



Neutral Citation No. -
2026:AHC-LKO:21761

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 1339 of 2013

Smt. Manju Singh and 3 Ors.

.....Petitioner(s)

Versus

State of U.P. Thru its Secy.Secondary Edu.Govt.of UP and Ors.

.....Respondent(s)

Counsel for Petitioner(s)	: Ajay Pratap Singh,
Counsel for Respondent(s)	: C.S.C.,

-:: A N D ::-

WRIT - A No. - 1348 of 2013

Deepak Kumar Pathak and others

.....Petitioner(s)

Versus

State of U.P.Thr.Secy.Secondary Education Civil Sectt.and Ors.

.....Respondent(s)

Counsel for Petitioner(s)	: Ajay Pratap Singh,
Counsel for Respondent(s)	: C.S.C.,

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Shri Ajay Pratap Singh, learned counsel for the petitioners and Shri Rajeev Srivastava, learned Additional Chief Standing Counsel for the respondents-State.

2. Both the writ petitions are being decided by means of a common judgment and order treating Writ-A No.1339 of 2013 to be leading writ

petition and the judgment and order passed therein, shall be equally applicable to both the writ petitions.

3. By means of the present writ petition, the petitioners have prayed for issuance of a writ in the nature of Certiorari, quashing order dated 31.10.2012 passed by opposite party no.3 (Joint Director of Education, Devi Patan Division, Shiksha Bhawan, Faizabad) as contained in Annexure-1 to the writ petition, with further prayer to issue a writ in the nature of Mandamus commanding the opposite parties to allow the petitioner to work on the post of Assistant Teachers in attached Primary School viz. Balrampur Girls Inter College, Balrampur and to ensure payment of salary to the petitioner every monthly regularly.

4. Factual matrix of the case is that Balrampur Girls Inter College, Balrampur is an institution imparting education upto intermediate standard. The recognition of the primary section has also been granted by the State Government. The institution is receiving grant-in-aid from the State Government of Uttar Pradesh.

Eleven posts of Assistant Teacher in attached primary section was vacant in the institution time to time due to retirement of the teachers. The selection process was started by the Committee of Management through Authorized Controller of the institution by way of advertisement.

The petitioners applied for the appointment and after recommendation of the selection committee, the opposite party no.5 issued appointment letters in favour of the petitioners on the post of Assistant Teacher in attached primary section. In pursuance thereto the appointment letters, the petitioner reported their joining to the Authorized Controller of the institution on 31.8.2010 and the same was accepted by the authority concerned.

Thereafter, the matter was referred before the District Inspector of Schools for grant of approval of the appointment of the petitioner by the opposite party no.5 and the District Inspector of Schools has recommended the same before the Joint Director of Education for further action.

Some persons who were also appointed along with the petitioners preferred Writ Petition NO.1452 (SS) of 2012 and the same was disposed of vide order dated 23.3.2012 passed by the Hon'ble Court with the direction to the Joint Director of Education, Devi Patan Division, Faizabad to take decision in respect of the petitioners selection within three months.

A review petitioner was also preferred against the order dated 23.3.2012 by the Committee of Management but the same was also disposed of with the direction of the earlier order vide order dated 21.5.2012.

The Joint Director of Education, Devi Patan Division, Faizabad passed the impugned order rejecting the claim of the petitioners on the post of Assistant Teacher in attached primary section on the ground which has nothing to do with the reality and only due to non-fulfillment of his legal demand despite of fact that the petitioners were appointed by following the due process after making proper advertisement but the same has not been considered by the then Joint Director of Education in most illegal manner.

5. Submission of learned counsel for the petitioner is that the impugned orders have been passed basically on the ground that the Authorized Controller has refused that he has not made signature on the appointment letters of the petitioner and in this regard, submission of learned counsel for the petitioner is that whole selection process has been made by the Authorized Controller and under the pressure on the Joint Director of Education, he has made false statement.

