (CIVIL) NOS. 38773878 OF 2022)

**RADHEY SHYAM YADAV & ANR. ETC. versus STATE OF U.P. & ORS.**

**Service Law - Stoppage of Salary - While the State sanctioned two vacancies, the school went ahead and recruited three. The State has no proof of commission of any malpractice by the teachers. The State approved their appointments, and the approval order till date has not been cancelled. The appointments have not been terminated. No action has been taken against the school and the school continues to receive the aid. Held, the teachers were not at fault and the State could not have abruptly stopped their salaries. (Para 22 & 34)**

(Arising out of final judgments and orders dated 15-09-2021 in Special Appeal No.1435/2023 and Special Appeal No.1445/2023 passed by the High Court of Judicature at Allahabad)

*For Appellant(s) Mr. Surender Kumar Gupta, AOR Mr. Chitvan Singhal, Adv. Ms. Muskan Gupta, Adv.*

*For Respondent(s) Mr. Dhawal Uniyal, Adv. Mr. Naresh Kumar, Adv. Mr. Krishnanand Pandeya, AOR Ms. Sansriti Pathak, Adv. Mr. Dhawal Unyal, Adv.*

**J U D G M E N T**

**K.V. Viswanathan, J.**

1. Leave granted.
2. Radhey Shyam Yadav, Lal Chandra Kharwar and Ravindra Nath Yadav are the three appellants. On 25.06.1999, they were appointed as Assistant Teachers at the Junior High School, Bahorikpur, Maharajganj, District Jaunpur, U.P. (hereinafter referred to as 'the School'). From October, 2005, abruptly their salaries were stopped. They moved the High Court for redressal. Both the learned Single Judge and the Division Bench declined them relief. Aggrieved, they are before us in these Appeals.

**Brief facts:-**

3. From the record, it appears that the School started as a recognized unaided school in 1983-1984 with one post of Head Master, four posts of Assistant Teacher, three posts of Peon and one post of Clerk. On 07.10.1996, two posts of Assistant Teacher were increased, raising the sanctioned strength of Assistant Teacher to six.
4. On 26.12.1997, the Director of Education (Basic) sanctioned certain additional posts of Assistant Teacher in the aforesaid School. While the department claims that by the order of 26.12.1997, only two posts of Assistant Teacher were sanctioned, the Manager/Principal of the School claiming that three posts were sanctioned, went ahead and sought permission from the District Basic Education Officer for issuing advertisement. This was done by their letter of 28.01.1998. The letter of 26.12.1997 has been placed before us by the State in the form of an additional affidavit which indicates that only two posts were sanctioned. The State does not dispute that by the above letter two posts of Assistant Teacher were sanctioned. In 1998, the School became an aided School.
5. Thereafter, responding to the letter of the School, the District Basic Education Officer by his letter of 20.11.1998 accorded permission to issue advertisement for

appointment of three posts of Assistant Teachers. On 25.11.1998, an advertisement was issued. The School, thereafter, on 08.12.1998, wrote a letter to the District Basic Education Officer to nominate a Member for the selection of the teachers. In response, the District Basic Education Officer nominated the Assistant District Basic Education Officer, Bahorikpur as a Member of the Selection Committee. The Selection Committee duly met and considered the twelve applications received by it. Seven out of the twelve applicants, including the three appellants herein, participated in the interview. By its letter of 27.12.1998, the Selection Committee informed the District Basic Education Officer that the appellants, on basis of their ability, have been selected and their case was being submitted for approval. The order in which the Selection Committee has sent subjectwise names were as follows:

- i. Lal Chandra Kharwar – Science and Math
- ii. Radhey Shyam Yadav – English
- iii. Ravindra Nath Yadav – Agric & Gen.Topic

It is not disputed that by an order of 09.06.1999, the District Basic Education Officer granted approval for the appointment of the appellants. As stated earlier, they were appointed on 25.06.1999 and were working continuously.

**6.** The undisputed case is that from October, 2005, their salaries were stopped from being disbursed, forcing them to file Writ Petitions in the High Court, namely, Civil Misc. Writ Petition No. 10286 of 2007 and Civil Misc. Writ Petition No. 18641 of 2008. The three appellants, in all, filed two writ petitions. In the writ petitions, the prayer was for a writ of mandamus commanding the respondents to pay the arrears of salary from July, 1999 to January, 2002 and continue to pay salary from October, 2005. It was their case that from the date of appointment till January 2002, their salary had not been released.

