
(2015) 12 AHC CK 0097
In the Allahabad High Court
Case No : Writ - A No. 21939 of 2013

Devendra Singh	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 04-12-2015

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 10, 5, 6, 7

Citation : (2016) 1 ADJ 525

Hon'ble Judges : M.C. Tripathi, J.

Bench : Single Bench

Advocate : Yogesh Agarwal, for the Appellant; Raghubir Singh, for the Respondent

Final Decision : Allowed

Judgement

M.C. Tripathi, J.—Heard Shri Yogesh Agarwal, learned counsel for the petitioner and Shri Pankaj Rai, learned Addl. Chief Standing Counsel for the State respondents. In spite of issuing notices to respondent Nos. 5 and 6 on 24.4.2013, none has appeared on their behalf.

2. By means of present writ petition, the petitioner has prayed for following reliefs:--

"(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 30.05.2012 passed by District Inspector of Schools, Mainpuri (Annexure 1 to the writ petition).

(ii) to issue a writ, order or direction in the nature of mandamus commanding the opposite parties to pay to the petitioner all arrears of salary as Principal of the college from the date of his selection in the year 1985 as Principal of the college till his date of retirement i.e. 30.06.2011 and then to pay him the arrears of his pension payable to a Principal to the college and continue to pay the same as and when it becomes due to be paid."

3. It appears from the record that there is an institution namely "Dayanand Inter College, Ghiror, Distt. Mainpuri" (in short "the institution"), which is run by a society by the name of "Dayanand Vidyalaya Society, Ghiror, Distt. Mainpuri". The petitioner had initially been selected and appointed as Assistant Teacher in the institution and had been working as such. In between the petitioner was selected by the "Secondary Education Service Commission, U.P. Allahabad" (in short "the Commission") as Principal of the institution and an order was passed on 9.1.1985 by the Commission intimating the Committee of Management of the institution in this regard and directing it to issue appointment letter to the petitioner. Though the petitioner was selected by the Commission, he was not given appointment due to pendency of a writ petition being Writ Petition No. 13988 of 1984 (Rajendra Singh v. U.P. Madhyamik Shiksha Sewa Ayog & Ors.) in which an interim order dated 9.10.1984 was operative to the effect that the selection may be held but appointment letter shall not be issued till further orders. In compliance of the order dated 9.10.1984 passed by the Court though the petitioner was selected for the post of Principal but he was not issued any appointment letter. Subsequently the writ petition was dismissed as withdrawn on 16.12.1989 and the interim order granted earlier was also come to an end.

4. It is submitted that consequent to the dismissal of the aforesaid writ petition, the petitioner should have been given appointment as Principal of the institution. Therefore, the petitioner moved an application dated 21.12.1989 to the District Inspector of Schools, Mainpuri (in short "the DIOS") requesting to get appointment letter issued to him in view of his selection as Principal by the Commission. In response thereof the DIOS by his letter dated 23.12.1989 had directed the Committee of Management of the college to take appropriate action and issue appointment letter to the petitioner. In spite of the direction of the DIOS, the Committee of Management had not issued appointment letter to the petitioner.

5. Thereafter, the petitioner made a complaint against the Committee of Management to respondent No. 3 - Director, U.P. Secondary Education Service Commission, U.P. Allahabad upon which the respondent No. 3 issued letter dated 27.2.1990 to the Committee of Management directing it to take appropriate action in pursuance of the selection of the petitioner by the Commission. Even then the Management did not issue any appointment letter to the petitioner. Thereafter, the petitioner made another representation dated 13.3.1990 to the Regional Director of Education, Agra Region, Agra on which the Regional Director of Education, Agra Region, Agra by his letter dated 15.5.1990 directed the Committee of Management to pay salary to the petitioner.

6. The management of the institution, the reason best known to it, instead of giving appointment letter to the petitioner, had filed Suit No. 103 of 1990 in the Court of Civil Judge, Mainpuri for issuance of permanent injunction without making the petitioner as a party. The petitioner moved an impleadment application in the aforesaid suit but the learned Civil Judge had rejected the

impleadment application of the petitioner and decided the suit in the absence of the petitioner. Permanent injunction was granted in favour of the Committee of Management.

