

(2009) 01 AHC CK 0123

In the Allahabad High Court

Case No : Special Appeal Nos. 1461 of 2005 and 12 of 2007

Committee of Management

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Recruitment and Conditions of Service of Teachers) Rules, 1978 — Rule 4(1), 5

Citation : (2009) 01 AHC CK 0123

Hon'ble Judges : S.Rafat Alam, J and Sudhir Agarwal, J

Final Decision : Disposed Of

Judgement

Sudhir Agarwal, J.—Both these matters involve common questions of law and facts and, therefore, as agreed by learned counsel for the parties have been heard together and are being decided by this common judgement.

2. These intraCourt appeals under the Rules of the Court have been preferred by the Committee of Management, Mahila Udyog Mandir Junior High School, Uncha Mandi, Allahabad (hereinafter referred to as the "School") through its Manager, Sri Akhilesh Kumar Mishra assailing the judgement dated 10.11.2005 of the Hon"ble Single Judge whereby it has disposed of the Writ Petition No. 51322 of 2000 filed by respondents no. 6 to 8 in Special Appeal No. 1461 of 2005 (hereinafter referred to as the "leading appeal") and Writ Petition No. 51985 of 2000 filed by respondent no. 6 in Special Appeal No. 12 of 2007.

3. The facts in brief giving rise to the present dispute are that the School is a recognised junior high school by the Board of Basic Education (in short "the Board") under the U.P. Basic Education Act, 1972 (hereinafter referred to as "1972 Act") and is also getting grant in aid from the State, hence, the liability of payment of salary is with the State Government under the provisions of U.P. Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 1978 (hereinafter referred to as the "Payment of Salaries Act, 1978"). The recruitment and conditions of service of teachers in the School are governed by the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and

Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as the "Recruitment Rules, 1978"). Sri Akhilesh Kumar Mishra has claimed that he is continuously holding the office of Manager of the Committee of Management of the School since 06.09.1992. However, one Sri Surendra Kumar Dhawan claiming himself to be the Manager of the Committee of Management published an advertisement on 22.04.1999 inviting applications for appointment of three Assistant Teachers in senior basic classes and one Assistant Teacher in junior basic classes. Sri Akhilesh Kumar Mishra on getting information about the aforesaid advertisement got another news published in daily newspaper "Amar Ujala" dated 24.04.1999 that the aforesaid advertisement of 22.04.1999 is illegal and without basis since there is a dispute of management in the School and, therefore, the applicants should be cautious and not get trapped. He also said to have informed the Additional Director of Education (Basic) U.P. Allahabad pursuant where to on 01.05.1999 the Additional Director of Education (Basic) said to have issued a letter addressed to Regional Assistant Director of Education (Basic), Allahabad requiring it not to make any appointment in the School due to the management dispute. Similar information was also communicated to the Board pursuant where to Secretary of the Board said to have issued a letter on 04.05.1999 informing the District Basic Education Officer, Allahabad (hereinafter referred to as the "DBEO") to ensure that no appointment is made in the School till the management dispute of the institution is resolved. To the same effect another letter was issued by the Director of Education (Basic) U.P., Allahabad on 24.05.1999 which was also addressed to DBEO. It is also said that the DBEO vide his letter dated 16.06.1999 informed the Additional Director of Education (Basic), Allahabad that no action has been taken from his office giving permission to the School for making appointment and moreover the appointment has been stayed by his office also.

4. It also appears that Sri Akhilesh Kumar Mishra filed Writ Petition No. 20786 of 1997 and Sri Surendra Kumar Dhawan filed Writ Petition No. 36395 of 1997 in respect to the management dispute. The writ petition of Sri Surendra Kumar Dhawan was disposed of by the Hon'ble Single Judge vide judgement dated 15.03.2000 directing the parties to appear before the Regional Director of Education who was required to pass a reasoned order in accordance with law in respect to the management dispute which would be subject to the original suit pending in the civil court.

5. In the meantime it appears that on 23.06.2000 the Regional Assistant Director of Education (Basic) passed order recognising Sri Akhilesh Kumar Mishra as Manager. Writ Petition No. 29761 of 2000 was filed challenging the aforesaid order dated 23.06.2000 which is pending before this Court.

