
(2010) 02 UK CK 0035

In the Uttarakhand High Court

Case No : Writ Petition (M/s) No. 2010 of 2009

Dr. Nikhat Arifa Khan

APPELLANT

Vs

Management Committee of Campus School and Others

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Citation : (2010) 02 UK CK 0035

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Advocate : Manoj Tiwari and T.A. Khan, for the Appellant; Rajendra Dobhal and Gopal Dutt Joshi, for the Respondent

Final Decision : Allowed

Judgement

B.S. Verma, J.—By means of this writ petition, the Petitioner has sought a writ in the nature of certiorari quashing the impugned judgment and order dated 23-11-2009 passed by learned Education Tribunal / District Judge, Udham Singh Nagar in Misc. Civil Appeal No. 62 of 2009 (Annexure-1 to the petition) as well as the cancellation order dated 31-10-2009 passed by the Respondent No. 3 Secretary Campus School Pant Nagar, District Udham Singh Nagar (Annexure-9 to the petition).

2. Brief facts, giving rise to the present writ petition, according to the Petitioner, are that the Petitioner possesses Master's Degree in Zoology. In addition to that, she is Master of Philosophy and Ph.D. in the same subject. She was given appointment on the post of Post Graduate Teacher (PGT) for teaching 11th and 12th Standard vide order dated 11-7-1987. Subsequently, she was appointed as Vice Principal after selection vide order dated 27-5-1998 (Annexure- 4 to the petition) and she has served as Vice Principal in the institution. Initially she was appointed Vice Principal for a period of 3 years, which was subsequently extended in the year 2003 vide order- dated 16-12-2003. The Petitioner is the senior-most teacher in the institution.

3. According to the Petitioner, when she was working as Vice Principal, she also officiated as Principal for a period of 22 months and thereafter she was appointed on the post of Principal. Her promotion order was cancelled by the President, Campus School Management Committee and vide order dated 31-10-2009 of the Secretary, Campus School Management Committee, the Petitioner was reverted to her original post in the pay scale of Rs. 6,500-10,500/- with retrospective effect. However, the Petitioner was directed to continue to perform as Officiating Principal till the appointment of regular Principal in the School (Annexure-9 to the petition).

4. Aggrieved by the aforesaid order, the Petitioner preferred appeal before the Education Tribunal/District Judge, Udham Singh Nagar, which was registered as Civil Misc. Appeal No. 62 of 2009, Dr. Nikhat Arifa Khan v. Management Committee and Ors. However, the learned Education Tribunal did not find favour with the Appellant and the appeal was dismissed vide judgment and order dated 23-11-2009 which gave rise to the present writ petition.

5. On behalf of the Respondents, counter affidavit has been filed. It has been asserted by the Respondents that the Campus School Management Committee headed by Dr. B.K. Sikka made appointments of Principal, teachers and employees in the month of October 2008 without any selection committee and issued appointment letters without the approval of the Patron. According to Respondents when the Patron started receiving representations from school teachers and information under the Right to Information Act, he came to know about the anomaly and ultimately, new committee of management headed by Dr. v. Rajora took over charge on February 1, 2009. It has further been asserted that after April 2008, the decisions taken in the meetings of Committee of Management were implemented without approval of the Patron. An enquiry committee was constituted by the Patron on 19-3-2009 which submitted its report on 29-4-2009. In its meeting held on 24-6-2009 recommended for cancellation of the decisions taken by earlier management committee for selection of Principal, teachers and other employees in the school. The Patron by letter dated August 16, 2009 asked the then President, the then Secretary and the Petitioner to submit their reply by 22-8-2009 to disclose the reason for ignoring the Patron and for violating the established practice in the matter of appointments of Principal, teachers and employees. Copies of letter dated 16-8-2003 are annexed as Annexure C.A.-3 to the counter affidavit. They submitted the replies which are annexed as Annexure CA-4 to the counter affidavit. The Respondent No. 3, who is competent authority issued order on 31-10-2009 thereby canceling the appointment of the Principal and other teachers and employees. The order dated 31-10-2009 was challenged by the Petitioner before the Education Tribunal/District Judge Udham Singh Nagar, who dismissed the appeal. It has been stated in the counter affidavit that the selection made by the Committee of Management headed by Dr. B.K. Sikka was in violation of mandatory provision of Rule 25, Chapter 7 of the C.B.S.E. Affiliation Bye-laws. It was further stated that the selection of the Petitioner on

