

**Court No. - 40**

**Case :-** SPECIAL APPEAL DEFECTIVE No. - 791 of 2023  
**Appellant :-** C/M Sri Durga Ji (P.G) College And Another  
**Respondent :-** Ambrish Kumar Gond And 5 Others  
**Counsel for Appellant :-** Ravindra Nath Yadav,Akhilesh Kumar Yadav  
**Counsel for Respondent :-** C.S.C.,Alok Mishra

Connected with

**Case :-** SPECIAL APPEAL DEFECTIVE No. - 790 of 2023  
**Appellant :-** C/M Sri Durga Ji (P.G.) College And Another  
**Respondent :-** Satendra Kumar Singh And 5 Others  
**Counsel for Appellant :-** Ravindra Nath Yadav,Akhilesh Kumar Yadav  
**Counsel for Respondent :-** C.S.C.,S.M. Mishra

And

**Case :-** SPECIAL APPEAL DEFECTIVE No. - 84 of 2024  
**Appellant :-** Ambrish Kumar Gond And Another  
**Respondent :-** State Of Up And 5 Others  
**Counsel for Appellant :-** Alok Mishra  
**Counsel for Respondent :-** C.S.C.

And

**Case :-** SPECIAL APPEAL DEFECTIVE No. - 803 of 2023  
**Appellant :-** Committee Of Management Sri Durga Ji (P.G.) College And Another  
**Respondent :-** Bharat Singh And 3 Others  
**Counsel for Appellant :-** Ravindra Nath Yadav,Akhilesh Kumar Yadav  
**Counsel for Respondent :-** C.S.C.,Pawan Kumar Shukla,Santosh Kr. Singh Paliwal

**Hon'ble Ashwani Kumar Mishra,J.**  
**Hon'ble Syed Qamar Hasan Rizvi,J.**

1. Delay in filing of the appeals has been explained to the satisfaction of the Court. Applications are allowed. Delay in filing of appeals is condoned.
2. These four appeals are in respect of appointments offered on Class-III posts to four Class-III employees of Shri Durga Ji Postgraduate College Chandeshwar, Azamgarh. The writ petitions filed by the four Class-III employees have been

allowed by the learned Single Judge and they have been held entitled to reinstatement without back wages. Since all the appeals have been heard together and common questions of fact and law are involved, as such, with the consent of learned counsel for the parties all the four appeals are being decided by this common judgment.

3. Shri Durga Ji Postgraduate College Chandeshwar, Azamgarh (hereinafter referred to as the 'institution') is duly recognized educational institution, affiliated to Veer Bahadur Singh Purvanchal University, Jaunpur. It is governed by the provisions of the U.P. State Universities Act, 1973, as well as the statutes of the Purvanchal University. In the concerned institution process of recruitment was initiated on the post of Lab Assistant and Library Clerk. An advertisement was issued by the institution for appointments to be made on 3 posts of Lab Assistant, one of which was reserved for Scheduled Castes candidate; 1 post of Routine Clerk and 3 posts of Class-IV employees. The advertisement was issued by the then Manager Kanhaiya Singh as well as Dr. Phool Chandra Singh, who was the Officiating Principal of the institution. The selection committee was constituted for appointment to Class-III posts consisting of the Officiating Principal Dr. Phool Chandra Singh. Bharat Singh and Manoj Kumar Yadav were appointed as Routine Clerk; while Satyendra Kumar Singh was appointed as Library Clerk. Ambarish Kumar Gond, and Ravindra were appointed as Lab Assistant. Certain other persons were appointed on Class-IV post. These appointments were approved by the Regional Higher Education Officer, Varanasi on 25.11.2004. The candidates, who were duly appointed, started working after their appointments were approved by the

Regional Higher Education Officer and also started receiving salary. No issue in that regard was apparently raised.

4. An Authorized Controller came to be appointed in the institution in January, 2008. It is thereafter that some doubts were raised with regard to legality of the appointments offered to the aforesaid persons on the ground that regular Principal of the institution had not participated in the selection proceedings and that the Officiating Principal had no right to take part in such proceedings.