7. Learned counsel for the petitioner submits that the U.P. Secondary Education Service Commission Act is a complete Code in itself and no decision of the Commission can be challenged by way of filing a suit. The decision of the Commission is final and are not amenable to challenge in the suit. It is not open to challenge the order of an authority passed in exercise of its statutory powers in a suit. When the statute constituting the Authority is a complete Code and provides for the entire procedure and also the relief to be given in case of any party being aggrieved by the said action and as such the petitioner's selection and appointment as Principal of the institution could not have been challenged in the suit.

8. On 09.03.1990 the petitioner again moved an application before the Committee of Management requesting to comply with the selection made by the Commission. Ultimately by order dated 19.06.2006 the Committee of Management issued an appointment letter dated 19.06.2006 to the petitioner appointing him as Principal of the institution. The petitioner joined on the post of Principal in the institution on 30.06.2006 in pursuance of the said appointment letter. However, the District Inspector of Schools, Mainpuri by order dated 3.7.2006 had directed that the petitioner's appointment as Principal of the institution is itself wrong and against the decree of Suit No. 103 of 1990. Aggrieved with the order dated 3.7.2006, the petitioner filed Writ Petition No. 35950 of 2006, which was dismissed on 8.7.2006. The petitioner has challenged the said order in appeal by means of Special Appeal No. 997 of 2008, which was allowed on 18.1.2012. The Hon'ble Court found that the order dated 3.7.2006 passed by the District Inspector of Schools, Mainpuri refusing to attest the signature of the petitioner as Principal of the institution was unjustified and had consequently quashed it.

9. Consequent to the judgment and order dated 18.1.2012 the petitioner moved an application dated 13.3.2012 requesting the District Inspector of Schools, Mainpuri to ensure payment of the salary of the Principal to the petitioner from the date of the order of the Director dated 15.5.1990. The said application dated 13.3.2012 was rejected by the DIOS by impugned order dated 30.5.2012.

10. Learned counsel for the petitioner submits that the petitioner after facing selection process conducted by the U.P. Secondary Education Service Commission had been selected as Principal and it was incumbent on the Committee of Management to have given appointment to the petitioner. The Hon'ble Court in Special Appeal No. 997 of 2008 has also held that it was incumbent on the Committee of Management to have complied with the selection of the petitioner as Principal of the institution and the Court had also noted that the Director had already passed an order dated 15.5.1990 in exercise of power under Section 17 of the Act.

11. It is submitted that the U.P. Secondary Education Service Selection Board Act has been promulgated and Section 17 of the Act provides to impose obligation on the management of the institution and also on the authority for ensuring payment to the Principal of the institution. The provisions of Section 17(3) of the Act are quoted as below:--

"17(3). The amount of salary, if any, due to such teacher shall, on a certificate issued by the Director or the officer authorized by him, be recoverable by the Collector as arrears of land revenue from the property belonging to or vested in the society or body running the institution."

12. Learned counsel for the petitioner submits that from a bare perusal of the provisions of Section 17(3), it is clear that the amount of salary which is payable to such teacher (in the present case Principal) shall be recoverable by the Collector as arrears of land revenue from the property belonging or vested in the society running the institution.

13. It is further submitted that the provisions of U.P. High School and Intermediate College Payment of Salary of Teachers and other Employees Act, 1971 (in short "the Act of 1971") provides for machinery by means of which the payment is to be made to the teacher. Section 7 of the Act of 1971 provides that in case of default in making the payment to the teacher, action is to be taken against the institution. In spite of the mandatory provisions of Section 5 and 6 of the Act of 1971 the payment required to be made to the petitioner has not been made due to the order dated 3.7.2006 passed by the DIOS, which has been quashed by the Court in Special Appeal No. 997 of 2008.

