
(2017) 05 AHC CK 0163
In the Allahabad High Court
Case No : 55113 of 2015

Dr. Dharendra Singh And Another

APPELLANT

Vs

State Of U.P. And Others

RESPONDENT

Date of Decision : 31-05-2017

Acts Referred:

Constitution of India, Article 226 -
Uttar Pradesh Regularisation of Ad Hoc Appointments (On Posts With the Purview of
Public Service Commission) Rules, 1979, Rule 4

Citation : (2017) 05 AHC CK 0163

Hon'ble Judges : Arun Tandon, Ashwani Kumar Mishra

Bench : Division Bench

Advocate : Alok Mishra, A.K. Singh, Abhishek Mishra, G.K. Singh, T.P. Singh,
A.K. Goyal, Neeraj Tewari, Pankaj Rai, Shailendra, Archana Singh

Final Decision : Allowed

Judgement

1. Petitioners are associate professors working in Post Graduate Colleges affiliated to Deen Dayal Upadhyay Gorakhpur University. They are before this Court in a writ of quo-warranto, questioning appointment of respondent no.5 as adhoc lecturer in Government Degree College, as well as his subsequent placement on deputation as Deputy Secretary of U.P. Higher Education Services Commission, Allahabad. Petitioners assert that respondent no.5 has no legal right to hold the public office, and being a usurper, is liable to be ousted in the judicial inquiry under Article 226 of Constitution of India.

2. Accusations are two fold. First, that respondent no.5 has misrepresented himself as Scheduled Tribe candidate, although he was not so, and secondly that he has manipulated his Post Graduation mark-sheet and secured appointment on the basis of a forged mark-sheet. Both the allegations are denied. Ordinarily, such issues could have been resolved by examining the relevant records. We, however, find ourselves compelled to enter into issues, on facts, as surprisingly all relevant records, wherever they existed, have gone missing. Our persistent

endeavor to call upon the Officers of State to investigate such facts stands belied, for the reasons enumerated later. We have, therefore, summoned the original records available, impleaded the examining University to ascertain facts from them, and after hearing the parties at length with reference to records produced, proceed to deliver this judgment.

3. Facts relevant for the case are that State of U.P. issued a Government Order on 8th September, 1997 to fill vacant posts of lecturers in Government Degree Colleges situated in areas both plains and hills of erstwhile State, by adhoc appointment. Such appointments were to be made for an year or till regular selections were made by U.P. Public Service Commission, whichever is earlier, in accordance with qualifications prescribed in the relevant Rules. A committee for such adhoc appointment was constituted, consisting of Director, higher education as its Chairman, and two members of the rank of Joint Director/Principal of Post Graduate Degree Colleges. Government was required to appoint two subject experts. Selection was to be made by allocating 70% weightage to marks secured in educational examinations, 10% weightage for Ph.D., and remaining 20% towards interview. The select list was required to be approved by the State Government and applicable reservation was to be provided in terms of applicable Rules/Government Orders. Consequently, on these terms an advertisement dated 11.9.1997 was issued by the office of Director of Higher Education U.P. at Allahabad. Applications were invited till 30th September, 1997. Adhoc appointment was to be made till 30th June, 1998 or till a regularly selected candidate is sent by the Commission, whichever is earlier. Age limit, qualifications, and procedure of making applications were specified. Fee receipt of Rs.9/- issued by the treasury, was to be annexed. A declaration was to be made that information furnished therein, is correct. Signatures along with date of making application was to be mentioned. The application was to be sent by registered post to the office of Director, Higher Education, U.P. along with self stamped envelope.

4. Name of subject experts were provided by the Director of Education (Higher Education) vide his letter dated 27.9.1997. Certain additional experts were also named. Interview was held and selection proceedings were sent to State by the Director Higher Education vide his letter dated 14th January, 1998. 268 candidates were selected, whereas in respect of one candidate, enquiry was being held regarding NET Certificate. State Government approved the selection proceedings and consequently, the Department of Higher Education issued adhoc appointment for a period of one year to such selected candidates, including respondent no.5, vide order dated 6th April, 1998. Respondent no.5 pursuant to it joined. Such appointment was extended from time to time. It is important to note that the records produced including select list as well as appointment letter does not refer to the category of appointed candidates i.e. SC/ST/OBC/UR.