**7.** The District Basic Education Officer filed counter affidavits to the writ petitions. It was his case that, by order dated 26.12.1997, only two additional posts of Assistant Teacher were created by the Joint Director of Education. It was averred that manipulation was made by the management in collusion with the appellants to show that three posts of Assistant Teacher were sanctioned.

**8.** Apart from this bare allegation, absolutely no material was placed on record to show how the appellants had colluded or were blameworthy for any manipulation.

**9.** Subsequent to the counter affidavit filed by the State, on 30.07.2013, a compliance affidavit was filed. It is averred therein that a detailed enquiry was conducted in the matter wherein it had transpired that manipulation was got done at the level of the School in question by overwriting the sanctioned posts of teachers of the School as “three” in place of “two”.

**10.** The Learned Single Judge, by order dated 10.09.2013, held that if based on the forged order, proceedings were initiated for the selection of Assistant Teacher, then the entire selection needs to be cancelled. It was also held that since forgery was committed by the persons involved in the selection of Assistant Teachers and since the selection process was not fair, being based on a forged letter, the candidates who were selected in the selection process are not entitled to be appointed and retained on the post of Assistant Teacher, and holding so, the writ petitions were dismissed. The appellants filed writ appeals. By the impugned order, the appeals were dismissed reiterating the findings of the learned Single Judge.

### **Contentions:**

11. We have heard Mr. Surender Kumar Gupta, learned counsel for the appellants and Ms. Sansriti Pathak, learned counsel for the respondent-State.

12. Learned counsel for the appellants, after placing a comprehensive overview of the facts, vehemently contended that there was no fault on the part of the appellants and for any wrong computation of vacancy, the appellants ought not to be prejudiced. He further contended that the State admittedly does not dispute that two vacancies were, in fact, created and that if at all there was any manipulation, it was at the level of the School. In the absence of any blameworthy conduct attributed to the appellants, they ought not to be prejudiced after serving the School for very long. According to the appellants, they were continuously teaching till 30.03.2016 by entering their names in a separate register. However, according to the State, from October, 2005 their salaries have been stopped. In support of their claim, learned counsel for the appellants relied upon the judgments of this Court in **Vikas Pratap Singh and Ors. Vs. State of Chhattisgarh and Ors., (2013) 14 SCC 494** and the recent judgment in Civil Appeal Nos. 6233-34 of 2023 dated 20.11.2023 titled **Vivek Kaisth and Anr. Vs. The State of Himachal Pradesh and Ors., 2023:INSC:1007 = 2023 SCC OnLine SC 1485.**

13. Ms. Sansriti Pathak, learned counsel for the State vehemently defended the impugned judgment. She contended that where there was fraud, the whole selection process shall be vitiated. She relied on **Sachin Kumar and Ors. Vs. Delhi Subordinate Service Selection Board (DSSSB) and Ors. 2021:INSC:147 = 2021 (4) SCC 631** in support of her proposition. Learned counsel submitted that there was no case warranting interference under Article 136 of the Constitution of India.

### **Discussion and Findings:**

14. We have given our thoughtful consideration to the matter and considered the submissions of the rival parties and perused the records. The correspondence between the School and the Directorate of Education culminated in the order of 26.12.1997. There is a dispute about the number of posts that were sanctioned. According to the State, two posts were, in fact, sanctioned and it was the School that manipulated it, to make it three. We will proceed on the basis that the version of the State is correct. The nominee of the State participated in the selection process. Twelve candidates had applied and ultimately three appellants were empanelled for selection. Due approval was given for the appointment and admittedly they discharged their duties on their post from 25.06.1999 till September, 2005. Even according to the State, admittedly, till date there is no order terminating their services. What impelled the appellants to go to the High Court was the stoppage of their salary.

15. There is not an iota of material to demonstrate how the appellants, who were applicants from the open market, were guilty of colluding in the manipulation.