6. However, we are not concerned in this case with the management dispute and for the purpose of present case suffice it to mention that respondents no. 6 to 9 in leading appeal were selected for appointment to the post of Assistant Teacher in the School in 1999 pursuant to advertisement dated 22.04.1999 and their

selection was approved by the DBEO vide letter dated 12.05.2000 and pursuant thereto the appointment letters were issued under the signatures of Sri Surendra Kumar Dhawan as Manager of the School on 13.05.2000 appointing respondents no. 6 to 9 in leading appeal on the post of Assistant Teacher in the School. The aforesaid respondents joined the institution and their salary bills were also prepared by the management but the salary was not paid. The Deputy Director of Education acting on behalf of Director of Education (Basic) issued a letter on 28.09.2000 directing the DBEO to cancel appointments made during the period when there was a management dispute in the School but four Assistant Teachers were appointed and inform the Director about the authority concerned responsible for such action.

7. The respondents no. 6 to 8 in leading appeal aggrieved by the order dated 28.09.2000 filed Writ Petition No. 51322 of 2000 seeking a writ of certiorari quashing the same and also sought a writ of mandamus commanding the respondents in the writ petition to pay salary to them. Respondent no. 9 in the leading appeal filed Writ Petition No. 51985 of 2000 for the same relief. The writ petition of respondents no. 6 to 8 has been disposed of by Hon''ble Single Judge vide his detailed judgement dated 10.11.2005. He has also quashed the order dated 28.09.2000. The writ petition of respondent no. 9 in the leading case was also disposed of vide judgement of the same date passed in terms of the detailed judgement in Writ Petition No. 51322 of 2000. The Hon''ble Single Judge has quashed the said order only on the ground that before passing the said order no opportunity was afforded to the respondents no. 6 to 9 since having appointed they had a right of notice before termination.

8. Learned counsel for the appellants in both the appeals has raised only one issue before us that from the very order dated 12.05.2000 of DBEO whereby she granted approval to the appointments of respondents no. 6 to 9 of the leading appeal on the post of Assistant Teacher in the School, it is evident that they did not possess the requisite minimum educational qualification necessary for appointment to the said post. In the circumstance the alleged appointments of respondents no. 6 to 9 were nullity in the eyes of law and in these admitted facts and circumstances there was no occasion for Hon''ble Single Judge to set aside the order dated 28.09.2000 and to remand the matter directing the authority concerned to pass a fresh order. When the leading appeal was admitted by this Court on 03.11.2006 it is evident from the order passed on the said date that it is only on this question which was raised before this Court that the appeal was admitted and notices were issued to the contesting respondents. The respondents no. 6 to 9 thereafter were given full opportunity to show as to whether they possess requisite qualification for appointment on the post of Assistant Teacher or not.

9. On behalf of respondents no. 6 to 8 an affidavit alongwith stay vacation application has been filed wherein nothing has been said about the educational qualification of the said respondents but in para 14 thereof it is averred that a

large number of teachers without BTC qualification are working and getting salary but the said respondents having higher qualification are not paid salary only because of the filing of special appeal by the management. He has filed several documents showing that the basic education authorities have granted approval to the appointment of Assistant Teachers in various junior high schools despite of the fact that they did not possess requisite qualification of BTC etc. prescribed in the Rules. They have also filed a detailed counter affidavit in the leading appeal wherein it is stated that due to nonavailability of BTC, JTC, HTC and CT, about more than 70 thousands Assistant Teachers were appointed in the recognised institutions in the State of U.P. and they are continuously getting salary though they do not possess requisite qualification under 1978 Rules. Reference has also been made to the Government Order dated 06.09.1994 for providing in service training to those Assistant Teachers of primary schools who were appointed without possessing the requisite training qualification under the Rules. Relying on the Division Bench judgement in Special Appeal No. 21 of 1998 (Sachiv Basic Shiksha Parishad U.P. and others Vs. Triveni Prasad Pandey and others) decided on 01.11.2001 it is said that if a person possesses higher qualification, he cannot be denied appointment for that reason alone.