the post of vice principal was made on temporary basis only for three years and that too without any payment of pay scale. The Petitioner was given an honorarium of Rs. 250/- per month for carrying out extra duties of Vice Principal. The Petitioner was never granted pay scale of vice principal, i.e. Rs. 7,500/-, 12,000/- and that of Principal, Rs. 10,000/--15,200/-. The entire selection process adopted by the earlier committee of management was in violation of mandatory procedure prescribed under C.B.S.E. affiliation Bye-laws and the decision taken by the earlier committee of management on 22-10-2008 was against the bye-laws therefore, the same could not have been confirmed in the meeting held on 8-11-2008 particularly the Petitioner herself was a beneficiary, being ex-officio President.

6. The Petitioner has filed rejoinder affidavit. It has been stated that the earlier Management Committee took a decision in its meeting dated 22-10-2008 to regularize the services of teachers serving since long against regular posts and no fresh appointment was made. The Petitioner had been serving as Vice Principal since 1998 and she had worked as In-charge Principal for long spells during the absence of regular Principal. The minutes of the meeting held on 22-10-2008 have been annexed as Annexure RA-1 to the rejoinder affidavit. It has also been stated that the services of the Petitioner have been regularized observing that she had more than 10 years continuous and satisfactory service as Vice Principal and Officiating Principal in Campus School.

7. On behalf of the Petitioner supplementary affidavit has also been filed. Along with the same, the Petitioner has filed copies of certain documents, which are Annexure SA-1 to SA-4 to the affidavit.

8. I have heard learned Counsel for both the parties and perused the entire material placed on record including averments made in the writ petition, the counter version of the Respondents and the rejoinder affidavit as well as the contents of supplementary affidavit filed by the Petitioner.

9. It is an admitted fact that the Petitioner was appointed as Post Graduate Teacher (Biology) in the pay scale of Rs. 6,500- 10,500/-. It is also not disputed that the Petitioner had been appointed as Vice-Principal temporarily for a period of three years by the President, Management Committee Campus School Pantnagar and the communication to that effect was made to the Petitioner on 27-5-1998 (Annexure-4 to the petition) wherein it has been mentioned that "the Management Committee of the Campus School is pleased to appoint you as Vice-Principal temporarily for a period of three years." It is also not disputed that the Petitioner has been serving continuously on the post of Vice Principal since then until she was given appointment as Principal by the earlier committee of management. It is also not disputed that by Office Order dated 22-10-2008 the Petitioner, who was Officiating Principal had been sanctioned the pay scale admissible to the Principal, i.e. Rs. 10000-325-15200 and the communication to that effect was made by the Secretary, Campus School by his order dated 22-10-2008 vide Annexure 6. It is also not disputed that the Petitioner was

promoted as regular Principal in the pay scale of Rs. 10000-325-15200 with effect from 1-10-2008 by the Campus School Management Committee and the communication to this effect was made by the Secretary to the Petitioner by letter dated 3-11-2008 (Annexure-7 to the petition).

10. Learned Counsel for the Petitioner has vehemently contended that no opportunity of hearing and even a show cause notice was given to the Petitioner before passing the impugned order dated 31-10-2009 whereby the Petitioner was reverted to the post of PGT in the pay scale of 6,500-10,500/-. Therefore, the impugned order dated 31-10-2009 is hit by the principle of natural justice and the same is not tenable in the eye of law. Learned Counsel for the Petitioner has also contended that if the promotion of the Petitioner to the post of Principal be held to be erroneous for the sake of argument, even then show-cause notice must have been given to the Petitioner before passing any order against her. Learned Counsel has placed reliance on the case of Union of India (UOI) and Another Vs. Narendra Singh, , wherein the Apex Court has held that even if the promotion is erroneous, show cause notice is must. In para 34 of the judgment has inter alia observed that "true it is that before such an action is taken and a person is actually reverted, he must be given an opportunity to show cause why the proposed action should not be taken. He may be able to satisfy the authorities that there was no such mistake. But even otherwise, principles of natural justice and fair play require giving of such opportunity to him."

