

A.F.R.
Reserved on 19.03.2024
Delivered on 22.03.2024

Court No. - 34

Case :- WRIT - A No. - 18173 of 2023

Petitioner :- Ashok Kumar Pandey

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Dilip Kumar Sharma

Counsel for Respondent :- Arun Kumar,C.S.C.,Santosh
Yadav,Vimal Chandra Pathak

Hon'ble Ajit Kumar,J.

1. Heard Sri Sanjeev Singh, learned counsel appearing for the petitioner, Sri V.K. Singh, learned Senior Advocate assisted by Sri Arun Kumar, learned counsel appearing for the respondent No.- 6, Sri Santosh Kumar Yadav, learned counsel appearing for the Committee of Management, namely, respondent No.- 5 and learned Standing Counsel appearing for the State respondents.

2. The petitioner Ashok Kumar Pandey, who has been officiating as Principal of the institution as a result of attestation of signatures on 12th January, 2022 by the Manager of the institution and the District Inspector of Schools, is aggrieved by the order passed by the District Inspector of Schools dated 12th June, 2023 and also the order passed by the Additional Director of Education dated 6th October, 2023.

3. Briefly stated facts of the case are that the post of principal of the institution fell substantively vacant in the year 2019 and the question arose for giving officiating charge of principal of the institution in terms of Section 18 of the then U.P. Secondary Education Service Selection Board Act, 1982. The petitioner though was the senior most Lecturer working in the institution but at that point of time declined to take charge for deteriorating health and

medical conditions of his mother and consequently 6th respondent was given the officiating charge of the principal of the institution on 1st July, 2019 and his signature came to be attested on 17th July, 2019. It transpires that later on petitioner's mother died and so he moved representation that he being senior most teacher of the institution, his claim may be reconsidered for being given officiating charge of principal of the institution due to changed circumstances. The representation of the petitioner was rejected by the District Inspector of Schools against which he filed writ petition being Writ – A No.- 15612 of 2020 which was dismissed on 12th September, 2022 on the ground that once petitioner relinquished his claim, may be due to personal problem, to take charge of officiating principal of the institution, then such giving of *ad hoc* charge cannot be permitted to fluctuate between two different persons so as to allow administrative uncertainties. Petitioner preferred special appeal being Special Appeal No.- 7677 of 2022 which was also dismissed with observations that next occasion had not arisen for appointment of officiating principal and therefore, the authorities cited on behalf of the petitioner would not be of any help to him. This order was passed by the Division Bench of this Court on 19th December, 2022. In the meanwhile an intervening incident happened that 6th respondent got convicted in a criminal case being Sessions Trial No.- 3900448 of 2016 on 26th December, 2022 under Section 419, 420, 467, 468, 473 I.P.C. The said respondent applied for bail and he was granted bail by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No.- 12690 of 2022 on 11th May, 2023 placing sentence awarded by the trial court in abeyance. However, since in the meantime 6th respondent did not attend the institution and the administrative uncertainties were looming large in running the institution as no one else was coming forward to take charge as officiating principal of the institution, the Committee of Management resolved to condone the earlier waiver of

the petitioner to hold the post of principal of the institution, may be in officiating capacity, and thus resolved to forward his name to be appointed as officiating principal of the institution. Consequently, the District Inspector of Schools, vide order dated 12th January, 2023 attested the signature of the petitioner.

4. Upon being convicted in the criminal case authorized Controller working in the institution had suspended the 6th respondent on 21st January, 2023 and the suspension order came to be approved by the District Inspector of Schools on 10th February, 2023. The Committee of Management, it appears, in the meanwhile took the charge of the institution and instead of taking any action to issue show cause notice for terminating the services of a convicted employee, revoked his suspension on 29th May, 2023 and asked the District Inspector of Schools to accord his approval. It is in the light of this letter written by the Committee of Management that impugned order has been passed. Against the decision of the District Inspector of Schools petitioner preferred an appeal before the Joint Director of Education, who allowed his representation/ appeal holding that appointment of the petitioner as officiating principal of the institution to be valid one. The 6th respondent approached the Additional Director of Education who reversed the order of Joint Director of Education and upheld the order of District Inspector of Schools.