5. It appears that the Regional Higher Education Officer proposed cancellation of the appointments offered to Class-III employees, wherein the Officiating Principal Dr. Phool Chandra Singh had participated as a member of the Selection Committee. The Regional Higher Education Officer, nevertheless, sought guidance from the Director, Higher Education, U.P. The Director, Higher Education on 26.3.2009 directed cancellation of the appointment of such employees. In compliance of the orders passed by the Director, the Principal of the institution passed an order on 2.6.2010 suspending the payment of salary of the concerned employees. The Authorized Controller subsequently passed an order on 18.6.2010 cancelling the appointments offered to the Class-III employees in compliance of the orders passed by the Director on 26.3.2009. The aforesaid orders came to be challenged before this Court in separate writ petitions filed by the concerned employees.

6. Writ Petition No.49802 of 2010 came to be filed by Bharat Singh, who was appointed as Routine Clerk. Writ Petition No.54687 of 2010 was filed by Satendra Kumar Singh, who was

appointed as Library Clerk. Writ Petition No.47780 of 2010 came to be filed by Ambarish Kumar Gond and Ravindra. The writ petitions were initially dismissed by learned Single Judge, but those orders were reversed in appeal on the ground that facts have not been correctly adjudicated. The orders passed in Special Appeal No.1748 of 2012 filed by Ambarish Kumar Gond and another has been produced before us, which would go to show that the Division Bench was of the view that facts have not been correctly appreciated by the learned Single Judge, and therefore the dismissal of writ petitions was not proper. The special appeals were, consequently, allowed and the matters were remitted back for a fresh consideration of cause. It is pursuant to such orders passed in the year 2013 by the Division Bench that the abovenoted three writs have now been finally decided by the learned Single Judge vide orders dated 25.4.2023 and 22.5.2023. Learned Single Judge has come to the conclusion that cancellation of appointments offered to Class-III employees was not based on any proper enquiry report and opportunity of hearing has also been denied to such persons. It is for this reason that the writs filed by Class-III employees have been allowed. They have been held entitled to reinstatement and continuity in service. Salary, however, has been denied to them on the ground that they have admittedly not worked from 2010 to 2023. Aggrieved by these orders of learned Single Judge, Special Appeal Defective Nos.791 of 2023, 790 of 2023 and 803 of 2023 have been filed by the Committee of Management, whereas on behalf of Class-III employees Ambarish Kumar Gond and Ravindra, Special Appeal Defective No.84 of 2024 has been filed, insofar as back wages have been denied to them.

7. We have heard Sri R.N. Yadav for the Committee of Management, whereas Sri V.K. Singh, learned Senior Counsel assisted by Sri S.M. Mishra has been heard on behalf of Satendra Kumar Singh. Bharat Singh and two appellants Ambarish Kumar Gond and Ravindra are represented by Sri Alok Mishra. We have examined the materials placed on record.

8. It is undisputed that the institution is a recognized institution and certain vacancies of Class-III and Class-IV posts had arisen in the institution. The advertisement was duly published in that regard, which is on record of Special Appeal Defective No.791 of 2023 at page 158. The advertisement has been issued jointly by the Manager Kanhaiya Singh and the Officiating Principal Dr. Phool Chandra Singh. Pursuant to this advertisement selection committee has been constituted and all four Class-III employees were duly appointed. Their appointment was also approved by the Regional Higher Education Officer, Varanasi on 25.11.2004. These employees started working and receiving salary from State Exchequer. There is no denial of such facts in any of the appeals.

9. The dispute with regard to appointments offered to Class-III employees originated on the report of Regional Higher Education Officer, as per which the selection committee itself was flawed, since regular Principal of the institution was not associated in issuing the advertisement nor was he a member of the selection committee. This is the only objection on which the appointments offered to Class-III employees were set aside. In such view of the matter, it would be necessary to examine as to whether a valid person had participated in the selection proceedings as Principal or not?