5. Provisions of U.P. Regularization of Ad-hoc Appointments (on posts within the purview of Public Service Commission) Rules, 1979 got amended vide notification

dated 20th December, 2001. Rule 4 provided for regularization of appointments made prior to 30th June, 1998, where incumbent had completed three years working on the relevant date against a vacant post. Recommendations accordingly were made for regularizing services of such ad-hoc appointees from time to time, by the office of Director, Higher Education to the State Government. Ultimately, a regularization order dated 3rd February, 2005 came to be passed regularizing services of such lecturers. Category of candidates ironically is missing here also.

6. Respondent no.5 thereafter was sent on deputation to U.P. Higher Education Service Commission as Deputy Secretary. While continuing as such, complaints were received questioning appointment of respondent no.5, on the ground that his initial appointment is based upon manipulated and forged documents. Payment of salary to respondent no.5 was thus stopped. A Writ Petition No.26565 of 2009 came to be filed by respondent no.5 before this Court. During pendency of this writ petition, an order of suspension also came to be passed against respondent no.5 on 4th July, 2009, which too was challenged by way of amendment. This petition was ultimately disposed of vide following orders passed on 26.8.2009:-

"We have gone through the writ petition as well as counter affidavit and rejoinder affidavit. It appears that initially petitioner prayed for salary and consequential benefits for the period he was working in the institution concerned on the post of Lecturer and subsequently by way of amendment he also prayed for a writ of Certiorari calling for the record of the case and quashing the order of suspension dated 4th July, 2009. Upon hearing the parties at a considerable length we are of the view that the writ petition can be disposed of if we pass the order in following manner:

"The petitioner will be paid subsistence allowance for the period of suspension. He will be entitled to his salary for the period prior to his suspension. The enquiry will be conducted by the Secretary, Higher Education U.P. at Lucknow. Since the petitioner has taken name of some persons in the rejoinder affidavit, we are of the view that the enquiry will be conducted independently without being influenced by the statements, if any, of such persons, in other words, they will not be party to the enquiry proceedings. The petitioner will cooperate with the enquiry officer and the enquiry proceedings will be concluded within a period of 3 months positively from the date of communication of order."

The writ petition is disposed of with the aforesaid order. Copy of the writ petition along with annexures can also be treated as part and parcel of the enquiry proceeding, if the delinquent officer wants to raise the issue.

No order is passed as to cost."

7. A modification application thereafter was filed in the aforesaid writ petition, which got disposed of on 14.9.2009, vide following order:

"This is an application for modification of the order dated 26.8.2009 passed by this Court by which Secretary, Higher Education was directed to be the Enquiry Officer to complete the disciplinary enquiry against the petitioner. It has been brought to the notice of the Court by the learned Standing Counsel that the Secretary being the disciplinary authority, there will be a problem in future if he holds the enquiry which has been opposed by the petitioner. It is further submitted by the learned Standing Counsel that any of the three Special Secretaries may be appointed as the Enquiry Officer. Suggestion has been given to select one.

Sri Harendra Vir Singh, Special Secretary is chosen and accordingly appointed as Enquiry Officer to complete the disciplinary enquiry against the petitioner. Rest of the order dated 26.8.2009 will be treated to be unchanged.

Thus, the modification application is disposed of without imposing any cost."

8. It transpires that yet another application was filed in the writ petition, and was disposed of on 28.1.2011, vide following orders:-

"While finally disposing the writ petition we have passed an order dated 26.08,2009 directing the Secretary, Higher Education U.P. at Lucknow to conclude the enquiry within a period of three months from the date of communication of order. Now the enquiry has been completed but no step has been taken in pursuance of the same but are only saying that the Special Secretary, Higher Education U.P. at Lucknow has been directed to conclude the enquiry. It can not be intention of the Court to complete the enquiry alone. Whenever enquiry is in the hands of the officer, after completion of enquiry they will not be silent spectator but in order to conclude the enquiry he will do the needful. It is expected that the authority concerned will take appropriate steps as early as possible preferably within a period of one month from the date of communication of this order."