16. We are also reinforced on this, by the findings in the inquiry report initiated pursuant to the directions of the High Court in the writ petitions. In the Inquiry Report, the conclusion was that, it was the erstwhile District Basic Education Officer, Jaunpur and his office, in collusion with the Manager of the School, who had taken steps for appointment/approval. It was mentioned that there was involvement of Shri Ram Dular Yadav, Principal, Shri Triloki Nath Singh, Manager of the school, the erstwhile District Basic Education Officer, Jaunpur and also the officials of the District Basic Education Officer, Jaunpur. It was further

found that the Manager of the School has fraudulently changed the number of posts from two to three in the order dated 26.12.1997 and it was mentioned that Shri Triloki Nath Singh, the Manager was guilty and accordingly, District Basic Education Officer, Jaunpur has lodged an F.I.R. against Shri Triloki Nath Singh on 08.07.2013.

**17.** What is important to notice is, nothing has been mentioned as to how the appellants, who were applicants from the open market, were in any way responsible. There is no reference to any material whatsoever that had been unearthed either in the departmental inquiry launched or in the criminal investigation. On a pointed query to the counsel for the State as to whether the appellants were arrayed as accused in that criminal case, she candidly replied that they were not. On being further asked as to whether any action has been taken against the School, she replied that no action has been taken. The School continues to function with grants-in-aid. She submitted that the only action taken was to file an F.I.R. against the Manager of the School, which F.I.R. has since resulted in a charge-sheet.

**18.** In the inquiry report, the following crucial findings occur. They are extracted hereinbelow:

"(3) Two additional posts of Assistant Teachers were created vide the Directorate's letter No.Samanya(I) Basic/2117-20/96-97 dated 26.12.1997 (certified copy enclosed) as a result the number of sanctioned posts of Asst. Teachers in the school in question became 06 (six). Earlier this letter was typed for being sent to the Zonal Assistant Education Director (Basic), Azamgarh which was later on erased and 'Varanasi' was written with pen. In this letter, in column No.2, the number of sanctioned post is mentioned as 02 and against column No.5 the number of Assistant Teachers is clearly mentioned as 8. This file bears the signatures of Ex-Desk Assistant Shri Rajnarain Trivedi and Deputy Education Director (Science) Shri Harish Chandra Tiwari, who has since retired on the note side of the file there is the order of creation of two posts dated 11.8.1997 of late Shri Vinay Kumar Pandey, Deputy Education Director (Basic).

(4) In the aforesaid post creation order of the Directorate dated 26.12.1997, the Manager of the institute, showing 03 (three) posts of Assistant Teachers fraudulently and obtained approval for appointment of 03 Assistant Teachers S/Shri Lal Chand Kharwar, Radhey Shyam Yadav and Ravinder Nath from District, Jaunpur vide letter No B-2/1313-14/99-2000 dated 9.6.98.

(5) The District, Jaunpur sought permission from the Directorate for payment of salary of the aforesaid three teachers vide letter No.3909 dated 28.8.2001. With this letter the Directorate's letter dated 16.12.1997, which was sent by the Manager duly certified by the District, Jaunpur was enclosed in which fraudulently 03(three) in place of 02 (two) in column No.3, 09 (nine) in place of 08 (eight) and total 12 (twelve) in place of 11 (eleven) against column No.5 were shown.

(6) After the verification of the said fraudulent letter dated 26.12.1997 sent by the District, Jaunpur, vide the registered letter No.Arth(4)/1812/2004-05 dated 27.10.2004 and Letter No.Arth(4)/2310-13/2004-05 dated 19.11.2004, the District, Jaunpur was directed that in the post creation order in question the Manager of the institute had fraudulently mentioned three posts while in the post creation order dated 28.12.1997 only two posts of Assistant Teachers have been sanctioned. The Directorate directed the District, Jaunpur to call for the explanation of the Manager and the Principal of the institute responsible for the same, and to furnish the information about the then District, Jaunpur who had verified the posts and the name, designation and the place of posting of the then Desk Assistant (photo copy enclosed). On the aforesaid two letters of the Directorate no action was taken by the then District, Jaunpur which prima facie shows that the erstwhile District, Jaunpur and his office in collusion with the Manager of the school, had taken steps for appointment/approval in the school in which the involvement of Shri Ram Dular Yadav,

Principal, Shri Triloki Nath Singh, Manager of the institute, the erstwhile District, Jaunpur and the officials of the office of District, Jaunpur, is clearly visible.

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(c) The erstwhile District, Jaunpur/erstwhile Finance and Accounts Officer, Basic Education Office, Jaunpur and the Desk Assistant are prima facie guilty in granting permission for advertisement selection, approval and taking steps for disbursement of salary on the basis of the forged letter of creation of posts dated 26.12.1997 of the Manager of the institute and in this respect the Education Director (Basic) should submit proposal to the Government to initiate disciplinary action against them.