6. Next submission of learned counsel for the petitioner is that the ground of the impugned order cancelling the selection process has been made that there was no approval of the State Government regarding appointment of the petitioners. Submission of learned counsel in this regard is that according to the judgment and order dated 17.4.2012 passed by this Court in Special Appeal No.69607 of 2010, no fresh sanction is required prior to filling of the post in attached primary section.

7. Next submission of learned counsel for the petitioner is that after issuance of the Government Order dated 25.5.2012, the Joint Director of Education can only remand the same before the concerned District Inspector of Schools, Balrampur, as such the order which has been impugned in the writ petition is wholly without jurisdiction.

8. Last submission of learned counsel for the petitioner is that by means of an order passed by the Hon'ble High Court, jurisdiction cannot be created upon any Public Authority who is not empowered to pass the order.

9. In support of his submissions, learned counsel for the petitioner has relied upon the following judgments:

"(i) Anurag Kumar Singh and others v. State of Uttarakhand and others reported in MANU/SC/1174/2016

(ii) Suresh Chandra Mishra v. State of U.P. Thru Secy. Secondary Edu. Civil Sectt. Lko. & others (Case:- SERVICE SINGLE No.6600 of 2018, decided on 10.7.2018)"

10. On the other hand, Shri Rajeev Srivastava, learned Additional Chief Standing Counsel submits that the entire proceedings of appointment was forged and fabricated. The Authorized Controller has also refused that he has not issued appointment letters in its signature. He next submits that the impugned order is just and valid and has been passed under direction issued by this Court and, therefore, there is no illegality or infirmity in the order impugned.

11. Having the rival submission of learned counsel for the parties, I have perused the material on record and law-reports cited by learned counsel for the petitioner.

12. First question which came for determination is that whether the Regional Joint Director of Education is having jurisdiction to pass the order or not. Government Order dated 25.5.2012 empowers the District Inspector of Schools to pass order of approval in regard to appointment made in primary section of attached intermediate college, therefore the order passed by the Regional Joint Director of Education after issuance of the Government Order is wholly without jurisdiction.

13. In regard to question that whether the High Court can create jurisdiction upon an authority by passing the order, this controversy has already been settled by the Hon'ble Supreme Court in the case of **Anurag Kumar Singh and others v. State of Uttarakhand and others** reported in **2016 (9) SCC 426**, operative portion of which is extracted hereinbelow:

"Judicial discretion can be exercised by a Court only when there are two or more possible lawful solutions. In any event, courts cannot give any direction contrary to the statute or rules made thereunder in exercise of judicial discretion. It will be useful to reproduce from Judicial Discretion (1989) by Aharon Barak which is as follows:

"Discretion assumes the freedom to choose among several lawful alternatives. Therefore, discretion does not exist when there is but one lawful option. In this situation, the Judge is required to select that option and has no freedom of choice. No discretion is

involved in the choice between a lawful act and an unlawful act. The Juge must choose the lawful act, and he is precluded from choosing the unlawful act. Discretion, on the other hand, assumes the lack of an obligation to choose one particular possibility among several."

14. While deciding the controversy involved in the present writ petition, the relevant portion of Government Order dated 20.5.2012 is being quoted below:

" प्रेषक

संख्या-15 (स)/15-12-2012

पार्थ सारथी सेन शर्मा,

सचिव,

उ०प्र. शासन।

सेवा में,

शिक्षा निदेशक, माध्यमिक,

उ०प्र०, लखनऊ।

शिक्षा अनुभाग 12
2012

लखनऊ: दिनांक: 25 मई,

विषय:- प्रदेश के अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों से सम्बद्ध प्राइमरी प्रभाग में शासन की अनुमति के उपरान्त नियुक्ति की व्यवस्था में संशोधन।