10. On behalf of respondent no. 5, i.e., the Head Mistress of the School a separate counter affidavit has been filed in the leading appeal and in para 14 thereof it has been stated that the appointment process and appointment letter issued to respondents no. 6 to 9 are valid so far as it relates to appointment process and postings are concerned. It is also stated in the same paragraph that after granting approval by the competent authority the appointment cannot be reopened by anyway under law. However, from the averments of paragraphs 17 and 18 it is evident that none of the respondents no. 6 to 9 possess requisite qualification, i.e., training qualification prescribed under Recruitment Rules, 1978 though it is an essential educational qualification. The respondent no. 5 has tried to explain so many other things with respect to training qualification and it would be useful to refer para 17 and 18 of the counter affidavit:

"17. That the contents of paragraph no. 18, 19 and 20 of the affidavit are misconstrued hence not admitted as stated and in para under reply it is submitted that the judgement referred by the appellant are not applicable into the appointment in question. The appellant had never raised such points nor taken any plea either in argument or in counter affidavit before the learned single judge and at this stage he cannot be permitted to create new dispute nor he can be permitted to raise new points which were not a part of the writ petition before learned single judge. Moreover it is submitted that the B.T.C. Certificate/course is done in 2 years and in Special B.T.C., B.Ed. and L.T. Holders are permitted for trained grade getting training only within three months. The touchstone as such has been not followed in Special B.T.C. course also. The Special B.T.C. course came from first time after 2000 and the appointment of the petitioners are prior to same. The appointment can not be invalidated as such and if any such training requires, there is already a provisions to provide the

departmental training and further there is a provisions to give exemption from training after completing 10 years teaching experience. This Hon"ble Court has also come to conclusion in some of the writ petition that 5 years teaching experience is enough for exemption from the training secondly such restraints are only applicable in primary schools run and controlled by Basic Shiksha Parishad in rural area and not in nonParishadiya schools. Thirdly the institution in question is recognised junior High School run and controlled by the private management therefore the standard for the appointment of in Parishadiya schools are to be distinguished from the institution in question.

18. That there is a lack of B.T.C. holders into the states and institution can not be left for destruction of the purposes of impact in education therefore the recruitment process in lack of B.T.C. holders is even to be continued among B.Ed./L.T. holders moreover the department may provide them training if necessary."

11. It is also stated on behalf of the respondents that their appointments having not been challenged, it is not open to the management to raise this ground of lack of qualification so as to deny salary to the respondents no. 6 to 9 and it is also not open to the State to deny payment of salary on the ground that the respondents no. 6 to 9 lack requisite qualification once their appointment has been approved by the DBEO as they are stopped.

12. Lastly it is contended that an amendment has been made in the Recruitment Rules, 1978 including the qualification of B.Ed. and, therefore, in view of the subsequent amendment in the Rules the appointment of respondents no. 6 to 9 is liable to be treated valid entitling them for salary for the entire period commencing from the date of their appointment.

13. It is worthy to notice hereat that in para 19 of the affidavit filed in support of the stay application in leading appeal the appellants has averred as under:

"19. That admittedly the service conditions of the teachers of recognised basic school is governed by the rule known as Uttar Pradesh Recognised Basic School (Junior High Schools) (Recruitment and Condition of the Service of the Teacher), Rules, 1978. The minimum qualification for the post of Assistant Teacher of recognised school shall be Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh or equivalent examination (with Hindi and Teacher's training Course recognised by State Government or a Board such as Hindustani Teaching Certificate, Junior Teaching Certificate, Basic Teaching Certificate or Certificate of Training). Admittedly none of the petitioners/respondents possess aforesaid qualification, on the other hand Smt. Sarita Dwivedi possess M.A. Lt., Km. Shipra possess B.A., Lt., Smt. Poonam Srivastava possess M.A., B.Ed. and Smt. Savitri Devi possess BA, B.Ed. Since none of the petitioners possess essential qualification, their appointment was void abinitio and could not have been in countenance."

14. In reply thereto the respondents no. 6 to 8 in para 42 of the counter affidavit

have said as under:

"42. That the contents of paragraph no. 19 of the affidavit is not admitted and denied. It is submitted that the State Government by various Government Orders has permitted the exemption from BTC Training which can be acquired during service."

15. Before proceeding further it would be appropriate to have a glance hereat over the provisions prescribing requisite qualifications in Recruitment Rules, 1978 for appointment to the post of Assistant Teacher in junior high schools.

16. Rule 4(1) of Recruitment Rules, 1978 provides for minimum qualification which an Assistant Teacher must possess for appointment in a recognised school. Sub Rule (2) is in respect of Headmaster. Rule 4 reads as under:

"4. Minimum qualification.(1) The minimum qualification for the post of Assistant teacher of a recognised school shall be Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh or equivalent examination (with Hindi and Teacher's training Course recognised by State Government or a Board such as Hindustani Teaching Certificate, Junior Teaching Certificate, Basic Teaching Certificate or Certificate of Training).