In addition take action against the concerned Desk Assistants at his level."

There was absolutely nothing found against the three appellants. However, the following recommendations were made: -

"(d) The appointments of S/Shri Lala Chand Kharwar, Radhey Shyam Yadav and Ravindra Nath Yadav, made pursuant to the said forged letter dated 26.12.1997 are illegal. They have been paid for the period February, 2002 to October, 2005, the salary is illegal. The same be counted and action for proportionate recovery be taken against the guilty erstwhile District/erstwhile Finance and Accounts Officer, Basic Education and the concerned Desk Officer by the Director of Education (Basic) as per the settled procedure and steps taken to terminate the services of illegally appointed Assistant Teachers S/Shri Lala Chand Kharwar, Radhey Shyam Yadav and Ravindra Nath Yadav."

**19.** In the inquiry, the appellants were not given any opportunity. Even in the inquiry held behind the back of the appellants, there were no findings of collusion or blameworthiness against them for the alleged manipulation. Even as on date, the appointment order dated 25.06.1999 and the approval order of 09.06.1999 have not been revoked. With no finding of guilt against the appellants and with no material against them, their salaries had been stopped and they have been prevented to sign on the regular attendance register, admittedly from October, 2005. The contention of the appellants is that they continued with their teaching work up till 30.03.2016 entering their names on a separate attendance register.

**20.** We may also note the fact that in the F.I.R. lodged by the State on 17.07.2015 also, there is no allegation against the appellants or any other applicants and only two persons were named in that F.I.R. They were Vinod Kumar Chaturvedi, Senior Assistant and Rajendra Prasad Yadav, Senior Assistant. Both were employees in the office of the District Basic Education Officer. The allegation was that the documents related to approval of appointments/teacher listings from the concerned schools were missing and that the said two officers were responsible for maintaining the records.

**21.** In this background, the question that really falls for consideration is, was the State justified in abruptly and without anything more, stopping the salary? We are constrained to answer the question in negative.

**22.** Assuming the case of the State to be true and taking it at its highest, the factual position would come to this, namely, that while the State sanctioned two vacancies, the school went ahead and recruited three. The State has no proof of commission of any malpractice by the appellants. The State approved their appointments, and the approval order till date has not been cancelled. The appointments have not been terminated. No action has been taken against the school and the school continues to receive the aid.

**23. Chief Engineer, M.S.E.B. and Another vs. Suresh Raghunath Bhokare, (2005) 10 SCC 465** is a case which, on facts, has a striking resemblance to the case at hand. The respondent therein had been recommended by the department and was selected as line-helper in the appellant-Board. On the ground that the recommendation was allegedly made fraudulently, the respondent was dismissed from service. The complaint preferred by the respondent had been dismissed by the Labour Court. The Industrial Court reversing the findings of the Labour Court, quashed the termination of the respondent therein and directed reinstatement. Writ Petition filed by the appellant therein was dismissed by the High Court. This Court, while observing that in the absence of any overt act being attributed to the respondent, held that it could not be inferred that the respondent had a role in sending fraudulent list, solely on the basis of the presumption that he got the job. Para 5 of the judgment which is crucial for the decision of the present case is extracted herein below: -