5. Sri Sanjeev Singh, learned counsel for the petitioner has argued following points:

(i). Petitioner even though had earlier chosen not to take charge of officiating principal of the institution due to bad health condition of his ailing mother but in the changed circumstances when sitting incumbent on the post of officiating principal of the institution absconded without leave and did not turn up to join and resulantantly

was placed under suspension, he had rightly accepted the post of officiating principal and his earlier waiver will be taken to have been condoned by the employer which it could very much do so in its discretion provided of course, no other employee of the institution put up his claim citing the waiver.

(ii). It was almost new situation when the Committee of Management resolved to make fresh appointment of the officiating principal on account of conviction of officiating principal of the institution in a criminal case and his conviction was not stayed and he was not reporting for duty and so in the light of the observations made by the Division Bench that as and when circumstances would arise he would make his claim, petitioner was rightly given charge as officiating principal of the institution.

(iii). 6th respondent having been convicted in a criminal case was rightly placed under suspension which was approved by the District Inspector of Schools but Committee of Management wholly illegally revoked the suspension order to reinstate convicted employee of a criminal case and that too when it involved moral turpitude, instead of issuing him show cause notice as to why he may not be removed from service.

(iv). The post of principal is of an administrative head of the institution and cannot be given to teacher who is convicted in a criminal case involving moral turpitude.

6. In support of above arguments, learned counsel for the petitioner has relied upon the judgment of Division Bench of this Court in the **Ran Vijay Chandra v. State of U.P. and others; 2003 (2) AWC 1385, Raghvendra Singh Shishodiya v. State of U.P. and others** in Special Appeal Defective No.- 834 of 2013 decided on 25th

September, 2013, **Shashi Kapoor v. State of U.P. and others** passed in Writ – C No.- 35196 of 2015 decided on 16th June, 2015 and **Union of India and others v. Manju Arora and another, (2022) 2 SCC 151.**

7. *Per contra*, learned counsel for the respondents had argued on following points:

(i). Once a teacher waived his right to be appointed as officiating principal of the institution, he cannot take a turn around to say that now he was interested in holding the charge until of course vacancy had arisen afresh substantively.

(ii). A mere conviction of an employee would not result in automatic termination or dismissal from service. An employer was needed to pass appropriate orders giving an opportunity of hearing to such a convicted employee before firing him from service.

(iii). Petitioner's sentence had been stayed and he had been granted bail and, therefore, he deserved reinstatement and the Committee of Management committed no wrong in reinstating the 6th respondent.

(iv). Since 6th respondent was holding the charge of officiating principal, upon reinstatement he was entitled to resume his duties, so there was nothing wrong in the order passed by the District Inspector of Schools and Additional Director of Education impugned herein this petition.

8. Sri V.K. Singh, learned Senior Advocate appearing for the respondents had relied upon the judgment of Division Bench of this Court in the case of **Sundershan Kumar v. State of U.P. and others** passed in Special Appeal No.- 959 of 2006 and the judgment of a

coordinate Bench of this Court in the case of **Archana Singh v. State of U.P. and others, 2009 (6) ADJ 115.**

9. Having heard learned counsel for the respective parties and their arguments raised across the bar, the following points fall for consideration:-

(i). As to whether petitioner could have revived his claim for holding officiating charge of the principal of the institution in the changed circumstances of the case in hand?

(ii). A teacher who enjoys lien against the post of a Lecturer while being reinstated upon revocation of suspension of sentence awarded in a criminal conviction case involving moral turpitude, can still be permitted to hold the charge of officiating principal of the institution, more especially in the circumstances when he is not the senior most teacher.

10. Coming to the first point as to the revival of the claim of holding officiating charge of principal is concerned, in the fact background of the case I find that petitioner had earlier expressed his inability to hold charge of the officiating principal of the institution on account of his ailing mother, despite the fact he was senior most teacher. Under the circumstances, therefore, 6th respondent being the next man was given the charge. In the meanwhile, petitioner's mother died and in such circumstances, he approached again the District Inspector of Schools (DIOS) for giving him the charge which DIOS rejected. This Court upon writ petition being filed dismissed the same on the ground that this *ad hoc* position cannot be permitted to fluctuate between the two teachers to invite administrative uncertainties. The court did not go into the question as to whether the petitioner was so conditioned and/ or circumstanced that upon that