(2) The minimum qualifications for the appointment to the post of Headmaster of a recognised school shall be as follows:

(a) A degree from a recognised University or an equivalent examination recognised as such;

(b) A teacher's training course recognised by the State Government or the Board, such as Hindustani Teaching Certificate, Junior Teaching Certificate, Certificate of Training or Basic Teaching Certificate; and

(c) Three years' teaching experience in a recognised school."

17. "Recognised school" is defined in Rule 2(g) of Recruitment Rules, 1979 and reads as under:

"2(g) "Recognised Schools" means any Junior High School not being an institution belonging to or wholly maintained by the Board or any local body recognised by the Board as such;"

18. It is not in dispute that the School in the present case is a recognised school and the Recruitment Rules, 1978 are applicable for appointment to the post of Assistant Teachers in the School.

19. Besides prescribing the minimum qualification in Rule 4 there is a legislative mandate in Rule 5 of Recruitment Rules, 1978 that no person shall be appointed in any recognised school as Assistant Teacher in substantive capacity unless he possess minimum qualifications prescribed for such post. Rule 5 is reproduced as under:

"5. Eligibility for appointment.No person shall be appointed as Headmaster or Assistant Teacher in substantive capacity in any recognised school unless

(a) he possesses the minimum qualifications prescribed for such post;

(b) he is recommended for such appointment by the Selection Committee."

20. The entire Recruitment Rules, 1978 do not possess any provision empowering any authority whatsoever to relax the minimum qualification prescribed therein for appointment of a teacher in a recognised school.

21. The liability for salary of teachers and employees of recognised junior high school receiving maintenance from the State Government is governed by the Payment of Salaries Act, 1978 and Section 10 thereof reads as under:

"10. Liability in respect of salary.(1) The State Government shall be liable for payment of salaries of teachers and employees of every institution due in respect of any period after the appointed day.

(2) The State Government may recover any amount in respect of which any liability is incurred by it under subsection (1) by attachment of the income from the property belonging to or vested in the institution as if that amount were an arrear of land revenue due from the institution.

(3) Nothing in this section shall be deemed to derogate from the liability of the institution for any such dues to the teacher or employee."

22. From the perusal of Recruitment Rules, 1978 and payment of Salaries Act, 1978 and in particular Rules 4 and 5 and Section 10, it is evident that for a valid appointment to the post of teacher in a recognised junior high school one must possess the requisite minimum qualification prescribed in Rule 4 and salary for payment of such a teacher of a recognised junior high school shall be the liability of the State Government. Section 10, therefore, contemplates a valid appointment in the eyes of law before making the State Government liable for payment of salary to such a teacher of a recognised junior high school.

23. Without entering into the dispute as to whether Sri Akhilesh Kumar Mishra was Manager of the Committee of Management or Sri Surendra Kumar Dhawan and also whether there was any order restraining appointment of four teachers in the school or not, so far we are concerned, if admittedly the respondents no. 6 to 9 do not possess the requisite minimum qualification provided in Rule 4 of Recruitment Rules, 1978, its effect has to be considered in this case. When an incumbent approaches this Court for seeking a writ of mandamus commanding the authorities concerned to pay him salary, it is obligatory on him to show that a right is vested in him based on a valid appointment and only thereafter the matter of granting any relief can be considered by this Court. Further if a litigant approaching this Court seeks relief which emanates from his so called appointment and he fails to show that he was validly appointed, his writ petition is liable to be dismissed without any further inquiry into the matter.

24. In *Pramod Kumar Vs. U.P. Secondary Education Services Commission and others*, 2008(7) SCC 153 considering a similar question the Apex Court held as under:

"The appellant, however, has filed a writ application for issuance of or in the nature of a writ of mandamus. He, therefore, must establish existence of a legal right in himself and a corresponding legal duty in the State. If he did not possess the requisite qualification to hold a post, he could not have any legal right to continue. It was, therefore, immaterial as to why and when the said proceeding had been initiated against him" (para 24)

(emphasis added)

25. In the letter of approval issued by the DBEO, a copy whereof is on record as Annexure10 to the affidavit filed in support of stay application in the leading appeal, the qualification of respondents no. 6 to 9 are shown as under:

Sl. No.

Name

Qualification

1.

Smt. Savitri Devi

B.A. B.Ed.

2.

Km. Shipra

B.A. L.T.

3.