14. Per contra learned Addl. Chief Standing Counsel submits that the petitioner has not functioned as Principal of the Institution in the period as stated by him nor his signature was attested by the District Inspector of Schools. The District Inspector of Schools has issued a letter to the Manager of the institution on 9.1.1985 to ensure his appointment as a selected Principal of the institution subject to the order passed in Writ Petition Nos. 5804 of 1979 and 13988 of 1984. After dismissal of the Writ Petition No. 13988 of 1984 the petitioner has represented his matter before the District Inspector of Schools, who in turn has directed the Committee of Management on 23.12.1989 and thereafter on 27.2.1990 to take appropriate action in pursuance to the selection of the petitioner by the Commission. Thereafter, the District Inspector of Schools has submitted its report and also its recommendation to the Regional Deputy Director of Education, Agra Region regarding the selection of the petitioner as a Principal in the institution and also the letters issued to the Committee of Management for joining of the petitioner. After receiving the said letter, the Regional Deputy Director of Education, Agra Region issued a letter to the DIOS on 15.5.1990 to take action against the Committee of Management under Section 17(2) of U.P. Act No. 5 of 1982 to ensure the joining of the petitioner in the institution and also directed to pay the salary to the petitioner. The Committee of Management has filed a suit being Suit No. 103 of 1990 in the Court of Civil Judge, Mainpuri

for permanent injunction and obtained the relief for permanent injunction vide order dated 10.4.1991 passed by the Civil Judge.

15. The Committee of Management had issued appointment letter to the petitioner on 19.6.2006 much after the decree passed in the Civil suit dated 10.4.1991, which was much after 22 years after the selected panel was issued in favour of the petitioner. Therefore, there was no justification to issue an appointment letter on 19.6.2006 knowing the order of decree dated 10.04.1991 passed in Suit No. 103 of 1990. Therefore, the DIOS have not countersigned the signature of the petitioner and termed the appointment of the petitioner as unjustified and illegal. The petitioner filed a writ petition being Civil Misc. Writ Petition No. 35950 of 2006 against the order dated 3.7.2006 passed by the DIOS, which was dismissed by this Court on 8.7.2008. Against the same the petitioner filed Special Appeal No. 997 of 2008, which was allowed on 18.1.2012, but before that judgment the petitioner being an Assistant Teacher was superannuated on 30.6.2011. As such the petitioner had never worked as a Principal in the institution in question.

16. It is submitted that the appointment letter issued by the Manager of the institution in favour of the petitioner dated 19.6.2006 and subsequent joining on 30.6.2006 was contrary to the order passed by the Civil Judge, Mainpuri dated 10.4.1991 inasmuch as it was also against the order passed by the District Inspector of Schools dated 3.7.2006. Throughout his service career the petitioner had never discharged his service against the post of Principal nor he was ever paid salary in the capacity of the Principal. The petitioner had superannuated on 30.6.2011 before the order passed in the special appeal on 18.1.2012 and after superannuation he is drawing his pension as an Assistant Teacher, therefore, the petitioner has no right to claim the salary as a Principal as he never worked against the post of Principal.

17. In reply to the counter, learned counsel for the petitioner submits that the liability of the respondents for payment of salary to the petitioner is not dependent on the work carried out by the petitioner as Principal of the college, but it is a statutory liability as provided under Section 10 of the U.P. High School and Intermediate College Payment of Salaries of Teachers and Other Employees Act, 1971. The payment of salary to the selected Principal is required to be made by the joint action of the management and the DIOS as provided by Section 5 of the Act, which has not been complied by the DIOS in the order dated 3.7.2006, which was set aside by the Court and as such the duty required to be performed under Section 5 of the Act of 1970 for payment of salary to the petitioner revives and the petitioner is required to be paid by the provisions of Section 5 of the Act of 1971.