situation being removed or upon such a situation being extinct, he could be offered fresh appointment or not. The Division Bench also dismissed the writ petition rightly so on the ground that once next man had been given charge of officiating principal of the institution and he was continuing then upon new circumstances which petitioner had pleaded, he could not be offered officiating charge. The Division Bench also did not have the occasion to visualize such a situation which is today as it did not arise then. It was in that above distinguishable circumstances when petitioner had approached earlier this Court that judgment of Division Bench of this Court in the case of Sundershan Kumar (*supra*) and of a coordinate Bench in the case of Archana Singh (*supra*) respectively were fully attracted but here is a different case and distinguishable on facts. The petitioner's waiver or relinquishment of earlier opportunity stood condoned by the Committee of Management itself by offering him appointment as an officiating principal and getting his signatures attested. It is nobody's case that other senior teachers had put up their claims before the Committee of Management to be given charge on account of the fact that petitioner had earlier relinquished his claim or waived his right. While in view of the judgment of Division Bench in the case of Sundershan Kumar (*supra*) such waived claim could not be permitted to be revived but looking to the facts of the present case where a sitting principal had been absconding and not reporting back as he had been convicted in a criminal case and he had also been placed under suspension resultantly and other teachers were not interested in holding the charge of officiating principal, the authorized controller in its wisdom had rightly decided to condone the earlier waiver of the present petitioner and permitted him to take charge of officiating principal. This situation continues even today except the fact that a teacher, who has been convicted in a criminal case, has been

reinstated upon stay of sentence not of conviction. The operative portion of the bail order passed by the court of appeal runs as under:

*“Looking to the facts and circumstances of the case, contention of learned counsel of the appellant and according to listing policy the hearing of this appeal will take time, the application is allowed and **it is directed that the execution of the jail sentence passed against the appellant shall remain suspended during the pendency of this appeal** and he be released on bail upon his furnishing personal bond in the sum of Rs.50,000/- (Rs. Fifty Thousand only) with one surety in like amount to the satisfaction of the trial Court for his appearance before the trial Court on 06/10/2023 and on such further dates as may be fixed in this regard by it during the pendency of this appeal.”*

(emphasis added)

11. From the above order it is clear that the conviction of the 6th respondent has not been stayed and now he continues to be convicted even today. The petitioner has been given charge because 6th respondent had absconded and subsequently was suspended and suspension order was also approved by the District Inspector of Schools.

12. It was in these special facts and circumstances of the case that both the District Inspector of Schools and the then authorized controller were justified in condoning the earlier waiver of the petitioner to hold the charge of the officiating principal. Now, since petitioner has been given charge of the officiating principal of the institution and he is the senior most teacher, the judgment in the case of **Vikas Jain v. State of U.P. and others** (Special Appeal No.- 506 of 2022) and **Dhanesh Kumar Sharma v. State of U.P. and others (2004) 3 UPLBEC 2297** are fully attracted.

13. In the considered view of the Court, every employer has a right to condone the waiver of an employee in the interest of the institution. Here the authorized controller, looking after

Management, had condoned the earlier waiver of the petitioner in holding the charge of officiating principal of the institution, and so did not commit any wrong more especially when no other teacher except the 6th respondent had put up his claim to hold the charge of officiating principal.

14. Accordingly, I hold that petitioner's claim in the given facts and circumstance of this case stood revived to hold the charge of officiating principal of the institution and the authorized controller and District Inspector of Schools were justified in attesting his signature as officiating principal of the institution.

15. Coming to the second point with regard to the claim of the 6th respondent to hold the charge, I find that 6th respondent has a lien upon his original post of Lecturer in the institution and he was just given charge of the officiating principal of the institution under Section 18 of the then U.P. Secondary Education Service Selection Board Act, 1982. Section 18 of the U.P. Secondary Education Service Selection Board Act, 1982 provides as under:

“18. Ad hoc Principals or Headmasters.-(1) Where the management has notified a vacancy to the Board in accordance with sub-section (1) of Section 10 and the post of the Principal or the Headmaster actually remained vacant for more than two months, the Management shall fill such vacancy on purely ad hoc basis by promoting the senior most teacher, -

(a) in the lecturer's grade in respect of a vacancy in the post of the Principal;

(b) in the trained graduate's grade in respect of a vacancy in the post of the Headmaster.