11. Learned Counsel for the Petitioner has further relied upon the Division Bench judgment in the case of Vishwamitra Yadav Vs. U.P. State Public Service Tribunal and Others, . In paragraph No. 6, the Allahabad High Court has observed that in the case of ineligibility for promotion, the Petitioner was entitled to an opportunity of being heard. But that was not done. It is apparent that the impugned order has been passed in violation of principles of natural justice.

12. Learned Counsel for the Petitioner has also relied upon the case of Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa, wherein the Apex Court has observed in para 35 that "any order passed in violation of the principles of natural justice save and except certain contingencies of cases, would be a nullity." In the case of Basudeo Tiwary Vs. Sido Kanhu University and Others, , the Apex Court in para 10 has inter alia observed that "in order to impose procedural safeguards, this Court has read the requirement of natural justice in many situations when the statute is silent on this point. The approach of this Court in this regard is that omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing-it may be implied from the nature of the power-particularly when the right of a party is affected adversely."

13. Learned Counsel for the Petitioner has vehemently contended that it is well settled that no person should be condemned without hearing. He has relied in paragraph 8 of the Apex Court judgment in the case of Shridhar Vs. Nagar Palika, Jaunpur and Others, wherein it has been held inter alia that it is an elementary

principle of natural justice that no person should be condemned without hearing. The order of appointment conferred vested right in the Appellant to hold the post of Tax Inspector, that right could not be taken away without affording opportunity of hearing to him. Any order passed in violation of principles of natural justice is rendered void.

14. Learned Counsel for the Petitioner has also relied upon the case of Gajanan L. Pernekar Vs. State of Goa and Another, , wherein in para 8 the Apex Court inter alia has held that "the manner in which the order dated 21-1-1999/22-1-1999 came to be made was, to say the least, not proper. The Appellant was denuded of the benefits of the order dated 16-2-1994 unheard. There has been a breach of the principle of natural justice and a violation of fair play in action. The earlier order made in favour of the Appellant as early as on 16-2-1994 was rescinded without giving any opportunity to the Appellant to show cause against it. Absorption of the Appellant as Headmaster of Government High School by the order dated 16-2-1994 had not been put in issue through any proceedings by any party at any point of time. That benefit could not have been taken away from the Appellant without affording him any opportunity of hearing, even where the absorption as Headmaster of the High School had been put in issue. The principles of natural justice have been respected in their breach."

15. In reply, the learned Counsel for the Respondents argued that the decision taken in the meeting held on 22-10-2008 was totally in violation of the Bye-laws of the society and established selection norms, therefore, the same could not have been confirmed in the meeting held on 8-11-2008 in which the Petitioner herself as a beneficiary was present as Vice President. Learned Counsel for the Respondents vehemently argued that in its meeting held on 14-8-2008, it has been mentioned that "as regard to services of officiating principal, the committee has felt to honor the pay scale meant for the principal and therefore the officiating principal is hereby given the scale of the principal with the effect of August 1,2008 till the regular new appointment for the principal is made. The committee also felt the necessity to urgently advertise the position for the recruitment of Principal of Campus School."

16. It has also been contended by the learned Counsel for the Respondents that in the case at hand, there was no need at all to issue show-cause notice for the reason that the order dated 3-11-2008 was totally illegal and in violation of mandatory provision and the Rules. The learned Counsel has argued that the Petitioner was herself fully aware that she could not have been promoted to the post of Principal for want of eligibility. In support of his contention, the learned Counsel for the Respondents has relied upon the judgment in the case of S.L. Kapoor Vs. Jagmohan and Others, . The Apex Court in paragraph 24 has inter alia observed as under:

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference of natural justice had been observed. The non-observance of natural justice is itself prejudice to any

man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier 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.

17. Learned Counsel for the Respondents further relied upon the case of State of M.P. and Others Vs. Shyama Pardhi etc. etc., . The Apex Court in paragraph 5 of the judgment has inter alia observed since prescribed qualifications had not been satisfied, the initial selection to undergo training is per se illegal. Later appointments thereof are in violation of the statutory rules. The Apex Court further held that the question or violation of the principles of natural justice does not arise. Similar view has been taken by the Apex Court in the case of Mohd. Sartaj and Another Vs. State of U.P. and Others, and in this case, the Apex Court has relied upon the case of State of M.P. and Ors. v. Shyama Pardhi and Ors. (supra).