Smt. Poonam Srivastava

M.A. B.Ed.

4.

Smt. Sarita Dwivedi

M.A. L.T.

This document and its contents are not disputed by any of the parties before us.

26. All the four respondents, i.e., respondents no. 6 to 9, therefore, do not possess the training qualification of BTC, JTC, HTC or CT which is one of the minimum qualification prescribed in Rule 4 and in the absence whereof vide Rule 5 of the Recruitment Rules, 1978 no appointment could have been made in a recognised junior high school. It has not been brought on record that any other

training qualification was recognised by State Government as contemplated in Rule 4 of Recruitment Rules, 1978 which is possessed by the said respondents and thus they do not satisfy the requirement of Rule 4.

27. So far as the Government Order dated 06.09.1994 is concerned, suffice it to mention that the same would not prevail over the statutory rules which do not contemplate any relaxation in the matter of minimum qualification. Moreover, the learned Standing Counsel informs that the same applies to those cases where appointments were made before enforcement of Recruitment Rules, 1978.

28. In these admitted facts and circumstances showing that the respondents no. 6 to 9 lack minimum qualification by not possessing any certificate in respect to the recognised training course i.e. BTC, JTC, HTC or CT, in our view, the appointment of respondents was a nullity being in violation of Rule 4 and 5 of the Recruitment Rules, 1978.

29. Appointment of a person who does not possess requisite qualification prescribed in the rules is illegal since its inception. It does not confer a right upon such person to hold the post and, therefore, would not result in any advantage to such appointee. Such an appointment is nonest. Moreover, in the light of the mandate of Rule 5 of Recruitment Rules, 1978 we have no hesitation in holding that an appointment in breach of Rule 4 is prohibited and if made it is nonest.

30. If there is a provision in the statute which empowers the authorities to relax the qualification prescribed in the statute and the authority exercising such power made appointment or, depending upon the language of the statute, if appointing authority has made appointment in anticipation of relaxation of qualification prescribed in the rules where power of relaxation is vested elsewhere and ultimately such relaxation is granted, the position may be different but when the statute does not talk of any such relaxation and there is no such power, yet, if an appointment is made in violation of the rules or statute prescribing a particular qualification for appointment to a particular post, such appointment would be a nullity.

31. The Apex Court in Pramod Kumar (supra) has clearly said in para 16 and 18 of the judgement as under:

"16.The qualifications for holding a post have been laid down under a statute. Any appointment in violation thereof would be a nullity.

18. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularized, particularly, when the statute in no unmistakable term says so. Only an irregularity can be."

32. Earlier also a similar controversy came up before the Apex Court in Mohd. Sartaj and another Vs. State of U.P. and others, 2006(2) SCC 315 and in

paragraphs 11, 19 and 21 of the judgement the Court held as under:

"11.....Thus under the Rules, the basic qualification for the post of Assistant Teacher, apart from the educational qualification, was the training qualification of the Basic Teacher's Certificate or Hindustani Teacher's Certificate or Junior Teacher's Certificate or Certificate of Teaching or equivalent training course recognized by the State Government. It is an admitted position by both the parties that these qualifications are required for appointment to the post of Assistant Teacher. It is also not the case of the appellants that the academic qualifications were amended at the time of their appointment. Thus, admittedly on the date of appointment, the appellants did not hold the training qualification to be appointed to the post of Assistant Teachers as prescribed under Rule 8.

19. In the present case, the appellants' case fall within the exception laid down in S.L. Kapoor's case (supra) and other supporting cases, as admittedly, the appellants were not qualified and they did not possess the B.T.C. or Hindustani Teacher's Certificate or Junior Teacher's Certificate or Certificate of Teaching or certificate of any other training course recognized by the State Government as equivalent thereto at the time of their initial appointment. In view of the basic lack of qualifications, they could not have been appointed nor their appointment could have been continued. Hence the appellants did not hold any right over the post and therefore no hearing was required before the cancellation of their services.....

21. It is settled law that the qualification should have been seen which the candidate possessed on the date of recruitment and not at a later stage unless rules to that regard permit it. The minimum qualification prescribed under Rule 8 should be fulfilled on the date of recruitment. Equivalence of degree of Moallium Urdu, Jamia Urdu Aligarh with that of B.T.C. in the year 1994 would not entail the benefit to the appellants on the date they were appointed....."