9. Departmental enquiry was initiated and respondent no.5 was charged of securing appointment on the basis of forged M.A. mark sheet. Allegation was that respondent no.5 had submitted mark-sheet showing his marks as 479 out of 800, whereas marks subsequently claimed by him were only 441 out of 800. Respondent no. 5 submitted his reply, which shall be dealt with latter. A First Information Report was also lodged being Case Crime No. 228 of 2009, under Section 419/420 against respondent no.5, in which a final report was submitted by the investigating officer. Relying upon reply filed by respondent no.5, the Inquiry Officer came to the conclusion that an incorrect mark sheet was issued by the University initially which later got corrected. Enquiry officer found that there was no complicity of respondent no.5 in issuance of incorrect mark sheet. The charges, accordingly were not found proved by inquiry officer in its report dated 23.4.2011. The report of inquiry officer was ultimately accepted by the State Government, and the enquiry was dropped vide order dated 24.8.2012. By a separate order of same date, respondent no.5 was again appointed as Deputy

Secretary, on deputation, in the U.P. Higher Education Services Commission, Allahabad. As there was no Secretary, therefore, respondent no.5 was given additional charge of the office of Secretary of U.P. Higher Education Service Commission as well.

10. Petitioners contend that office of Secretary, U.P. Higher Education Services Commission is an important public office, and under the relevant Rules is required to be manned by an officer belonging to P.C.S. Cadre. However, no regular Secretary was posted and respondent no.5 continued to hold this office for years together. U.P. Higher Education Services Commission conducts recruitment of teachers, including principals, in colleges through out the State of U.P. imparting education in Graduate and Post Graduate courses.

11. Regulations have also been framed under the U.P. Higher Education Services Commission Act, 1980, known as U.P. Higher Education Services Commission, Allahabad (Procedure of Selection of Teachers) Regulation 1983, which stood modified vide notification dated 22nd April, 2014. Under Regulation 11 the Deputy Secretary is made a member of examining Committee. It is contended that person with questionable integrity, who has secured appointment on the strength of forged and fabricated document is allowed to occupy such important public office undermining sanctity of recruitment process itself.

12. The question whether respondent no.5 secured appointment on the basis of a forged M.A. Mark-sheet is taken up first. As per respondent No.5, he received an incorrect M.A. mark-sheet from the Kanpur University showing his marks as 479 out of 800, dated 15.1.1996. He further admits that in his application made for securing appointment in question he had in fact annexed such incorrect mark-sheet. The defence, however, is that issuance of incorrect mark-sheet was due to fault of the University and he was not responsible. He further states that a corrected mark-sheet was issued later, which was submitted alongwith a subsequent application moved with the permission of Director, Higher Education. His defence before the examining university is recorded in his letter dated 27.9.1997, addressed to the Registrar of the Kanpur University, Kanpur. This letter is hand written by respondent no.5 and is filed as Annexure-6 to his counter affidavit. The contents of the letter are extracted hereunder:-
"VERNACULAR MATTER OMITTED"

13. It is claimed that respondent no.5 came to know about issuance of incorrect mark-sheet only when he contacted the University for obtaining original degree on 27.9.1997. He has stated in para 2 of his letter that he received M.A. (Part-I) Mark-sheet but had not received his M.A. (Final) Mark-sheet. He claims to have sent a person known to him to the University, and when this alleged person came to University he was informed that mark-sheet had already been sent at the postal address, which however was not received. This known person (curiously, nowhere name of this person is disclosed) was informed by the office of the University that if original mark-sheet is not received then a duplicate mark-sheet can be issued. This person was also informed that marks secured by respondent