(2) Where the Management fails to promote the senior most teacher under sub-section (1), the Inspector shall himself issue the order or promotion of such teacher and the teacher concerned shall be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he joins such post in pursuance of such order of promotion.

(3) Where the teacher to whom the order of promotion is issued under sub-section (2) is unable to join the post of Principal or the Headmaster, as the case may be, due to any act or omission on the part of the Management, such teacher may submit his joining report to the Inspector, and shall thereupon be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he submits the said report.

(4) Every appointment of an ad hoc Principal or Headmaster under sub-section (1) shall cease to have effect from the date when the candidate recommended by the Board joins the post.”

16. Upon bare reading of the provisions as contained under Section 18 as quoted above, it is absolutely clear that the mandate contained is that the senior most teacher shall be given the charge and if the management fails to do it, then the District Inspector of Schools will intervene to ensure that the provisions of the Act are complied with. Such teacher is also entitled for payment of salary.

17. Admittedly, petitioner is a senior most teacher. So, upon condoning his earlier waiver in holding the charge of officiating principal in the institution, there is nothing wrong on the part of the respondents in allowing the petitioner to hold the charge of the officiating principal of the institution as per the statutory provisions.

18. Even assuming for argument sake that once petitioner had waived his right, 6th respondent being the next senior most cannot be denied promotion then in these circumstances it has to be seen as to what should be the rule of promotion where the seniority is the criterion. This Court as well as Supreme Court of India in a catena of decisions have held that in the matters of rule of seniority-cum-suitability, if the post is to be filled up, may be by way of promotion, then seniority has to be judged along with suitability and fitness. A candidate is required to be suitable also in terms of fitness, integrity and character. Although in the case of **Union of India v. Lt. General Rajendra Singh Kadyan, (2000) 6 SCC 698** the Supreme Court was

dealing with the relevant army rules of promotion but I find that discussion part in paragraph 12 of the same is relevant here. Vide paragraphs 11 & 12 the Supreme Court held thus:

“11. The hierarchy in the Army and the method of selection and promotion to various posts starting from the post of Lieutenant and going up to the post of the Chief of the Army Staff will clearly indicate that the posts of Lieutenant, Captain and Major are automatic promotion posts on passing the promotion examination irrespective of inter se merit, whereas the posts from Major to Lt. Colonel, Lt. Colonel to Colonel, Colonel to Brigadier, Brigadier to Major General and Major General to Lt. General are all selection posts filled up by promotion on the basis of relative merit assessed by the designated Selection Boards. From Lt. General (Corps Commander) to Army Commander is a non-selection post to which promotion is made subject to fitness. It is a promotion subject to fitness in all respects, although the rank remains the same. From the post of Army Commander to that of the Chief of the Army Staff, it is by promotion for which no specific criteria have been laid down. There have been precedents where the seniormost Army Commanders have not been appointed as the Chief of the Army Staff. Selection implies the right of rejection depending upon the criteria prescribed. Selection for promotion is based on different criteria depending upon the nature of the post and requirements of the service. Such criteria fall into three categories, namely,

- 1. seniority-cum-fitness,*
- 2. seniority-cum-merit,*
- 3. merit-cum-suitability with due regard to seniority.*

12. Wherever fitness is stipulated as the basis of selection, it is regarded as a non-selection post to be filled on the basis of seniority subject to rejection of the unfit. Fitness means fitness in all respects. "Seniority-cum-merit" postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed. Subject to fulfilling this requirement the promotion is based on seniority. There is no requirement of assessment of comparative merit both in the case of seniority-cum-fitness and seniority-cum-merit. Merit-cum-suitability with due regard to seniority as prescribed in the case of promotion to All-India Services necessarily involves assessment of comparative merit of all eligible candidates, and selecting the best out of them.”