(emphasis added)

33. The aforementioned judgment also reply the contention of Sri Dwivedi and Triloki Nath appearing on behalf of the petitionerrespondents that the amendment made vide notification dated 12.6.2008 in Rule 4 of Recruitment Rules, 1978 whereby B. Ed. has been included as a training qualification for appointment would validate their appointment in May 2000. Admittedly amendment is not retrospective. On the date when they were appointed, they did not possess the prescribed training qualification. Any subsequent change in law would not validate an earlier illegal and non est appointment.

34. The Apex Court also held in Mohd. Sartaj (supra) that cancellation of appointment on the ground that the candidate does not possess minimum qualification prescribed in the statutory rules cannot be permitted to be questioned on the ground that there has been violation of principles of natural justice.

35. Even otherwise one well established exception to the principle of natural justice is where in the facts and circumstances of the case only one conclusion is possible the Court would not interfere. Where material facts going to the root of the matter are not disputed or are admitted between the parties, the action of the authorities cannot be set aside on the technical ground of violation of principle of natural justice since this Court does not issue futile writs particularly when no further investigation is to be made.

36. In *M.C. Mehta Vs. Union of India and others*, JT 1999(5) SC 114 it was said:

"It is, therefore, clear that if on the admitted or indisputable factual position only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of principles of natural justice."

37. In *Kendriya Vidyalaya Sangathan v. Ajay Kumar Das*, JT 2002(4) SC 467 the Apex Court said:

"If such appointment orders are a nullity, the question of observance of principles of natural justice would not arise."

38. Similarly in *Bar Council of India v. High Court of Kerala*, 2004(6) SCC 311 it was said:

"Principles of natural justice, however, cannot be stressed too far. Their application may be subject to the provisions of a statute or statutory rule."

39. In *Mohd. Sartaj* (supra) also the Apex Court said:

"Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice, but because courts do not issue futile writs."

40. In *Punjab National Bank and others Vs. Manjeet Singh another*, 2006(8) SCC 647 the Apex Court opined:

"Principles of natural justice were also not required to be complied with as the same would have been an empty formality. This Court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible a writ would not issue only because there was a violation of principles of natural justice."

(emphasis added)

41. In *P.D. Agrawal Vs. State Bank of India and others*, 2006(8) SCC 776 the Court said:

"The Principles of natural justice cannot be put in a straitjacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time

also undergone a seachange."

42. The aforesaid view was reiterated in *Ashok Kumar Sonkar Vs. Union of India*, 2007(4) SCC 54.

43. It is thus well settled that when the facts are admitted any inquiry would be an empty formality. The principles of natural justice, its trite, is no unruly horse. Mere violation thereof would not make it obligatory upon the Court to interfere.

44. Here also the factum that the respondents no. 6 to 9 do not possess requisite minimum qualification prescribed under Rule 4 of Recruitment Rules, 1978 has not been disputed by them. In these facts and circumstances it is difficult to hold that they have any iota of right to hold the post of Assistant Teacher in the school or to claim salary merely on the ground that ignoring this necessary aspect of the matter the educational authorities have granted approval to them. The order DBEO in the teeth of rule 4 is a nullity and can be ignored. It would not confer any right upon the respondents 6 to 9. In fact this Court is shocked by noticing that despite of categorical mandate in Rule 5 that no person who lack minimum qualification under Rule 4 shall be appointed as a teacher in a recognised junior high school yet the respondents educational authority i.e. DBEO has granted approval to the appointment of respondents no. 6 to 9 and that too despite of even noticing the lack of qualification in the said letter of approval. This is a serious lapse on the part of the then DBEO justifying a suitable disciplinary action against such careless and negligent authority which has also attempted to saddle with the responsibility upon the State to pay salary to the teachers of a recognised junior high school who are shorn of minimum qualification prescribed under the Rules. The action if not otherwise for collateral purpose, definitely lacks bona fide.

45. The submission made on behalf of respondents no. 6 to 9 by Sri Dwivedi and Sri Triloki Nath, Advocates that due to lack of sufficient number of trained persons such kind of appointments have been made, cannot justify illegal appointments in the teeth of the statutory rules continuing and operating in the State of U.P. We are not in a position to make any comment further on this aspect since those other persons who are alleged to have been appointed despite of lacking minimum qualification under Rule 4 and are getting salary from State exchequer are not party before us and, therefore, we cannot pass any order in respect to those persons but it require appropriate investigation into the matter by the State Government as to how and in what circumstances such illegal appointments have been made and appropriate action needs to be taken against the erring officers. We, therefore, find it appropriate to direct Secretary, Basic Education, State of U.P. to get an inquiry conducted into such matter and take appropriate action expeditiously but not later than six months from the date of communication of a certified copy of this order.