“5. The entire basis of the dismissal of the appellant depends upon the factum of the alleged misrepresentation attributed to the respondent. The Industrial Court in its impugned order has noticed the fact that the respondent was appointed in April 1994 pursuant to the selection procedure followed by the competent authority and that he was selected by the panel of Selection Committee consisting of 6 members which included the very same Social Welfare Officer who had sent the proposal including the name of the respondent for appointment. It also noticed the fact that the selection in question was made after an oral interview and the required test as also the medical examination. The Industrial Court also noticed the fact that the appointment of the respondent was confirmed after one-year period and thereafter the respondent has been working without any complaint. The said Industrial Court also noticed the fact that the termination of the respondent was based on a showcause notice issued on 5-7-1999 which was replied to by the respondent on 17-7-1999 and the termination was made in a summary procedure permissible under Rule 90(b) of the Service Regulations. The Industrial Court after perusing the pleadings and the notice issued to the respondent came to the conclusion that the alleged misrepresentation which is now said to be a fraud was not specifically pleaded or proved. In the show-cause notice, no basis was laid to show what is the nature of fraud that was being attributed to the appellant. No particulars of the alleged fraud were given and the said pleadings did not even contain any allegation as to how the appellant was responsible for sending the so-called fraudulent proposal or what role he had to play in such proposal being sent. It also noticed from the evidence of Mr Waghmare, Social Welfare Officer who sent the proposal before the Labour Court that he did not utter a single word as to whether the said supplementary list was ever called for by the department concerned or not. Thus applying the basic principle of rule of evidence which requires a party alleging fraud to give particulars of the fraud and having found no such particulars, the Industrial Court came to the conclusion that the respondent could not be held guilty of fraud. The said finding of the Industrial Court has been accepted by the High Court. Mr. Bhasme though contended that the fraud in question was played in collusion with the Social Welfare Officer and 2 other employees of the Board and action against the said 2 employees of the Board has been taken, but by that itself we are unable to accept the argument of Mr. Bhasme that there is material to support the contention of the Board that the appellant had also contributed to making the misrepresentation at the time of applying for the job with the Board. In the absence of any such particulars being mentioned in the showcause notice or at the trial, attributing some overt act to the respondent, we do not think the Board can infer that the respondent had a role to play in sending a fraudulent list solely on the basis of the presumption that since the respondent got a job by the said proposal, the said list is a fraudulent one. It was the duty of the Board to have specifically produced the material to prove that the respondent himself had the knowledge of such a fraud and he knowingly or in collusion with other officials indulged in this fraud. Since there is no such material on record, on the facts of the instant case, the Industrial Court and the High Court have come to the right conclusion that the alleged fraud has not been established by the

appellants, hence, this is not a fit case in which interference is called for. This appeal, therefore, fails and the same is dismissed.”

(emphasis supplied)

**24.** In **Vikas Pratap Singh (supra)**, this Court, while protecting the selection of the appellants, had the following to say: -

“27. Admittedly, in the instant case the error committed by the respondent board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.”

**25.** **Vikas Pratap Singh (supra)** was followed in **Anmol Kumar Tiwari and Others vs. State of Jharkhand and Others**, 2021:INSC:101 = (2021) 5 SCC 424. This Court, in para 11, held as follows:-

“11. Two issues arise for our consideration. The first relates to the correctness of the direction given by the High Court to reinstate the writ petitioners. The High Court directed reinstatement of the writ petitioners after taking into account the fact that they were beneficiaries of the select list that was prepared in an irregular manner. However, the High Court found that the writ petitioners were not responsible for the irregularities committed by the authorities in preparation of the select list. Moreover, the writ petitioners were appointed after completion of training and worked for some time. The High Court was of the opinion that the writ petitioners ought to be considered for reinstatement without affecting the rights of other candidates who were already selected. A similar situation arose in **Vikas Pratap Singh case [Vikas Pratap Singh v. State of Chhattisgarh, (2013) 14 SCC 494 : (2013) 3 SCC (L&S) 100]**, where this Court considered that the appellants therein were appointed due to an error committed by the respondents in the matter of valuation of answer scripts. As there was no allegation of fraud or misrepresentation committed by the appellants therein, the termination of their services was set aside as it would adversely affect their careers. That the appellants therein had successfully undergone training and were serving the State for more than 3 years was another reason that was given by this Court for setting aside the orders passed by the High Court. As the writ petitioners are similarly situated to the appellants in **Vikas Pratap Singh case [Vikas Pratap Singh v. State of Chhattisgarh, (2013) 14 SCC 494 : (2013) 3 SCC (L&S) 100]**, we are in agreement with the High Court that the writ petitioners are entitled to the relief granted. Moreover, though on pain of contempt, the writ petitioners have been reinstated and are working at present.”

(emphasis supplied)

**26.** To the same effect is the ratio of the judgment of this Court in **Dr. M.S. Mudhol and Another vs. S.D. Halegkar and Others**, (1993) 3 SCC 591 wherein, in para 6, it was observed as under:-

“6. Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequitable to make

him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same.”

**27.** In **Rajesh Kumar and Others** vs. **State of Bihar and Others**, (2013) 4 SCC 690, this Court finding the appellants to be innocent parties ruled that even if in the re-evaluation the appellants do not make the grade, still the appellants appointments ought to be protected. Para 21 & 22.3 are extracted herein below:-

“21. There is considerable merit in the submission of Mr Rao. It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter se merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The reevaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.