महोदय,

उपरोक्त विषयक आप के पत्र संख्या सा०-1-शि०/537/2012-13, दिनांक 19 अप्रैल, 2012 के सदर्थ में मुझे यह कहने का निदेश हुआ है कि सम्बद्ध प्राइमरी प्रभाग में बिना पद सृजन कराये अनियमित ढंग से अध्यापकों की नियुक्ति कर राजकोष पर अनावश्यक व्यय भार बढ़ाने हेतु प्रबन्धतंत्रों द्वारा निरन्तर किये जा रहे प्रयासों का संज्ञान लेते हुए शासनादेश संख्या-783/796-03-04 जी (1)/03 दिनांक 19 अप्रैल, 2003 द्वारा उक्त प्रकार के विद्यालयों में पद सृजन, अतिरिक्त कक्षा वर्ग की अनुमति, नियुक्ति तथा अनुमोदन की कार्यवाही पूर्णरूपेण शासन की पूर्वानुमति तक स्थगित रखे जाने के आदेश दिये गये थे और यह भी निर्देश दिये गये थे कि सेवानिवृत्ति से रिक्त होने वाले पदों पर नियुक्तियों विद्यालय की छात्र संख्या, सृजित पद, वार्षिक परिणाम और कार्यभार के सामंजस्य की स्थिति स्पष्ट करते हुए शासन को प्रस्तुत कर शासन की पूर्वानुमति के उपरान्त की जाये।

2- उक्त आदेशित व्यवस्था के अन्तर्गत उपलब्ध रिक्तियों के सापेक्ष प्रबन्धतंत्र द्वारा प्रेषित प्रस्ताव के परीक्षणोपरान्त जनपद स्तर से प्रस्ताव प्राप्त कर निदेशालय स्तर पर परीक्षण के उपरान्त शासन को प्रेषित करने एवं शासन स्तर पर परीक्षणोपरान्त रिक्त पदों को भरे जाने की अनुमति दिये जाने में अनावश्यक विलम्ब होता है और अध्यापकों की समयान्तर्गत व्यवस्था न होने के कारण शिक्षण कार्य कुप्रभावित होता है।

3- निःशुल्क एवं बाल शिक्षा अधिकार अधिनियम लागू हो जाने के उपरान्त यह अपरिहार्य हो गया है कि बच्चों के शिक्षण कार्य हेतु अध्यापकों की समय से विद्यालय में उपलब्धता सुनिश्चित किया जाये।

4- कतिपय प्रकरणों में (यथा रिट याचिका संख्या-12977/2012-जनपद पीलीभीत तथा रिट याचिका संख्या-25733/2012 जनपद कानपुर) मा० न्यायालय द्वारा भी सम्बद्ध

प्राइमरी प्रभाग में रिक्त पदों पर भर्ती की अनुमति शासन की पूर्वानुमति के उपरान्त दिये जाने और प्रकरण में होने वाले प्रक्रियागत विलम्ब पर चिन्ता व्यक्त की गयी है।

5- सम्बद्ध प्राइमरी विद्यालयों में अध्यापकों के चयन / नियुक्ति से सम्बन्धित नियमावली बनाने का प्रकरण शासन के सक्रिय विचार में है अतः प्रश्रुत नियमावली प्रख्यापित होने तक सम्बद्ध प्राइमरी प्रभाग में रिक्त पदों को भरे जाने की अनुमति दिये जाने का अधिकार सम्बन्धित जिला विद्यालय निरीक्षकों को दिये जाने का निर्णय, निम्नलिखित शर्तों एवं प्रतिबन्धों के अधीन, लिया गया है