no.5 in his back paper was not recorded/updated, and duplicate mark-sheet can be issued once the marks awarded in back paper is recorded in the award sheet etc. This known person sent by respondent no.5, then handed over requisite expenses for issuing mark-sheet alongwith some extra sum for favours. The other unknown person, claimed to be an official of University, undertook to send corrected marks-sheet at the address of respondent no.5 and that he actually received a corrected duplicate M.A. (Final) Mark-sheet by post from University. However, for applying against the advertised post in question respondent no.5 admits to have utilized the incorrect marks-sheet. It is then stated that interview for the examination was to be held in October/November and for such purposes, respondent no.5 visited the University on 27.9.1997. There he came to know that M.A. (Final) Mark-sheet received by him through post was not genuine, and the marks shown therein do not tally with the records of the University. A prayer, accordingly, was made to issue a correct mark-sheet on 27.9.1997 and to take action against erring clerk. The alleged original of duplicate mark-sheet is stated to have been returned to the University alongwith such application. It is claimed that on the same date i.e. 27.9.1997, the University verified the records, made necessary endorsements and issued a correct mark-sheet showing his marks in M.A. to be 441 out of 800.

14. A counter affidavit is filed by the University through its Deputy Registrar, categorically stating that University never issued any incorrect mark-sheet to respondent no.5 dated 15.1.1996, showing his marks to be 479 out of 800. However, respondent no.5 asserts that two mark-sheets have been issued to him by the University, against same roll no.60711, which are as under:-

Incorrect Mark-sheet as per respondent no.5

Ist IInd IIIrd IVth Total

M.A. (Part -I)

216/400

M.A. (Part-II) 72 64 63 64 263/400

Total

479/800

Correct Mark-sheet as per respondent no.5

Ist IInd IIIrd IVth Total

M.A. (Part -I) 90 50 53 55 248/400

M.A. (Part-II) 42 64 43 44 193/400

Total

441/800

15. It is relevant to notice at this stage that minimum eligibility prescribed in the advertisement for the post in question was 55% marks i.e. 440 out of 800. Selection was to be held by according 70% weightage to the marks secured and apparently, candidate was to derive benefit by claiming higher marks. Respondent no.5 has not brought on record his M.A. (Part-I) incorrect mark-sheet. However, if his back paper result in M.A. (Part-I) 1st paper is ignored (there is reason to suspect it, as would be explained later), his actual marks in M.A. would work out to 409 out of 800, as against 479 out of 800. This would be less than 55% and render respondent no.5 ineligible to even apply for the post.

16. According to the counter affidavit filed by the examining university, a direction was issued by the Vice-Chancellor, to look into the allegations of manipulation in mark-sheet of respondent no.5. On the basis of directions issued by Vice Chancellor, the Assistant Registrar examined the record and a report dated 12.5.2011 was given, stating that the tampering has taken place in recording of marks in the back paper. The report of University in that regard is based upon the award sheet. It is stated that in the 1st Paper of student concerned 90 marks are awarded, but a careful perusal of the reverse of award sheet tampering is apparent to naked eyes. An ink remover was found to have been used to remove the earlier score and substitute it with an unusually high mark of 90 out of 100. It is further stated that although the corrected mark-sheet is stated to have been issued on 27.9.1997, but correction in the award sheet has been made only on 3.4.2001. Para 7 of the University's counter in that regard is reproduced:-

"7. That the then Vice-Chancellor has directed the Assistant Registrar of the University to look into the matter and Assistant Registrar after verifying the records, has given a report dated 12.5.2011 that it appears to be a case of tampering in posting the marks of Back Paper. Further stated that in first paper of the student, 90 marks are mentioned but from the perusal of back side, it appears that after using ink remover 90 has been written. He has further pointed out that the relevant mark sheets has been issued on 27.9.1997 whereas correction in both the charts that is, confidential and examination has been made on 3.4.2001. The report dated 12.5.2011 is the part of paper submitted before the Hon"ble Court."