18. Learned counsel for the petitioner has relied upon *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others*, wherein it is observed as under:--

".....second is where the Court reaches a conclusion that the enquiry was held in respect of frivolous issue or petty misconduct as a camouflage to get rid of the employee or victimize him and the disproportionately excessive punishment is a result of such scheme or intention in such cases Principal relating to back wages etc., will be the same as those applied in the cases of illegal termination."

19. He submits that it is clear that the management and the DIOS were acting malafide in denying the fruits of selection as Principal to the petitioner and such malafide act does not deserve to be rewarded by permitting the management and government to deny remuneration to the petitioner inspite of his selection and mandatory duty of the management to comply as provided in Section 11(3) (4) of the Act of 1982.

20. Heard rival submissions and perused the record.

21. As per the record it appears that the Committee of Management had finally vide order dated 19.6.2006 had complied the order passed by the Regional Director of Education, Agra Region, Agra and issued an appointment letter in favour of the petitioner as Principal of the college. Pursuant to the appointment letter the petitioner joined the post of Principal in the college on 30.06.2006. Just to appreciate the present controversy, it would be appropriate to reproduce the letter of appointment dated 19.06.2006 as under:--

22. In pursuance to the aforesaid appointment letter the petitioner joined the post of Principal and taken over the charge in Dayanand Inter College on 30.6.2006. The appointment letter and joining letter has been dealt by the appellate court in Special Appeal No. 997 of 2008. At this stage it would be appropriate to indicate that the aforesaid special appeal had been filed against the order dated 8.7.2008 passed by learned Single Judge, which is reproduced as under:--

"The petitioner has prayed for the quashing of the order dated 3rd July, 2006, passed by the District Inspector of Schools, whereby the District Inspector of Schools had refused to accede to the request of the Committee of Management to appoint the petitioner as the principal of the institution.

Before coming to the facts of this case, it is essential to narrate a brief history, which led to the filing of the present writ petition. It transpires that the petitioner was a teacher in L.T. Grade and a post of principal was advertised under the U.P. Secondary Education Service Commission Act, 1982, in which, the petitioner applied, and by a letter dated 20th December, 1984, the Commission recommended the name of the petitioner as the principal of the institution. Based on the said recommendation of the Commission, the District Inspector of Schools issued an order dated 9th January, 1985 directing the Manager of the institution to issue an appointment letter. It transpires that before any action could be taken by the management, one Rajendra Singh filed Writ Petition No. 13988 of 1984 against the said advertisement, and an interim order was issued directing that the selection may go on, but no appointment letter should be issued. This writ

petition was subsequently withdrawn on 16th December, 1989, and after its dismissal, the petitioner again applied for joining, which was refused by the Management. Consequently, Writ Petition No. 21150 of 1990 was filed by the petitioner praying that he should be paid salary w.e.f. 15.5.1990 on the post of principal.

In this petition, a counter affidavit was filed by the Committee of Management, alleging that the petitioner was only an assistant teacher and was not a lecturer, and was, therefore, not qualified to be appointed as the principal, and that, the Committee of Management had filed suit No. 103 of 1990 which was decreed by judgment dated 10th April, 1991 and a permanent injunction was granted restraining the defendants from compelling them from enforcing the selection of the principal vide letter dated 9th January, 1985, which had become invalid after the lapse of one year. The said writ petition was disposed of by an order dated 4th August, 1999 directing the petitioner to make an appropriate representation before the District Inspector of Schools.

Subsequently, another Writ Petition No. 55126 of 2003 was filed praying for a writ of mandamus to give effect to the order dated 9th January, 1985 and appoint the petitioner on the post of principal w.e.f. 15.5.1990. This writ petition was merely filed and no notices were ever issued, and today, it has been dismissed as infructuous on the statement made by the learned counsel for the petitioner.

The present writ petition has been filed for the quashing of the order passed by the District Inspector of Schools. It has been stated that based on the recommendation made by the Commission in the year 1984, the Committee of Management issued an appointment letter dated 19th June, 2006 and had forwarded the papers to the District Inspector of Schools for necessary attestation of the signatures, and that the District Inspector of Schools, by the impugned order of 3rd July, 2006, has arbitrarily passed the order refusing to appoint the petitioner as the principal.