- (i) पद सृजन, अतिरिक्त कक्षा वर्ग की अनुमति दिये जाने का अधिकार जिला विद्यालय निरीक्षक को नहीं होगा।
- (ii) अनुदानित होने के समय सम्बद्ध प्राइमरी प्रभाग की जनशक्ति कितनी थी और उसके सापेक्ष वर्तमान में कितनी जनशक्ति है, का सम्यक परीक्षण जिला विद्यालय निरीक्षक द्वारा किया जाना अपेक्षित होगा।
- (iii) प्रबन्धतंत्र द्वारा जब किसी सृजित पद के विरुद्ध नियुक्ति की अनुमति जिला विद्यालय निरीक्षक से मांगी जायेगी तो जिला विद्यालय निरीक्षक द्वारा उक्त विद्यालय में अध्ययनरत छात्रों की पंजीकृत छात्र संख्या, औचक निरीक्षण में छात्रों की उपस्थिति का संज्ञान लेना होगा।
- (iv) जिला विद्यालय निरीक्षक यह सुनिश्चित करेगा कि नियुक्ति की प्रक्रिया पारदर्शी है, और वह यह भी देखेगा कि रिक्त पदों के विरुद्ध मर्ती हेतु विज्ञापन दिया गया है अथवा नहीं।
- (v) जिला विद्यालय निरीक्षक द्वारा जब भर्ती हेतु अनुमति दी जायेगी तो उसकी सूचना शिक्षा निदेशक एवं शासन को निश्चित रूप से उपलब्ध कराया जाना आवश्यक होगा।
- (vi) जिला विद्यालय निरीक्षक द्वारा छात्रों की संख्या के सापेक्ष कार्यस्त आध्यापकों की संख्या का परीक्षण मानक
- (vii) के अनुसार किया जाना अनिवार्य होगा। जिला विद्यालय निरीक्षक यह सुनिश्चित करेंगे कि आखक्षण नियमों का कड़ाई से अनुपालन किया जा रहा है।
- (viii) संयुक्त शिक्षा निदेशकों द्वारा जनपदीय भ्रमण के दौरान सम्बन्धित जिला विद्यालय निरीक्षक द्वारा पदों को भरे जाने हेतु दी गयी अनुमति का सत्यापन निश्चित रूप से किया जाना सुनिश्चित किया जायेगा।
- (ix) विद्यालय प्रबन्धतंत्र एवं जिला विद्यालय निरीक्षक की दुरभिसन्धि का प्रकरण संज्ञान में आने पर नियमानुसार दण्डात्मक कार्यवाही सम्बन्धित सक्षम स्तर से की जायेगी।

6- उपरोक्तानुसार सम्बद्ध प्राइमरी प्रभाग में आध्यापकों की उपलब्धता समयबद्ध ढंग से सुनिश्चित कराने के उद्देश्य से और प्रक्रियात्मक अनावश्यक विलम्ब से बचने के लिए शासनादेश संख्या-783/79-6-03-4 जी (1)/03 दिनांक 19 अप्रैल 2003 जिसमें नियुक्तियों शासन की पूर्वानुमति के उपरान्त किये जाने के निर्देश दिये गये थे, की व्यवस्था समाप्त की जाती है। "

15. On perusal of the relevant provisions of Government Order, it recites that the power to grant of approval to the appointment of the Assistant Teacher appointed in Primary Section vests in District Inspector of Schools.

16. In view of the law report referred hereinabove, there is no substance in the submission of learned Additional Chief Standing

Counsel for the respondents that the order of the Regional Joint Director of Education rejecting the claim of the petitioner is valid order. In view of the provisions contained under the Government Order, District Inspector of Schools is empowered to pass appropriate order of approval, therefore the respondents have committed gross illegality in passing the impugned order.

17. In the order of the Hon'ble Supreme Court, a direction was issued to pass appropriate order in accordance with law and the statutory rules provided under the Statute and Rules. In case Regional Joint Director of Education has perused the Government Order dated 20.5.2012, he would not have passed the order impugned and the matter would have been referred to the District Inspector of Schools who has held to be competent to pass appropriate order of approval.

18. In view of the judgment referred by the Hon'ble Supreme Court in the case of **Anurag Kumar Singh (supra)**, the Hon'ble High Court cannot create jurisdiction upon the authority to pass an order of approval. Therefore, the order being wholly without jurisdiction is liable to be set aside.

19. Accordingly, impugned order dated 31.10.2012 passed by opposite party no.3 (Joint Director of Education, Devi Patan Division, Shiksha Bhawan, Faizabad) as contained in Annexure-1 to the writ petition is set aside.

20. In the result, both the writ petitions succeed and are **allowed**. However, the respondent- District Inspector of Schools is directed to discharge its duties as provided under Government Order dated 20.5.2012 and to pass appropriate reason and speaking order after affording opportunity of hearing to the parties for the grant of approval in accordance with law within a period of two months from the date of production of a certified copy of this order.

(Irshad Ali,J.)

March 25, 2026
GK Sinha