17. The original award sheet has been produced before us and we find that inference drawn by the Assistant Registrar that tampering is made in awarding of marks in back paper has substance. We have viewed reverse of award sheet against light and tampering is apparent to us. At this stage, it may be noticed that it is only by virtue of 90 marks awarded in the back paper that respondent No. 5 has succeeded in securing 441 out of 800 marks, as against requirement of minimum 55% marks i.e. 440 out of 800. The defence setup by respondent no.5 about having sent an unknown person, who met an unknown clerk of university, and that such unknown clerk gave all information, and thereafter the unknown person gave money, not only for requisite fee but for the favours extended so as

to receive the alleged incorrect mark-sheet showing his marks as 479 out of 800, is clearly unbelievable. It seems more like a desperate endeavour to somehow explain inconsistent plea on part of respondent no.5. It is otherwise too much of a coincidence that he could secure 90 out of 100 in back paper, whereas in all other papers he could not even secure above 65% marks. We are informed at the bar that no other student in the entire University had secured 90 marks in any history paper.

18. The matter has to be viewed from another aspect, so as to test veracity of claim put forth by respondent no.5. He has admitted in his counter affidavit that an application was submitted by him for appointment to the post in question annexing therewith the forged mark-sheet, showing his marks as 479 out of 800. He then states that he submitted a fresh application annexing therewith the alleged corrected mark-sheet. His defence in this regard is contained in para 10(D) of his counter affidavit, which is reproduced:-

"That thereafter, respondent no. 5 approached the then Director of Higher Education, Sri Shiv Shankar Singh and informed the mistake committed by the Kanpur University. The then Director permitted the respondent no. 5 to move fresh application, which he personally allowed for moving fresh application on 29th September, 1997 against the advertisement dated 11th September, 1997. The respondent no. 5 submitted the application and after getting the permission, he moved fresh application with correct mark-sheet. The story submitted by the petitioners is absolutely incorrect and deliberately twisted to mislead this Hon'ble Court. True copies of the advertisement dated 11th September, 1997 and application moved before the then Director of Higher Education along with endorsement dated 29th September, 1997 are being attached herewith and marked as Annexure Nos. 9 and 9-A to this affidavit."

Annexure 9A is the second application allegedly submitted by respondent no.5 for appointment against the same post. It is claimed to have been made by hand on 29.9.1997. On the left margin of the application is an endorsement, claimed to be by the Director, "vuqefr" signifying permission. It is on this basis that respondent no.5 asserts that he had been selected on the basis of his correct mark-sheet. We have examined the contention. It means that respondent no.5 had submitted two applications for selection against the same post. There is nothing on record to show that first application submitted by respondent no.5, relying upon incorrect mark-sheet was withdrawn or permitted to be withdrawn. The advertisement permitted application to be made only by post and it is not known as to how an application could be made by hand. Making of two applications, by the same person, relying upon different mark-sheets would otherwise be impermissible. In the earlier petition filed by respondent no.5 a counter affidavit was filed by Assistant Director on behalf of State categorically stating that respondent no.5 had submitted only one application. The filing of alleged application dated 29.9.1997 has been specifically denied. In the totality of circumstances noticed above, we are not inclined to accept the flimsy excuse

put forth by respondent no.5 in the matter.

19. It is difficult for us to comprehend the entire story setup by respondent no.5 about filing of an application with false certificate, and thereafter getting second certificate issued and making a fresh application along with correct mark-sheet. The University categorically disputes having issued any false mark-sheet. Sri Shailendra appearing for respondent no.5 has invited attention of the Court to an RTI information given by the University through the Assistant Public Information Officer dated 6.2.2009, which records that a false certificate was inadvertently issued, whereafter the mistake was corrected and the corrected mark-sheet has been issued. The University in its counter affidavit has clearly disowned contents of the alleged reply given on 6.2.2009 by stating that there exists no record with the University on the basis of which it could be said that respondent no.5 was issued an incorrect certificate earlier.