(emphasis added)

19. Explaining the principle behind seniority subject to rejection of unfit, Supreme Court in the case of **Diploma Engineers Sangh v.**

State of U.P. and others (2007) 13 SCC 300 vide paragraph 16 the Court held thus:

“16. After substitution of Rule 12 by the 1992 Amendment to the 1936 Rules, “seniority subject to rejection of unfit” is the criterion for promotion. This is similar to as "seniority-cum-merit" and "seniority-cum-suitability". Application of such criterion does not mean that promotion is automatic, on a the basis of seniority. It means that a list of all candidates in the feeder post should be prepared in the order of seniority, and each candidate as per the rank in seniority is considered on merit. Whoever is found unfit, is rejected. Whether the candidate is "fit" or "unfit" is determined by adopting the procedure prescribed by the Rules. It can be by requiring the candidates to undergo a qualifying examination. It can also be by an interview. It can be with reference to the grades assigned in the annual confidential reports. It can be by any other reasonable and relevant method prescribed. In B.V. Sivaiah v. K. Addanki Babu (1998) 6 SCC 720 this Court observed:

"18. We thus arrive at the conclusion that the criterion of 'seniority-cum-merit' in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion, Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit."

20. In my considered view a candidate who is convicted in a criminal case involving moral turpitude, such a candidate cannot be taken to be suitable candidate to hold the position of head of any institution or department much less an educational institution as he has not only to run the administration but to ensure discipline with high moral values and character to demonstrate.

21. The question now here is that once a teacher has been convicted in a criminal case involving moral turpitude, would it be appropriate and proper for this Court to exercise equitable jurisdiction

by dismissing this writ petition to permit such teacher to hold the charge of officiating principal of the institution.

22. In the criminal case in which 6th respondent was implicated the charge was that he in conspiracy with the other offenders had appeared as a candidate in place of original candidates with fake identity card and forged admit card on 18th July, 2016 in the Madhya Pradesh Police Constable Recruitment Examination- 2016 held on 18th July, 2016 at 9:00 a.m. These offenders were to get candidates Ram Sagar, Irfan, Major Singh, Panch Lal and Avnish Singh illegally successful in the written examination and for this purpose they had fraudulently prepared fake identity cards and forged admit card. The offenders including 6th respondent were charged for fabricating the forged IDs related to the Identity card, seal and pan cards and also for fraudulently prepared answer books to show them as original one. All such incriminating materials relating to the forged IDs., admit cards, pan cards were recovered from the possession of the 6th respondent and according to the charge the main architect of the conspiracy was 6th respondent himself.

23. Putting up his defence 6th respondent had pleaded before the Court that he had visited district Sagar to collect information regarding Ph.D. degree when examination in question was being held. Since all the facts in the trial court judgment and charges are related to the famous M.P. Vyavashayik Pariksha conspiracy the Court returned the findings of the fact that it was a recognized examination of the State Government for police constable recruitment -2016 and the fraud played amounted to serious public offence. After making assessment of materials produced, facts pleaded and also the oral testimonies of the prosecution witnesses, guilt was held to be proved against 6th respondent. The Court arrived at a finding that circumstantial evidence against the 6th respondent was well proved.

Paragraph 84, 85 and 86 of the judgment of trial court is reproduced hereunder:

“84. आरोपी संजय दुबे के कब्जे से उपरोक्त सभी दस्तावेद जप्त किए जाने के विवेचक के कथनों को प्रतिपरीक्षण में कही भी विवादित नहीं किया गया है। इसके विपरीत विवेचक को इस संबंध में सुझाव दिया गया कि उससे जप्तशुदा सामग्री एवं दस्तावेजों के संबंध में उनके दुरुपयोग किए जाने के कोई तथ्य उनकी विवेचना में नहीं आए। उक्त दस्तावेज अनाधिकृत थे, इसकी भी कोई शिकायत उनके पास नहीं आई। अतः स्पष्ट है कि उक्त समस्त दस्तावेज आरोपी संजय दुबे से जब्त होना साबित होता है।