46. Sri Dwivedi and Sri Triloki Nath also contended that the respondents no. 6 to 9 having been appointed despite of noticing their qualification and there was no

concealment on their part, the management and the authorities are estopped from challenging the validity of their appointment.

47. This argument also lacks substance. No estoppel can arise which is against law. In *Smt. Ravindra Sharma and another Vs. State of Punjab and others*, JT 1994(6) SC 531 considering the similar contention and rejecting the same the Apex Court said:

"Admittedly the appellant did not possess this qualification. That being so, the appointment is bad. Where, therefore, the appointment was clearly against Regulation 4, it was liable to be set aside. That being so, no question of estoppel would ever arise. We respectfully agree with the view taken by the High Court."

48. Now there remains a last submission advanced on behalf of contesting respondents that after a long time their appointment need not be disturbed inasmuch as having been appointed in the year 2000 they are continuously working on the post of Assistant Teacher in the School and, therefore, they should be allowed to continue. Reliance has been placed on Apex Court's decision in *Dr. M.S. Mudhol and another Vs. S.D. Halegkar and others*, 1993(3) SCC 591 and *Shainda Hasan Vs. State of U.P.*, 1990(3) SCC 48.

49. It would suffice to notice that the Apex Court itself has considered both the aforesaid authorities in *Pramod Kumar (supra)* and in paragraphs 25 and 27 has held the said authorities inapplicable in a case where a person lacks requisite minimum qualification for appointment to a post and has said as under:

"25. Reliance placed by Mr. P.S. Patwalia on *Shainda Hasan Vs. State of Uttar Pradesh and Others* [(1990) 3 SCC 48] is not apposite. Therein a concession was made on behalf of the State that the University had agreed that asking the appellant therein to leave the job after 16 years will be doing injustice to her. Such a view might have been taken by this Court in exercise of its extra ordinary jurisdiction under Article 142 of the Constitution of India. The question, however, that arose therein was as to whether the Selection Committee could grant relaxation of the educational qualification vis`vis the experience required to be obtained. It was held that such a power did not exist in the Selection Committee.

27. Reliance has also been placed by Mr. Patwalia on *Dr. M.S. Mudhol and Another Vs. S.D. Halegkar and Others* [(1993) 3 SCC 591]. Therein a writ of quo warranto was sought for in a case involving the question as to whether a degree granted in favour of the appellant therein was equivalent to another degree or not. It was found that as public interest would not suffer, a writ of quo warranto may not be issued. The Court, therefore, did not exercise its discretionary jurisdiction."

50. In view of the above, we do not find that the respondents no. 6 to 9 can draw any help from the aforesaid two authorities.

51. There is a faint argument that B.Ed. is a higher qualification than BTC, JTC,

HTC, CT etc. and, therefore, the respondents no. 6 to 9 cannot be said to lack requisite qualification but the said submission is noticed to be rejected for the reason that B.Ed. is a different qualification than a training qualification required for teaching of primary classes i.e. BTC, JTC, HTC or CT. This issue has been settled by the Apex Court in Yogesh Kumar and others Vs. Government of NCT Delhi and others, AIR 2003 SC 1241; P.M. Lata Vs. State of Karela, 2003(3) SCC 541 and Dilip Kumar Ghosh and others Vs. Chairman and others, 2005 AIR SCW 4500.

52. In view of the above discussion we are clearly of the view that since the respondents no. 6 to 9 do not possess requisite minimum qualification prescribed under Rule 4 of U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 and in view of Rule 5 there was an embargo on appointment of a person as teacher in a recognised junior high school if he lacks minimum qualification the appointment of respondents no. 6 to 9 was clearly a nullity and did not confer any right upon them either to hold post or continue thereon or to claim salary from the State exchequer.

53. In the result both these appeals succeed and are allowed. The impugned judgements of Hon''ble Single Judge are set aside. The Writ Petitions No. 51322 of 2000 and 51985 of 2000 are dismissed.

54. The Registrar General is directed to send a copy of this judgement forthwith to the Secretary, Basic Education, U.P. Government for information and taking appropriate action as directed above.

55. There shall be no order as to costs.