20. The submission advanced on behalf of the petitioners that respondent no.5 secured appointment on the basis of forged M.A. mark-sheet, and thereafter managed to get original University's records manipulated to show his marks as 441 out of 800, appears to have substance. The marks secured in M.A. (Part-I) back paper i.e. 90 out of 100 stands out alone. In the facts and circumstances, we have no hesitation in arriving at a conclusion that respondent no. 5 has secured appointment on the basis of forged mark-sheet showing his marks as 479 out of 800 and his defence that he got it corrected and made a fresh application form in the same advertisement, is clearly unsustainable.

21. So far as respondent no.5 having applied against Scheduled Tribe category seat is concerned, we find that application form annexed alongwith the writ petition clearly shows that respondent No. 5 had applied as a Scheduled Tribe candidate. The original records containing application submitted by respondent no.5 are reported to be lost. The relevant records maintained with the State Government, Directorate of Higher Education are all missing. The annexures filed along with the petitioner's Writ Petition No. 28999 of 1997 are reported to be missing from the Court's record as well. It is not in dispute that appointments made by the State pursuant to advertisement concerned were in accordance with the applicable Reservation Rules. The advertisement itself clearly records such facts. However, there is no record available anywhere which may show as to which out of 268 ad-hoc lecturers were appointed against reserved category seats.

22. The second limb of challenge to the appointment of respondent no.5 is that he has secured appointment as adhoc lecturer in Government Degree Colleges, misrepresenting himself as scheduled tribe candidate, whereas his claim in that regard stands adjudged, otherwise, by the Apex Court. Respondent No. 5, however, claims that he had secured appointment claiming his status to be that of an unreserved candidate, and that he had not applied as a scheduled tribe candidate.

23. Petitioners assert that respondent no. 5 was appointed as ad-hoc lecturer in scheduled tribe category, being "NAGA". The caste certificate issued on 18.1.1996 is annexed alongwith writ petition. The application form, on the basis of which respondent no. 5 allegedly secured his appointment as ad-hoc lecturer, as per petitioners, is Annexure-4. Respondent no.5 is shown to be a scheduled tribe candidate therein, and his M.A. Marks is also shown as 479 out of 800. The photograph of respondent no.5 is also stapled on which 12/11 is the date mentioned. NET certificate issued to the respondent no.5 on 9.1.1996 mentions his category as SC/ST is Annexure- 5. This certificate was issued pursuant to test conducted by U.G.C on 9.4.1995, wherein respondent no.5 was awarded JRF in SC/ST category. A prior NET certificate, pursuant to UGC test held for eligibility for lecturership held in December, 1994 dated 2.7.1996 is also annexed.

24. Respondent no. 5 admittedly had applied as a scheduled tribe candidate in an earlier recruitment conducted by U.P. Public Service Commission for combined State/Upper Subordinate Examination (PCS Examination) and claimed benefit of 2% reservation admissible to a Scheduled Tribe candidate. He was selected in the year 1994 in PCS examination, and was placed at serial no. 5 in the select list. Such appointment of respondent no. 5 was later cancelled by the Commission for the following reasons:-

"Sanjay Kumar Singh was taken to be a candidate in the Scheduled Tribe category on the basis of facts stated by him during interview. Sri Sanjay Kumar Singh had disclosed that he was of Scheduled Tribe "NAGA". This Tribe "NAGA" is not one of the tribes enumerated in the list of Scheduled Tribe in the State of Uttar Pradesh by the Government. Therefore, he is not entitled to the aforesaid reservation."

25. Respondent no. 5 challenged this decision by filing Writ Petition No. 28999 of 1997, which came to be allowed by Division Bench of this Court on 26.11.1999. Public Service Commission approached the Hon"ble Supreme Court against this judgement in Civil Appeal No. 6120 of 2000. The judgement of this Court was reversed. It was held that " NAGA" is not notified as Scheduled Tribe in the State of U.P, as such, selection of respondent no. 5 as Scheduled Tribe was illegal and his appointment, as such, was set aside. Paragraph 14 of the judgment reported in 2003 SCC (L&S) 1081 is reproduced:-

"The contention of the appellants should therefore be accepted and the appellant cannot be treated as a Scheduled Tribe candidate so as to qualify himself to claim reservation against the vacancy reserved for Scheduled Tribe in public services in the State of U.P. The view of the High Court cannot be sustained as it goes counter to the pronouncements of this Court. Hence it is set aside and the appeals are allowed without cost. However, in the peculiar circumstances of the case, the ends of justice would be met if the appellants are directed to consider the case of the respondent in general category and if in comparison with the general category candidates selected, the respondent had secured higher marks/ grading, he should be offered appointment to an appropriate post against one of

the existing vacancies."