85. आरोपी संजय दुबे के कब्जे से पुलिस आरक्षक भर्ती परीक्षा 2016 के सागर के परीक्षा केन्द्र के अन्य प्रवेश पत्र जो कि इस परीक्षा से संबंधित विभिन्न तारीखों के शिवम कुमार मिश्रा का प्रवेश पत्र प्र.पी. 23, हिमांशु सिंह का प्रवेश पत्र प्र.पी.27, पल्लसिंह का प्रवेश पत्र प्र.पी. 28, शिव मोहन बिंद का प्रवेश पत्र प्र.पी. 29, नवाब सिंह का प्रवेश पत्र प्र.पी.21, जो कि इसी परीक्षा से संबंधित है। हालांकि इन प्रवेश पत्र के दुरुपयोग किए जाने के संबंध में आरोपीगण के विरुद्ध कोई आरोप नहीं है, परंतु आरोपी संजय दुबे के पास से आरोपित अपराध की प्रकृति के अनुरूप ही अन्य अभ्यर्थियों के प्रवेश पत्र जप्त किए गए हैं और इस संबंध में धारा 313 दं.प्र.सं. के परीक्षण में आरोपी संजय दुबे की ओर से इस संबंध में कोई भी स्पष्टीकरण नहीं दिया गया है। अतः आरोपित अपराध की प्रकृति से संबंधित दस्तावेज आरोपी संजय दुबे के कब्जे से जप्त होने के नाते धारा 11 साक्ष्य अधिनियम के अंतर्गत इस प्रकरण में सुसंगत न होने पर भी आरोपी के आचरण के संबंध में अन्यथा सुसंगत है। अतः यह परिस्थिति भी आरोपी संजय के विरुद्ध साबित होती है।

86. इसी प्रकार आरोपी संजय दुबे के कब्जे से संजय दुबे के कब्जे से 468 दस्तावेज, 158 पासपोर्ट साईज के फोटो एवं दो सील प्रधानाचार्य माधव इंटरमीडियेट कॉलेज विजयपुर मीरजापुर, गोल आकार की सील जिलाधिकारी जनपद मीरजापुर लेख है, जप्त की गई है। उक्त शासकीय सील का आरोपी के पास रखे जाने का क्या प्राधिकार था, इस संबंध में भी आरोपी ने कोई स्पष्टीकरण नहीं दिया है। अतः परीस्थिति क्रमांक 5 आरोपी संजय दुबे के विरुद्ध साबित होती है।”

24. Vide paragraphs 108 and 109 the sessions court held petitioner to be guilty of offence and thus convicted and sentenced him for seven years rigorous imprisonment which is reproduced hereunder:

“108. अतः इस न्यायालय के मत में अभियोजन आरोपी प्रदीप, संजय दुबे एवं रिकू उर्फ नंदगोपाल के विरुद्ध यह तथ्य समस्त युक्तियुक्त संदेह के परे साबित करने में सफल रहा कि इन आरोपीगण ने दिनांक 18.07.2016 को 9.00 बजे से 11.00 बजे के बीच अभ्यर्थी रामसागर के स्थान पर आरोपी प्रदीप को प्रतिरूपक के रूप में उपस्थित कराकर उपस्थित पत्रक में अंगुष्ठ चिन्ह लगाकर एवं उत्तर पुस्तिका में कूट रचना की तथा मध्यप्रदेश से मान्यता प्राप्त प रीक्षा अधिनियम 1937 के अंतर्गत मान्यता प्राप्त परीक्षा में अनुचित साधनों का उपयोग किया।

109. आरोपी संजय एवं रिकू उर्फ नंदगोपाल ने अभ्यर्थी रामसागर के स्थान पर प्रदीप को उक्त परीक्षा में बैठाकर प्रतिरूपण करने द्वारा छल कारित करने का आपराधिक षडयंत्र किया, तथा तीनों अभियुक्तगण प्रदीप, संजय एवं रिकू उर्फ नंदगोपाल ने मिलकर आरक्षक भर्ती परीक्षा 2016 में अभ्यर्थी रामसागर के प्रवेश पत्र एवं उत्तर पुस्तिका में कूट रचना कर उनका मूल के रूप में प्रयोग किया तथा मान्यता प्राप्त परीक्षा में अनुचित साधनों का उपयोग किया। परिणामतः आरोपी प्रदीप, संजय एवं रिकू उर्फ नंदगोपाल को धारा 419, 420, 467, 468, 473, 120 बी भारतीय दंड संहिता एवं म०प्र० मान्यता प्राप्त परीक्षा अधिनियम 1937 की धारा 3/4 आरोप में दोषसिद्ध किया जाता है एवं आरोपी विनय एवं संतोष को धारा 419, 420, 467, 468, 473, 120 बी भारतीय दंड संहिता एवं म०प्र० मान्यता प्राप्त परीक्षा अधिनियम 1937 की धारा 3/4 के अपराध के आरोपों से दोषमुक्त किया जाता है।”

25. The question now is as to whether proof of guilt would amount to moral turpitude. The words and expressions ‘moral turpitude’ refer to such behaviours or occasions that are considered morally depraved. It has the element of dishonesty, fraud or other morally corrupt conduct. Thus, whatever the action is vile or depraved would amount to moral turpitude and activities which wicked and despicable would amount to involving moral turpitude.