18. Learned Counsel for the Respondent has further relied upon the case of Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, . In that case, the Apex Court has observed in paragraph Nos. 26 and 27 that there cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillars of natural justice which means no one should be condemned unheard. However, whenever possible the principles of natural justice should be followed. These principles cannot be put in any straitjacket formula. The said principles may not be applied in a given case unless a prejudice is shown. It is not necessary where it would be a futile exercise. In paragraph No. 28, it was observed that a court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences.

19. In the case of Ashok Kumar Sonkar (supra) the selection of the Appellant employee was illegal. He was not qualified on the cut-off date. It was therefore held by the Apex Court that being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard. Similar view has been taken by the Apex Court in paragraph 12 of the case of Union of India (UOI) and Others Vs. Bikash Kuanar, .

20. Learned Counsel for the Petitioner in reply to the contention of the Respondents that no show cause notice was necessary as the Petitioner did not possess the requisite qualification has drawn the attention of this Court to Annexure No. 5 annexed to the Counter Affidavit filed by the Respondents and urged that the impugned order dated 29-10-2009 passed by the Patron thereby reverting the Petitioner to the post of P.G.T. (Biology), there is no whisper that the Petitioner was lacking requisite qualification for the post of Principal. The learned Counsel also pointed out that the Respondents have not produced any

document before this Court, which could show that the approval of Patron was in any manner necessary. Learned Counsel for the Petitioner has further contended that the powers of committee of management are contained in Clause 8.6 of the Bye-laws. In Sub-clause 4 of Clause 8.6, it is mentioned that for selections of teachers and other employees, there shall be a committee of three persons i.e. the President of the committee of management (Chairman), Secretary of committee of management and Vice-President of committee of management as members of the selection committee. The learned Counsel for the Petitioner further submitted that in the case at hand, it was a case of promotion, therefore, on this ground also, there was no need to constitute any selection committee. In reply, the learned Counsel for the Respondents could not show any specific clause of the Bye-laws which makes it incumbent to constitute a selection committee in the matter of promotion to the post of principal. Admittedly, the Campus School of which the Petitioner was the Principal is an unaided private institution, therefore, the rules prescribed for the government school/institutions do not apply in letter and spirit to such private school.

21. Moreover, a reference to the alleged show cause notice dated August 16, 2009 (Annexure-10 to the petition), which was given to the Petitioner, is necessary to make the matter crystal clear. The same is reproduced hereunder:

OFFICE OF THE PATRON, CAMPUS SCHOOL,
PANTNAGAR DISTRICT UDHAM SINGH NAGAR,
UTTARAKHAND.

Secret

No. VC/C. School/908

Dated : August 16, 2009.

Ms. N. Khan, Principal Campus School Pantnagar

Some cases of anomalies having taken place in the Campus School, Pantnagar, in recent past, have come to the notice of the undersigned.

As per the established practice, the policy decisions taken in respect of Campus School by the President and/or Management Committee, before their implementation, particularly in the cases of nominations, appointments, promotions, regularization of services of contractual or daily paid workers etc. involving financial commitment, had to be got approved by the Patron of the School. But in some cases, such as appointment of Vice-Principal, teachers, regularization of workers, etc. having financial involvement, the established practice had not been followed. On account of ignoring the Patron in these cases, many complications have cropped up which need immediate solution. In fact you will agree that violation of established practices and procedures in any Institution is a serious act of disobedience and indiscipline. I would, therefore, like to know the circumstances under which, as Principal of Campus School Pantnagar, you

had preferred to take policy decisions at your own level or at the level of Management Committee, in above mentioned cases, ignoring the approval of Patron of the Management Committee of Campus School.

Your reply may please be submitted to the undersigned at the earliest but before 22.8.2009.

Sd/

(B.S. Bisht)

Patron

Campus School, Pantnagar.