22.3. In case the writ petitioners, Respondents 6 to 18 also figure in the merit list after re-evaluation of the answer scripts, their appointments shall relate back to the date when the appellants were first appointed with continuity of service to them for purpose of seniority but without any back wages or other incidental benefits.”

**28.** In **K. Ameer Khan and Anr. Vs. A. Gangadharan and Ors.**, (2001) 9 SCC 84, a case involving the wrong computation of vacancies, while protecting the promotion of the appellants, this Court had the following to say:-

“2. ....The appellants have been selected quite some time back and the first appellant has been promoted to a higher grade. The appellants were not responsible for the wrong computation of vacancies done by the second respondent. After the empanelment and appointment of the appellants, it is brought to our notice that there have been fresh promotions to the post of Assistant Controller of Stores at least on two occasions in June 1995 and May 1997. In a new selection, five Scheduled Caste candidates and four Scheduled Tribe candidates have been selected. The appellants could not participate in the same as they had already been promoted to the higher grade. Now, when the appellants have been working in the higher grade from 1994 onwards, it would not be equitable to disturb their promotions.....”

**29.** More recently, this Court in **Vivek Kaisth (supra)**, following the judgment of the Constitution Bench in **Sivanandan C.T. and Others** vs. **High Court of Kerala and Ors.**, (2023) SCC OnLine SC 994 protected the appointments of the appellants even after finding that their appointments were in excess of the advertised vacancies. This Court held as under: -

“32. ... .... Today, when we are delivering this judgment the two appellants have already served as Judicial Officers for nearly 10 years. Meanwhile, they have also been promoted to the next higher post of Civil Judge (Senior Division). In this process of their selection and appointment (which has obviously benefitted them), nothing has been brought to our notice which may suggest any favouritism, nepotism or so-called blame as to the conduct of these two appellants, in securing these appointments. The High Court in fact notes this factor. While placing the blame on the State Commission it records that “..... there is nothing on record suggestive of the fact that any mala fides were behind the selection of respondents Nos.4 and 6.....”

“34. The appellants were not entitled for any equitable relief in view of the High Court as they were the beneficiaries of an illegality committed by the Selection/appointing authority. But then it



failed to take this question further, which in our opinion, it ought to have done. What the High Court never answered was as to how much of this blame of “illegal” selection and appointment would rest on the High Court (on its administrative side). Undoubtedly, with all intentions of timely filling of the vacancies, the High Court still cannot escape the blame.....”

“36. What is also important for our consideration at this stage is that the appellants in the present case have been working as Judicial Officers now for nearly 10 years. They are now Civil Judge (Senior Division). These judicial officers now have a rich experience of 10 years of judicial service behind them. Therefore, unseating the present appellants from their posts would not be in public interest. Ordinarily, these factors as we have referred above, would not matter, once the very appointment is held to be wrong. But we also cannot fail to consider that the appellants were appointed from the list of candidates who had successfully passed the written examination and *viva voce* and they were in the merit list. Secondly, it is nobody’s case that the appellants have been appointed by way of favouritism, nepotism or due to any act which can even remotely be called as “blameworthy”. Finally, they have now been working as judges for ten years. There is hence a special equity which leans in favour of the appellants. In a recent Constitution Bench decision of this Court in ***Sivanandan C.T. and Ors. v. High Court of Kerala and Ors. (2023) SCC OnLine SC 994*** though the finding arrived at by this Court was that the Rules of the game were changed by the High Court of Kerala by prescribing minimum marks for the *viva voce*, which were not existing in the Rules and therefore in essence the appointment itself was in violation of the Rules, yet considering that those persons who had secured appointments under this selection have now been working for more than 6 years it was held that it would not be in public interest to unseat them.”

(emphasis supplied)

**30.** The situation of the appellants in the present case is no different from the individuals whose appointments were protected in the cases cited hereinabove. They had no blameworthy conduct. They were bona fide applicants from the open market. The alleged mischief, even according to the State, was at the end of the School and its Manager. It will be a travesty of justice if relief is denied to the appellants. Enormous prejudice would also occur to them.