Having heard Sri Yogesh Agarwal, learned counsel for the petitioner and the learned Standing counsel for the respondents, this Court is of the opinion that the present writ petition is patently misconceived and is a misuse of the process of the Court. No relief can be granted to the petitioner at this stage. The recommendation made by the Commission in the year 1984 lost its efficacy and could not be enforced after the lapse of 22 years, as contemplated under Rule 7(2) of the Uttar Pradesh Secondary Education Service Commission Rules, 1983. Further, a permanent injunction has been issued restraining the authorities from compelling the Committee of Management from enforcing the selection of the principal vide letter dated 9th January, 1985. This injunction is still in force and has not been set aside by any court of law. The petitioner filed Writ Petition No. 5126 of 2003, praying that the order dated 9th January, 1985 should be enforced, which has been dismissed today as infructuous on the statement made by the learned counsel for the petitioner. Further, this Court is of the opinion that

no order of appointment dated 19.6.2006 could be issued by the Committee of Management in favour of the petitioner in view of the fact that a principal is already functioning in the institution, whose appointment has already been approved by the District Inspector of Schools. Not only this, the appointment letter could not be issued by the Committee of Management on the basis of the recommendation made by the Commission after 22 years.

In view of the aforesaid, there is no merit in this writ petition and is dismissed summarily."

23. Aggrieved with the said order, the aforesaid special appeal had been filed and the appellate court vide order dated 18.1.2012 had allowed the special appeal, the relevant part of which is reproduced as under:--

"Misplaced reliance having been placed by the DIOS on the order passed in Civil suit No. 103 of 1990 in which the appellant was neither made a party by the then Manager of the College nor his application for impleadment was allowed. Therefore, the order in the aforesaid suit could not effect his interest especially when he himself had sought impleadment in the suit as he was going to be directly affected by the relief prayed for by the plaintiff in that case and the order rejecting his impleadment application and the granting permanent injunction by the Court.

Regard may also be had to the fact that permanent appointment on the post of principal could not have been restrained by the DIOS in the garb of order passed in suit No. 103 of 1990 particularly when the appellant has been selected by the Commission under the provisions of Statute as stated above.

To our mind, the learned Single Judge in his judgment and order dated 8.7.2008 has travelled beyond the reasons given by the DIOS in the impugned order particularly when the law is settled that Court examining the validity of an order is to confine itself to the reasons given in the order and not beyond the reasons.

It appears from letter dated 3.7.2006 that the appellant could not join the post even though he is selected candidate by the Commission merely because some legal impediment was created by the then Manager of the Institution who appears to be having some ulterior motive or grudge against the appellant as a result of which the charge of the post of principal having been given to the appellant on retirement of Sri Bare Lal, the then principal at the relevant time and letter of appointment having been issued by the new Manager to the appellant for his joining as principal, it cannot be said that the appellant has no right to work as principal of the institution. The DIOS appears to have committed an error in the facts and circumstances of this case in not attesting the signatures of the appellant as principal of the college for the reason that neither the judgment in the suit was binding upon the appellant nor there can be a permanent injunction not to appoint any person selected by the Commission particularly when Section 16-E of the statute i.e. U.P. Intermediate Act read with U.P. Secondary Education Services Selection Board Act, 1982 and U.P. Secondary

Education Services Commission Rules, 1983 provide appointment on the post of Principal by selection.

Learned Single Judge has, therefore, wrongly held that the writ petition is patently misconceived and no relief can be granted to the petitioner. The recommendation made by the Commission cannot lose its efficacy due to proceedings pending before Courts and other authorities in which interim orders have been granted.