22. From a bare perusal of the aforesaid letter, it is obvious that the Petitioner has not at all been asked to show cause as to why she be not reverted to the post of Vice Principal or to the PGT grade. There is even no reference as to the promotion of the Petitioner to the post of Principal. Moreover, by this letter, the Petitioner has been asked to let the Patron know the circumstances in which the Principal, i.e. Petitioner had taken policy decisions at her own level ignoring the approval of the Patron. In any view of the matter, the letter dated August 16, 2009 issued to the Petitioner (Annexure-10) cannot be termed as a show cause notice so as to hold that opportunity of hearing had been given to her before passing the order against her. In the show cause notice, one must be made aware that the authority concerned is going to take an adverse decision against the person concerned if the explanation called for is not found to be satisfactory. It is not a case in the case at hand. Therefore, this letter is of no help to the Respondents.

23. Learned Counsel for the Petitioner further argued that the decision regarding regularization of services of the Petitioner on the post of Principal having been taken by the approved Managing Committee in its meeting held on 8-11-2008, the subsequent action taken by the new committee of management thereby canceling the promotion by the impugned order dated 31-10-2009 is illegal and perverse. Learned Counsel has pointed out that in the meeting of 8-11-2008 out of eight members of the committee of management, seven members were present.

24. I have considered this contention of the learned Counsel for the parties. The decision for regularization of services of Principal was taken by the committee of management in the meeting held on 22-10-2008. It has been mentioned in the minutes of the meeting held on 22-10-2008 (Annexure CA-10) that "the Committee unanimously decided to regularize the services of Officiating Principal- Dr. (Mrs.) N. Khan as Principal." In this meeting as many as six members including the President and Secretary of the committee of management were present. The Respondent have also annexed the minutes of the meeting held on 8-11-2008 as Annexure CA-11 to the counter affidavit. From a bare perusal of the minutes of the meeting held on 8-11-2008, it is obvious that as

many as 13 members were present in the meeting including the President and Secretary of the committee of management and three members only were absent in the meeting. The said minutes bear the signatures of as many as 12 members except that of Mr. Mukesh Pandey, Member, Advisory Committee, whose name has been mentioned at serial No. 10 at the top portion of the minutes. Even otherwise, Clause 8.6 of the Bye-laws of the committee of management provides that the selection committee will consist of President and Secretary of the committee of Management and Vice President. The Principal is said to be ex-officio vice President of the Committee Management. It is provided under the said clause that in case of difference of opinion, the decision shall be taken on majority basis. Even if it may be presumed that the Petitioner herself was a member and has been a beneficiary, even then there has been impliedly 2/3rd majority. At any rate, in the Bye-laws framed by the Committee of Management, it has not been provided as to who shall be the member of selection committee in case of selection on the post of the Principal. Moreover, it is the own stand of the Respondents that in the meeting held on 14-8-2008, it was decided that the post of the Principal shall have to be advertised and till the regular appointment to the post of Principal is made, the Petitioner has been given the scale admissible to the Principal, (Rs. 10,000-325-15,200). If the contention of the learned Counsel for the Respondents is allowed to stand that the post of the Principal has to be advertised for regular appointment as per decision taken in the meeting held on 14-10-2008 (Annexure-CA-9 to the counter affidavit), then it has to be taken for granted that the Petitioner ought to have been allowed the pay-scale of Principal till the regular appointment to that post is made. The Respondents cannot be allowed to take aid of only that part of the minutes of the meeting dated 14-8-2008, which suits to their purpose. It has not been shown from the side of the Respondents that any regular appointment to the post of Principal has already been made and consequently, the Petitioner was being reverted to her original post of P.G.T. On the other hand, it is the own case of the Respondents that the Petitioner has been asked to continue as Officiating Principal till the appointment of regular Principal in the school.

25. Learned Counsel for the Respondents while supporting the impugned orders has lastly contended that no approval of the Patron was obtained while promoting the Petitioner to the post of Principal. I do not agree with the contention of the Respondents that the approval of the Patron is necessary in case of any appointment or promotion as per the bye-laws of the committee of management. Clause 9 of the bye-laws provides that the Patron is empowered to give necessary instruction suo motu or on any application or representation or on appeal to the committee of management or its President for running the school. This clause nowhere provides that the approval of patron is necessary to be obtained in the matter of promotion.