10. It is undisputed that Dr. Durga Prasad Dwivedi was the Principal of the institution. He was placed under suspension by the Committee of Management on 3.9.2004. The suspension of Dr. Durga Prasad Dwivedi was stayed by the Vice Chancellor on 19.10.2004. On 16.12.2004 the suspension order was set aside by the Vice Chancellor. The order dated 16.12.2004 came to be challenged by the Committee of Management before a Division Bench of this Court in Writ Petition No.55955 of 2004. The Division Bench of this Court quashed the order passed by the Vice Chancellor after holding that he had no jurisdiction to set aside the suspension of the Principal. The suspended Principal Dr. Durga Prasad Dwivedi thereafter filed Writ Petition No.51603 of 2005 challenging his suspension. This writ petition was disposed of after holding that in view of the previous order passed by the Co-ordinate Bench in Writ Petition No.55955 of 2004, there was no occasion for this Court to interfere with the order of suspension. The enquiry, however, was directed to be concluded within a period of three months.

11. The order of the Division Bench dated 3.1.2005 in Writ Petition No.55955 of 2004 has attained finality. Once that be so, it remains undisputed that regular Principal Dr. Durga Prasad Dwivedi continued under suspension. The plea taken by the educational authority and the Committee of Management that Dr. Durga Prasad Dwivedi ought to have participated in the recruitment as the Principal of the institution is clearly impermissible. A suspended Principal cannot take part in the recruitment proceedings, nor can he be expected to form part of the selection committee. The objection taken by the Committee of Management as well as the educational authorities in this regard is, therefore, found bereft of merits.

12. It is otherwise undisputed that Dr. Phool Chandra Singh was authorized to officiate as Principal and his signatures were attested. The officiation of Dr. Phool Chandra Singh as Principal has not been challenged by anyone. It is undisputed that Dr. Phool Chandra Singh had participated in the recruitment exercise and was also a member of the selection committee. Being the Officiating Principal he was entitled to be a part of the selection committee, since the statutes of the University contemplates a selection committee for appointment to Class-III post to consist of Principal. As the regular Principal was under suspension, the Officiating Principal had to take part in such proceedings. We find that there was absolutely no occasion for anyone to doubt the recruitment of Class-III employees on the ground that an incompetent person had participated in the recruitment proceedings, as the Principal. The educational authorities as well as Authorized Controller clearly fell in error in doubting the correctness of the recruitment proceeding culminating in appointment of Class-III employees, who were duly approved by the Regional Higher Education Officer. We otherwise find substance in the reasoning assigned by learned Single Judge to interfere with the order of the authorities, inasmuch as at no stage, any opportunity of hearing was given to the selected employees. No disciplinary enquiry was otherwise held. The services of Class-III employees, who were duly appointed and approved by the educational authorities, could not have been set aside, merely on a misconceived apprehension that selection committee was incompetent. We, therefore, fully endorse the view taken by the learned Single Judge that the cancellation of appointment of Class-III employees was impermissible. Learned Single Judge,

therefore, has rightly set aside the order passed by the Director dated 26.3.2009 as well as the consequential orders passed by the Principal dated 2.6.2010 and the order passed by the Authorized Controller dated 18.6.2010. The Special Appeal Defective Nos.791 of 2023, 790 of 2023 and 803 of 2023 filed by the Committee of Management, in that regard, are dismissed.

13. So far as the claim for back wages put forth by the two employees are concerned, we find that they have not worked since 2010. Although we find substance in the argument of Sri Alok Mishra that it was for no fault of these employees that they were not allowed to work, yet, in the facts of the case we find that denial of back wages to these two employees cannot be said to be illegal or arbitrary. All these employees, however, would be entitled to continuity in service and their salary etc. would be notionally fixed by granting them the benefit of uninterrupted continuance since their appointment in the year 2004 without any back wages for the period 2010 to 2023. The authorities shall ensure that all the four Class-III employees would be allowed to resume their duties, forthwith, if it has not already been done, and they would be entitled to salary in terms of the above directions.

14. Subject to the observations made above, Special Appeal Defective No.84 of 2024 stands disposed of.

**Order Date :-** 6.2.2024  
Anil

(Syed Qamar Hasan Rizvi,J.) (Ashwani Kumar Mishra,J.)