26. On the basis of such materials, petitioners contend that respondent no.5 having applied for appointment as Scheduled Tribe category candidate is otherwise ineligible to hold the post, in view of the Apex Court judgment. Petitioners have also annexed counter affidavit filed in Writ Petition No. 26565 of 2009, by the Assistant Director working in the Directorate of Higher Education U.P, Allahabad on behalf of State, contending that respondent no.5 had secured appointment as Scheduled Tribe candidate on the basis of forged mark-sheet.

27. Respondent no.5 states that it was a conspiracy hatched by the deponent swearing counter affidavit in Writ Petition No. 26565 of 2009, that records have been got misplaced and a false stand was taken before this Court. Such allegation of respondent no.5 has been taken to be correct by the higher officials of the State, who were directed to examine the relevant records, by us. At this stage, it may be noticed that having prima facie found substance in the allegations made in this petition, we directed an enquiry by the State and thereafter required the Chief Secretary of State of U.P. to examine relevant records as also the findings given by the Enquiry Officer in the matter. The Chief Secretary, however, has endorsed the defence of respondent no.5 as also the report of Enquiry Officer.

28. We, however, do not find any substance in the plea of conspiracy against respondent no.5 by the officers posted in Directorate of Higher Education. The mere fact that authorization in favour of the Assistant Director to file a counter affidavit is not traceable, would not be a material fact to ignore the counter affidavit itself. From the counter affidavit filed, it is clearly reflected that records were available till the time of filing of reply before this Court. It was also stated categorically that respondent no.5 has submitted only one application, copy whereof was filed alongwith the counter affidavit of the State. Paragraphs 5, 7 (i), (iv), (vii), (x), (xiii) of the counter affidavit are reproduced:-

"5. That in reply to the contents of paragraph no.3 of the Amendment Application it is submitted that proper reply to the contents of writ petition has already been filed by way of counter affidavit. The order of suspension of the petitioner was passed on 4.7.2009 i.e. before the filing of counter affidavit therefore, it was expedient to bring this fact also in the knowledge of the Hon'ble Court.

7. That the contents of paragraph no. 6 are being replied as below:-

(i) That the contents of ground O of the Amendment Application are misconstrued and misleading, hence not admitted. It is submitted that petitioner has committed fraud by filing forged marksheet with his application and obtained the post of lectureship in Government Degree College. It is further submitted that petitioner's claim for submission of his application from on 29.9.1997 is baseless and unfounded. The selection records available in the office shows that petitioner has submitted one and only application which has already been annexed as Annexure No. 1 to the counter affidavit.

(iv) It is submitted that petitioner, whose selection has been made under ST category, would have not been called for interview had his candidature been considered under general category. The petitioner with 43.26 marks would have been at S.No. 181 in the merit list of general category. Thus, the claim of petitioner for being selection under General category is not sustainable of the eye of law. It is again submitted that on their ground alone, the writ petition is liable to be dismissed.

(vii) That in reply to the contents of ground U of the Amendment Application is submitted that in pursuance of advertisement no. Degree Seva 6123 dated 11.9.1997, the petitioner had submitted only one application (Annexure I to the Counter Affidavit) in the form as exists in the records of the Directorate of the Education. The petitioner is denying the same though he accepted the submission of the application in para 5 of the rejoinder affidavit filed by him in the writ petition.

(x) That in reply to the contents of ground X of the Amendment Application are misconceived and misleading, hence vehemently denied. It is submitted that it appears that after his selection and joining in Govt. Degree College, the petitioner somehow managed to replace the forged marksheet by the correct one because petitioner had no fear or apprehension of loosing the service. The recommendation of petitioner's regulation was made under the impression that there is no illegality in the selection of petitioner.