26. Supreme Court in the case of **Sushil Kumar Singhal v. Regional Manager, Punjab National Bank, (2010) 8 SCC 573** considered the expressions ‘moral turpitude’ and vide paragraphs 23, 24 and 25 held thus:

“23. “Moral turpitude” means per Black’s Law Dictionary (8th Edn., 2004):

“Conduct that is contrary to justice, honesty or morality. In the area of legal ethics, offenses involving moral turpitude – such as fraud or breach of trust. Also termed moral depravity.”

‘Moral turpitude means, in general, shameful wickedness – so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people.’”

24. In *Pawan Kumar v. State of Haryana (1996) 4 SCC 17* this Court has observed as under:

“12. ‘Moral turpitude’ is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile depraved or having any connection showing depravity.”

The aforesaid judgment in Pawan Kumar has been considered by this Court again in Allahabad Bank v. Deepak Kumar Bhola, (1997) 4 SCC 1 and placed reliance on Baleshwar Singh v. District Manager and Collector, AIR 1959 All 71, wherein it has been held as under:

“‘The expression ‘moral turpitude’ is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man.”

25. In view of the above, it is evident that moral turpitude means anything contrary to honesty, modesty or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked and base activities.”

27. In the case of **Pawan Kumar v. State of Haryana and another, (1996) 4 SCC 17**, the Court defined moral turpitude as an expression in societal parlance to describe conduct which is inherently base, vile, depraved or having connection showing depravity. Termination of service for involvement of an employee in a criminal case leading to conviction would certainly be logical one and would be necessary.

28. In the case of **Deputy Director of Collegiate Education (Administration), Madras v. S. Nagoor Meera, (1995) 3 SCC 377**, the Court on continuance of employee upon conviction in a criminal case held that clause (a) of second proviso to Article 311(2) is very

much permissible. The authority need not wait for any appeal or decision upon such appeal preferred against the order of conviction.

29. In that case, the Court was dealing with the conviction of an employee, of course, in a murder case. Vide paragraphs 9 and 10 the Court held thus:

“9. The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311(2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant- accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The, other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. It should be remembered that the action under clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2). As held by this court in Shankardass v. Union of India, (1985) 2 SCC 358:

"Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the government the power to dismiss a person from services "on the ground of conduct which has led to his conviction on a criminal charge. But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly."

10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate

or other higher court, it may not be advisable to retain such person in service. As stated, above, if he succeeds in appeal or other proceedings, the matter can always be reviewed in such a manner that he suffers no prejudice."

30. Neither every case can amount to moral turpitude unless it is a murder with intention of kill under Section 300 I.P.C. nor, every case of fraud or attempt to commit fraud can amount to moral turpitude. The decision of the authority, therefore, would be taken upon the facts of each case.

31. In the case of Ran Vijay Chandra (*supra*) the Court defined the words 'moral turpitude' referring to the various authorities. There of course it was a case of murder and the argument was that offence did not involve moral turpitude. Repelling the argument vide paragraphs 21, 22 and 23 the Court held thus:

"21. Learned counsel for the petitioner has placed reliance upon the decision of the Punjab High Court In Civil Misc. Writ Petition No. 7488 of 1992, Man Singh v. Dharamjit Singh and others. In that case, the finding was that the murder was committed by the accused to take revenge from Harchand who had also murdered Hazara Singh, father of Dalip Singh who was an accused along with the petitioner there and taking this fact into account the Court took the view that the offence did not indicate inherent wickedness of the petitioner therein. The case was decided on its own fact.

22. In the present case, there is nothing to show that the offence was committed by the petitioner on provocation by the deceased or any of his family member. The motive assigned to the prosecution was that there was a dispute in relation to contract and the murder was committed in that respect. The Sessions Judge found that even if that part be ignored, admittedly there was a rivalry between two families and bad blood. The murder cannot be said to be in a grave provocation. On the facts and circumstances of the present case, the offence committed by the petitioner involves moral turpitude.

23. In these circumstances, the petitioner shall be disqualified to continue in office unless the conviction is set aside in appeal as provided under Rule 453 (1) (d) of U. P. Co-operative Societies Rules, 1968."