The DIOS also has no power either under the U.P. Secondary Education Services Selection Board Act, 1982 or the U.P. Intermediate Education Act, 1921 refusing to attest the signatures of a selected principal which is necessary for his exercise of financial powers under the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971, also does not confer any power on the DIOS, therefore, it was incumbent upon the Committee of Management of the college to comply with the selection made under Sections 10 and 11 of the statute i.e. U.P. Secondary Education Services Selection Board Act, 1982. Section 11(4) of the Act envisages that the Management to pass order for appointment on receipt of intimation about selection but even such order cannot be issued due to any legal impediment. It was then incumbent upon the Committee of Management to issue appointment letter after the legal impediment no longer remained in existence due to withdrawal of Writ Petition No. 13988 of 1984 wherein the interim order was vacated. The action of the Committee of Management prior to issuance of appointment letter to the appellant dated 19.6.2006 was in violation of the mandatory requirement of law.

Note may also be had to the fact that the Director has already passed an order dated 15.5.1990 under the provisions of Section 17 of the 1982 Act, which was necessitated by the fact that the Management was refusing/failing to issue appointment order to the appellant. The provisions of Section 17 of the 1982 Act are mandatory in nature. The maxim of law that an act of Court shall harm no one squarely applies to the facts and circumstances of this case. The matter has remained pending in the Court inspite of best efforts made by the petitioner and he has ultimately been appointed as principal of the college vide order dated 19.6.2006. The contention of learned counsel for the respondents that the appellant was not qualified does not appeal to us for the reason that his qualifications were scrutinized by the Commission and thereafter he was selected. The Committee of Management has also issued appointment letter to him on 19.6.2005 subsequent to his selection.

The judgment of the Apex Court rendered in Sri Justice S.K. Ray Vs. State of Orissa and Others, may also be referred wherein it has been held that the court may grant appropriate relief even if it has not been prayed for. The learned Single Judge has not considered the specific averments of the petitioner regarding applicability of the order rejecting the impleadment application in the suit. The judgment in suit No. 103 of 1990 was ex-parte and cannot operate against the appellant.

For all the reasons stated above, the impugned judgment and order dated 8.7.2008 of the learned Single Judge in Writ Petition No. 35950 of 2006 is quashed. Writ Petition No. 35950 of 2006 as well as the special appeal stand allowed.

No order as to costs."

24. Bare perusal of the order passed by learned Single Judge, it is apparent that the Writ Petition No. 35950 of 2006 had been filed by the petitioner for quashing the order dated 3rd July, 2006 passed by the DIOS, whereby the DIOS had refused to accede to the request of Committee of Management to appoint the petitioner as Principal of the institution and finally vide order dated 8.7.2008 the writ petition was dismissed. The same was assailed by means of Special Appeal No. 997 of 2008, which was finally allowed with the aforesaid directions. At this stage, the bone of contention is that once the petitioner has attained the age of superannuation on 30.06.2011, whether he is entitled for salary as Principal or not. While allowing the special appeal, Hon"ble the Division Bench had categorically observed that in compliance of the order passed by the Regional Director of Education, Agra Region, Agra, the Committee of Management had issued an appointment letter in favour of the petitioner as Principal on 19.06.2006 and in pursuance thereof the petitioner has joined the post of Principal. But subsequently his signatures had not been attested by the District Inspector of Schools. Aggrieved with the said, the petitioner had preferred the writ petition, which was dismissed by the learned Single Judge but eventually the appeal was allowed. Therefore, at this stage, it is not disputed that in pursuance of the appointment letter dated 19.6.2006 the petitioner had joined on 30.6.2006. The appointment letter and the joining letter were appended along with the appeal and the same had been taken note of while allowing the appeal. Therefore, at this stage, it cannot be disputed that in pursuance of the aforesaid appointment letter the petitioner has joined as Principal in Dayanand Inter College, Ghiror, Mainpuri on 30.6.2006 in the afternoon. Once the petitioner had challenged the order dated 3rd July, 2006 passed by the DIOS in Writ Petition No. 35950 of 2006 by which the DIOS had not acceded to the request of the Committee of Management to appoint the petitioner as Principal of the institution and finally the appeal was allowed vide order dated 18.1.2012, therefore, at this stage, the respondents cannot take plea that on the basis of said appointment letter the petitioner had actually not discharged the duties as Principal of the institution and on the basis of no work no pay he would not be entitled for any salary. The petitioner was regularly selected as Principal of the college by the Commission and initially his joining has been illegally stalled by the then Manager of the college namely Shri Rajendra Singh, who had preferred Civil Misc. Writ Petition No. 13988 of 1984 challenging the advertisement for the post of Principal against which the petitioner had applied. In the said writ petition an interim order was granted by this Court on 09.10.1984 directing that the selection for the post of Principal by the Commission may be held but the appointment letter shall not be issued. The writ petition was finally dismissed as