**31.** Ms. Sansriti Pathak, learned counsel, who ably defended the case for the State, made a valiant attempt to draw support from the judgment in ***Sachin Kumar (supra)***. In that case, what was in issue was the validity of the cancellation of the selection process for recruitment to the 231 vacancies in the post of Grade 2 (DASS) (Head Clerk). This Court, while reversing the judgment of the Tribunal and the High Court held that in that case there was a basic denial of access to Tier I examination. The Court further held that the nature of the allegations was found substantiated upon the careful examination by the first Committee whose report showed that the credibility of the process itself had been eroded. In that case, the total vacancies for which recruitment was to be made was 231 and 61,179 candidates were found to be eligible. The first Committee which enquired found that there were serious irregularities including cheating and impersonation in the course of both Tier 1 Screening examination and Tier 2 Main examination. The Secretary (Vigilance) had also pointed out in his opinion there was a huge difference between the number of applications received, namely, 62056 and the number of candidates who had appeared in the Tier 1 examination i.e. 8224, indicating thereby that proper information regarding the exam was not given to the candidates. The second Committee had observed that no irregularity was found in the documents of the 281 candidates. The Tribunal holding that 281 candidates were free from blame, set aside the order cancelling selection process, clarifying that the appointments to be offered would be subject to the ACB

investigation. The High Court had held that the scope of the order of the Tribunal should be confined to the six applicants who have moved the Tribunal. The High Court had also held that it was possible to determine that at least in respect of 281 candidates there was no evidence of use of unfair means and that it was a case where separation of the tainted from the untainted was possible.

**32.** Reversing the judgment of the Tribunal and the High Court, this Court held that the irregularities were not confined to acts of malpractice or unfair means on the part of specific group of persons and that the report of the Committee found deficiencies of a systemic nature which cast serious doubts on the legitimacy of the entire process of recruitment. This Court held that in such a situation where a decision is taken by the government to cancel the entire process, the decision cannot be held to be irrational or arbitrary.

**33.** This judgment in **Sachin Kumar (supra)** is clearly distinguishable from the case at hand. First of all, **Sachin Kumar (supra)** involved the cancellation of the selection process before any appointments were made. No rights were crystallized to any of the candidates. The issue was about the validity of the cancellation of the selection process. **Sachin Kumar (supra)** falls in that genre of cases concerning validity of cancellation of the selection process due to largescale irregularities. The Case at hand is proximate to the facts and ratio in **Suresh Raghunath Bhokare (supra)** and cases of that ilk set out hereinabove.

**34.** We feel that the appellants were not at fault and the State could not have abruptly stopped their salaries. Accordingly, we set aside the judgments of the High Court dated 15.09.2021 in Special Appeal Nos. 1435/2013 and 1445/2013 and direct that the State shall pay the salaries of the appellants for the period from 25.06.1999 till January, 2002 in full. We also direct that insofar as the period from October, 2005 till today is concerned, the State shall pay the appellants 50% of the backwages. Since the appointment order and the approval order are still in force, we declare that the appellants have always been and are deemed to be in service. Apart from 50% backwages, as ordered above, we direct that all consequential benefits, including seniority, notional promotion, if any, and fitment of salary and other service benefits due, be granted to the appellants. We direct the State to comply with these directions within four weeks from today. We also direct that the appellants be allowed to commence work within the said period of four weeks.

**35.** We notice from the record that the Committee of Management, Junior High School, Bahorikpur was arrayed as fifth respondent in the writ petition before the High Court. They are also arrayed as fifth respondent before us in these appeals. Before us, even though notice has been served on the Committee of Management, Junior High School, Bahorikpur, nobody has entered appearance. It appears that even before the learned Single Judge and the Division Bench, the Committee of Management did not appear. We grant liberty to the State to issue a show-cause notice to the Committee of Management (R-5), after setting out clearly the charge pertaining to the alleged manipulation of the sanction order and altering of the figure from two to three. After receiving reply, if any, and after holding an inquiry with an opportunity of personal hearing, the State will be at liberty to pass an appropriate order. In the event of the Committee of Management being exonerated, no further question will arise. In the event of them being found guilty of the charge, in view of any finding that may be arrived that the manipulation prior to the recruitment was done at the level of the employees of the school (whether by themselves

or in collusion with the officials), we grant liberty to the State to recover from the Committee of Management one-third of the arrears, as ordered to be paid, hereinabove. This direction will serve the ends of justice in the matter.

**36.** The appeals are allowed in the above terms. No order as to costs.

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