32. In the case of Shashi Kapoor (*supra*) the Court relied upon the above judgment in the case of Ran Vijay Chandra (*supra*), wherein the petitioner – Shashi Kapoor was convicted in the case of murder. Moral turpitude not only involves the act of committing murder but also the act of committing such public offence which has the shocking effect as to conscious of seniority. If a person involved in impersonating real candidate in a Government recruitment drive of police constable and in conspiracy with a team of persons then the motive is clear to commit an offence deliberately and knowingly. Any attempt to disrupt the Government selection and proceedings in holding public examination for recruitment purposes, would involve a case of moral turpitude.

33. In view of the above, the action, therefore, of the 6th respondent in preparing fake IDs, pan cards and admit cards and also to the extent of preparing another answer sheets to be replaced as original amounted to an act suffering from moral depraving. It was recruitment examination for public employment and the 6th respondents in conspiracy with the other persons not only interfered with the Government recruitment process by committing forgery and fraud to get certain persons successful in the written examination and they appeared in appearing on their behalf with fake IDs. This is really a vileness.

34. In the present case, in my considered view, the action of 6th respondent in committing offence for which he has been held guilty in a judgment of conviction and sentence passed by the Sessions court, was an act involving moral turpitude and, therefore, Committee of Management was required to take consequential action but surprisingly after taking over the Committee of Management not only reinstated him but even supported his claim to take the charge of officiating principal of the institution. Such a convicted person is

certainly not a suitable person to be given charge of head of an educational institution. Not only it would give a wrong message to the society but it will have adverse effect in the innocent mind of the students and it may also affect adversely the administration of the institution.

35. It is true that senior most teacher is to be given the charge but the question is, whether senior most teacher should be given charge in all circumstances. One of the arguments so advanced is that unless and until a teacher is found to be bed ridden, he should be given charge if he is senior most. I do not find any reason justifiable enough in the argument so advanced nor, do I find this reasoning to be sound one. It could be a case where a teacher is completely insane or suffering from such mental thought disorder that giving him charge would result in *mal* administration what to say about the proper administration. A person could be even in a position not to discharge such duties for certain unavoidable circumstances relating to his health or physical conditions may be he is not bed ridden. In every case of promotion where seniority is the rule, it is always to be taken as seniority subject to rejection of unfit. Suitability of a candidate, therefore, to hold the position will have to be given due consideration otherwise any other interpretation to the rule of seniority in matters of promotion will lead to absurdity.

36. Suitability of a candidate to be promoted may depend upon many factors and one factor would be to judge whether a candidate who is to be offered a promotional post, would be entitled in law to be selected and appointed on that post looking to his service record and character.

37. In service jurisprudence the endeavour of an employer is always to ensure that the candidate who is being offered employment

is suitable from all angles besides merit and if a candidate convicted in a criminal case involving moral turpitude, cannot be offered appointment, then such a person definitely does not deserve promotion even in officiating capacity. The case in hand is of this kind and so in the considered view of the Court, the 6th respondent does not deserve to hold a post of officiating principal of a recognized and aided institution under Intermediate Education Act, 1921. Besides above, 6th respondent is not going to lose anything because management has reinstated him on his original post of Lecturer upon which he has the lien and against which he would be drawing salary until management takes decision to remove him from employment on account of conviction in a criminal case.

38. All these above aspects have not been considered either by the District Inspector of Schools or by the Additional Director of Education while passing the orders impugned. Even otherwise no appeal was maintainable either before the Deputy Director of Education or Additional Director of Education and so orders passed by these two authorities are held to be *null* and *void* for want of lawful authority.

39. In view of the above, it can be safely concluded that the 6th respondent has been held guilty of a serious public offence. The legal position is well settled that a conviction involving the moral turpitude dis-entitles a person to hold the position in public employment.

40. Thus, in my view while for technical reasons 6th respondent may continue as an Assistant Teacher but certainly would not be entitled to hold the position of officiating principal of the institution.

41. In view of the above, the writ petition succeeds and is allowed. The order passed by the District Inspector of Schools dated 12th June,

2023 and the order passed by the Additional Director of Education dated 6th October, 2023 are hereby set aside.

42. Consequences to follow.

Order Date :- 22.3.2024
Atmesh