26. From a perusal of the entire material placed before this Court, it is abundantly clear that the Respondents could not show that the Petitioner did not possess the requisite eligibility for being appointed as Principal of the school,

therefore, the contention of the Respondents that no show cause notice or opportunity of being heard was necessary in the case at hand cannot be acceptable. The case-law relied upon by the Respondents are of no avail. I am of the considered view that by the letter dated 16-8-2009, the Petitioner was only asked to explain the circumstances under which as Principal of Campus School, she had preferred to take policy decisions at her own level. She was not asked by the Respondents at any point of time as to why her promotion order be cancelled the same being in violation of the bye-laws or being illegal in any manner. As such, it is obvious that the Petitioner was not given any opportunity to show cause why she be not reverted to her original post of Post Graduate Teacher (Biology), though admittedly she had been promoted to the regular post of Principal by the former committee of management.

27. Learned Education Tribunal in its order dated 23-11-2009 has observed that no advertisement for the post of Principal was made and the Petitioner had been wrongly given the pay-scale of the Principal. If these are taken for granted that the post of Principal was not advertised by the committee of management and that without approval of the patron, pay-scale of principal has been given to the Petitioner, even in any view of the matter, the Petitioner cannot be held responsible for the alleged shortcomings/irregularities. It is undisputed fact that the Petitioner was appointed as Vice-Principal temporarily for a period of three years by order dated 27-05-1998 under the authority of the President, Management Committee, Campus School Pantnagar and her appointment as such has been extended from time to time. It is also an admitted fact that the patron, campus school has allowed the Petitioner to continue as Vice-Principal till further orders vide order dated 16-12-2003 (copy Annexure-8 to counter affidavit filed by the Respondent). Moreover, it is not the case of the Respondents that the Petitioner does not possess eligibility qualification to be promoted as Principal. But the learned Tribunal has held that the Petitioner was not qualified to be appointed to the post of Principal. Granting of pay-scale of Rs. 7500-12000 or Rs. 8000-13500. The learned Education Tribunal has not addressed itself with reference to the order dated 3-11-2008 (Annexure-7 to the petition) whereby the Management Committee of the Campus School had promoted the Petitioner as regular Principal in the pay scale of Rs. 10,000-325-15,200 with effect from 1-10-2008. The learned Tribunal has failed to examine the root of the case inasmuch as in the alleged show cause notice (Annexure-10 to the petition) issued by the Patron, Campus School, it is nowhere been mentioned worth the name of the Petitioner had not rendered prescribed service in the grade of Vice-Principal and therefore, she was not eligible to be promoted as Principal institution. At the most, the present case could be said as that of erroneous promotion of the Petitioner. Be that as it may, once the order appointing the Petitioner as Principal was issued and implemented in favour of the Petitioner by the committee of management, it was incumbent upon the Respondents to afford an opportunity of hearing to the Petitioner before passing adverse order against her. I am fortified in my view by the Apex Court judgments in the case of

Shridhar v. Nagar Palika Jaunpur and Ors. (supra) and Union of India and another impugned order passed by the learned Education Tribunal is not tenable in the eye of law.

28. For the reasons and discussion above, it is amply clear that the Petitioner had not been given any show cause notice, therefore, there has been clear-cut breach of the principles of natural justice. Accordingly the impugned order dated 31-10-2009 passed by the Respondent No. 3 (Annexure-9) is liable to be set aside. The learned Tribunal also lost sight of the fact that the Petitioner had been promoted as Principal by the earlier committee of management and she was granted pay-scale admissible to the Principal. Therefore, it was obligatory on the part of the Respondents to have given show cause notice to the Petitioner before passing any order against her, but it was not done. Consequently, the appellate order dated 23-11-2009 passed by the Education Tribunal Udham Singh Nagar also deserves to be set aside. However, the Respondents would be at liberty to take a decision afresh in the matter after affording adequate opportunity of hearing to the Petitioner. The writ petition, therefore, deserves to be allowed.

29. The writ petition is allowed. The order dated 31-10-2009 (Annexure-9 to the petition) passed by the Respondent No. 3 as well as the order dated 23-11-2009 passed in Misc. Civil Appeal No. 62 of 2009 (Annexure-1) are set aside. The Respondents would be at liberty to take a decision afresh in the matter after giving show cause notice and affording opportunity of hearing to the Petitioner, if they so like.