withdrawn on 16.12.1989.

25. It is also relevant to indicate, at this stage, that even the Regional Deputy Director of Education, Agra vide his order dated 15.5.1990 exercising the powers under the provisions of Section 17(1)(2) of the U.P. Secondary Education Service Selection Board, 1982, had directed the management to appoint the petitioner as Principal of the college and for the payment of salary.

26. Learned Single Judge in the earlier round of litigation while dismissing the Writ Petition No. 35950 of 2006 had taken a precise view that the recommendation made by the Commission in the year 1984 lost its efficacy and could not be enforced after lapse of 22 years as contemplated under Rule 7(2) of the Uttar Pradesh Secondary Education Service Commission Rules, 1983. Further a permanent injunction had been issued restraining the authorities from compelling the Committee of Management from enforcing the selection of the Principal vide letter dated 9.1.1985. This objection has been dealt with by the appellate court in detail with following observations:--

"It is further submitted that the provisions of Rule 7(2) of the U.P. Secondary Education Service Selection Board Rules, 1983 (hereinafter referred to as 1983 Rules) can have no effect on the rights of the appellant to continue and discharge his duties as principal of the college. It is stated that Regional Deputy Director of Education, Agra vide his order dated 15th May, 1990 exercising the powers under the provisions of Section 17(1)(2) of U.P. Secondary Education Service Selection Board, 1982 (hereinafter referred to as 1982 Act) directed the Management to appoint the appellant as principal of the college and for payment of his salary, hence the provisions of Rule 7(2) of the 1983 Rules cannot operate to defeat the order passed in statutory exercise of powers under Section 17 of the 1982 Act and that no party can be permitted to violate a lawful order and gain advantage from it i.e. it cannot be permitted to take advantage of his own wrong but the learned Single Judge has failed to consider this aspect of the matter."

27. Once the special appeal was allowed on 18.1.2012 and the order dated 8.7.2008 passed by learned Single Judge in Writ Petition No. 35950 of 2006 was quashed, therefore, the appointment letter, which had been issued in favour of the petitioner by the management on 19.06.2006 would come into play and thereafter the objections raised by the DIOS while rejecting the claim of the petitioner on 3rd July, 2006 cannot sustain at this stage. The Court is also conscious that the petitioner has also attained the age of superannuation on 30.6.2011. Therefore, at this stage, he cannot be given charge of the Principal of the institution. But however since it is not disputed that the management had issued an appointment letter on 19.6.2006 and in pursuance thereof the petitioner had joined as Principal of the institution on 30.06.2006, therefore, he is entitled for salary since his joining.

28. In view of above, it is apparent that unnecessarily the petitioner has been dragged in litigation inspite of the fact that he was selected as Principal by the

Commission. But unfortunately he could not be able to discharge working as Principal of the institution due to deliberate attempt made by the then Committee of Management. Thereafter, in compliance of the order passed by the Regional Director, an appointment letter had been issued in favour of the petitioner. In compliance thereof he had joined the said institution on 30.6.2006. Therefore, the Court is of the view that the petitioner is entitled for salary since 30.6.2006 as Principal of the institution. The arrears will be calculated and paid to the petitioner within two months. The petitioner will also be entitled for all consequential benefits and his retiral dues will be fixed accordingly.

29. Accordingly, the writ petition is allowed. The impugned order is quashed.