(xiii) That in reply to the contents of ground AA of the Amendment Application are misconstrued and misleading, hence vehemently denied. It is submitted that the petitioner did not submit the new or second application form as alleged by him in the para under reply. It is reiterated that office records shown that petitioner has submitted only one application which has already been annexed as Annexure 1 to the counter affidavit and his selection has been made on the basis of documents annexed therewith i.e. as ST candidate."

29. Even the certificate of NAGA claimed by respondent No.5 was alleged to have been outcome of fabrication, inasmuch as the caste certificate was also not validly issued. Respondent no.5 continued to assert before this Court and also before the Hon"ble Supreme Court that he is a scheduled tribe candidate. It is only in the year 2003 when the Civil Appeal was decided by the Hon"ble Supreme Court against respondent no.5 that an occasion arose for him to claim his candidature as an unreserved category candidate. It is, therefore, quite probable and natural otherwise in September, 1997 for respondent no.5 to claim his status as that of a scheduled tribe candidate.

30. It would be natural to expect that respondent no.5 since has pressed his claim of being NAGA right upto the Hon"ble Supreme Court, that in the application made for appointment, he described his category as that of scheduled tribe. The application form filed alongwith the counter affidavit of the State in 2009 writ petition of respondent no.5 also mentions his status as that of

scheduled tribe candidate.

31. Moreover, the contention of respondent no.5 that the application, relied upon by the petitioners, was actually an application submitted pursuant to some previous advertisement is neither substantiated nor appears to have any substance. Mere fact that date mentioned on his photo stapled on the form is 12/11 whereas last date for making of application was 30.9.1997 would not make much of a difference. Date on the photograph, insofar as recording of month is concerned, may have contained error, but on such basis the application itself cannot be discarded, particularly when no other application was available on record. We are constrained to take such a view as the persistent manipulation done at different levels, cannot be lost sight of. It is only after filing of counter affidavit in 2009 petition that all records suddenly have gone missing, with respondent no.5 being an apparent beneficiary. The mere fact that a final report was submitted in the F.I.R. lodged against respondent no.5 or in the matter of records having gone missing, would mean that no criminal action can be taken against him, but the fact of manipulation having been done in recording of marks, issuance of forged certificate, and in misplacing the records continues to exist, and we can always take note of such facts to ascertain genuineness of documents submitted by respondent no.5 for securing his appointment. At this stage, we may also note that records have gone missing from almost all offices. We required the Chief Secretary, State of U.P to have an enquiry conducted in the matter and submit his report. The Enquiry Officer has submitted his report to this Court blindly accepting whatever is stated by respondent no.5 as gospel truth. The materials in the form of contradictory and manipulated records, counter affidavit, have all been ignored. Respondent no.5 against whom such serious allegation of manipulating appointment on the basis of forged records is made, is rewarded by allowing him to occupy an important office of Deputy Secretary, U.P. Higher Service Education Commission and to continue as Secretary of the Commission for substantially long. We are sad to notice the State of Affairs prevailing in which a person facing serious charges of manipulating his appointment on the strength of forged document is rewarded by being made Secretary of an important Commission, which recruits associate professors, principals and teachers of all Post Graduate and Graduate colleges existing in the entire State of U.P.

32. We also record our disapproval of the stand taken by the Chief Secretary of the State of U.P., which ignores the weight of evidence on record and exposes manipulations and fabrication of records by respondent no.5 to obtain appointment contrary to law. We, therefore, hold that respondent no.5 has no valid title to hold the public office of adhoc lecturer in Govt. Degree College vide order dated 6.4.1998 and consequently, has no right to occupy the post of Deputy Secretary/Secretary of the U.P. Higher Education Service Commission. A writ of quo-warranto is hereby issued against respondent no.5 to forthwith vacate such office.

33. Writ petition is accordingly allowed. There shall be no order as to costs.