
(2009) 09 AHC CK 0061
In the Allahabad High Court

Farhat Jahan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16F

Citation : (2010) 1 AWC 940

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Gulrej Khan, learned Counsel for the petitioner and Sri K.S. Kushwaha, learned Counsel for the respondents.

2. Since counter and rejoinder-affidavits have been exchanged, as requested and agreed by learned Counsel for the parties this writ petition has been heard finally and is being decided under the Rules of the Court at this stage.

3. The petitioner is aggrieved by the order dated 29.7.1995 and 10.11.2006 (Annexures-4 and 1 to the writ petition respectively) whereby her appointment on the post of Assistant Teacher (Urdu) in Primary School has been cancelled on the ground that she did not possess the requisite training qualification and the certificate submitted by her alongwith her application form was found fabricated.

4. The case of the petitioner is that she never submitted any training certificate and, therefore, the question of playing any fraud on her part does not arise.

5. From the writ petition the following facts which are not in dispute may be summarized.

6. An advertisement was issued by respondent No. 3 on 24.9.1994 advertising vacancy on the post of Assistant Teacher (Urdu) in Primary School (Junior and Senior) (Boys and Girls). The essential qualifications prescribed in advertisement were as under:

2- fu/kkZfjr vgZrk;sa&

?d? "kSf{k d ;ksX;rk led{k

ek;/fed f"k{k ifj"kn~ dh b.VjehfM;V ijh{k mnwZ fo"k; ds lkFk A tkfe;ka mnwZ] vyhx< dh vnhc&,&ekfgj dh ijh{k

uksV& dksbZ vH;FkhZ tks mDr vgZrk ugha j[krk gS og Hkh fu;qfDr ds fy;s ik= gks ldrk gS ;fn og ,d fo"k; ds :i esa mnwZ ds lkFk ch0,0 vFkok ,e0,0 mikf/k j[krk gks ?tkfe;k mnwZ] vyhx< dh vnhc&,&dkfey mikf/k dks ch0,0 ?mnwZ? ds led{k ekuk x;k gS A?

?[k? izf"k{k.k ;ksX;rk

ch0Vh0lh0 mnwZ izf"k{k.k ?izns"k ds pkj dsUnzks ls& y[ku?] vkxjk] eokuk ? esjB? ldyMhg] ?okjk.klh? A** ;k tkfe;ka mwnZ vyhx<+ dh eksvfYye&,&mnwZ mikf/k A

7. Paras 3 and 4 further provides certain clarifications where the candidates with requisite qualifications are not available and read as under:

3- mi;qZDr vgZrvksa dks j[kus okys vH;FkhZ;ksa ds miyC/k u gksus dh n"kk esa fuEu vgZrk/kkjH Hkh fu;qfDr ds ik= gksxs%

ek;/fed f"k{k ifj"kn~ dh mnwZ fo"k; ds lkFk b.VjehfM;V ijh{k ,oa ch0Vh0lh0 ? lkekU;? izf"k{k.k mRrh.kZ vH;FkhZ A

4- ;fn fQj Hkh fu/kkZfjr la[;k eas vH;FkhZ u miyC/k gksa rks fuEu ojh;rk ds vk/kkj ij fu;qfDr gsrq fopkj fd;k tk;sxk%

?d? ,sls vH;FkhZ ftUgksus mnwZ fo"k; lfgr ek;/fed f"k{k ifj"kn~ dh b.VjehfM;V ijh{k ;k jkT; ljdkj }kjk ekU;rk izkIr led{k vU; ijh{k mRrh.kZ djus ds lkFk vkWy bf.M;k rkyhe?kj }kjk lapkfy mnwZ V?sfuax lfVZfQdsV ?;w0Vh0lh0? iw.kZ dj fy;k gks A

?[k? ,sls vH;FkhZ ftUgksusa ek;/fed f"k{k ifj"kn~ dh mnwZ fo"k; ds lkFk b.VjehfM;V ijh{k ;k jkT; ljdkj }kjk ekU;rk izkIr led{k vU; ijh{k mRrh.kZ dh gS] ;k mnwZ fo"k; ysdj ch0,0 vFkok ,e0,0 mRrh.kZ fd;k gS ?bUgs vizf"kf{kr osrueku ns; gksxk? tkfe;ka mnwZ] vyhx<+ }kjk iznRr vnhc&,&dkfey mikf/k dks ch0,0 ?mnwZ? ds led{k ekuk x;k gS A

8. The petitioner and many other candidates applied. A written test and interview were held. The petitioner was selected alongwith 13 other candidates. The appointment letter was issued to the petitioner on 30.11.1994 (Annexure-7 to the writ petition). Pursuant thereto the petitioner made a declaration on 5.12.1994 wherein according to petitioner only six documents were mentioned which are as under:

1- gkbZLdwy ijh{k ek0f"k0 ifj"kn~] m0iz0& o"kZ 1973] vuq0 400414

2- b.VjehfM;V ijh{k ek0f"k0 ifj"kn~] m0iz0& o"kZ 1975] vuq0 197669

3- gkbZLdwy ijh{kk ?vaxzsth fo"k;? ek0f"k0 ifj"kn~] m0iz0& o"kZ 1977] vuq0 614863

4- b.VjehfM;V ijh{kk ?vaxzsth fo"k;? ek0f"k0 ifj"kn~] m0iz0& o"kZ 1980] vuq0 624706

5- vkfnc] tkfe;k mnwZ] vyhx<+ o"kZ& 1973] vuq0 3269

6- vkfnc&,&dkfey&tkfe;ka mnwZ vyhx<+ o"kZ& 1975] vuq0 402

9. She further declared that if any of the certificate or document mentioned therein is found to be forged or fabricated she may be terminated from service. She was allowed to join on 12.12.1994. Pursuant where to she joined at Primary School, Bhojapur on 13.12.1994. On 27.1.1995, the petitioner after getting information that her appointment has been made in trained pay scale though she was untrained, sent a letter to the District Basic Education Officer, Ghaziabad (hereinafter referred to as "D.B.E.O.") informing him that she is untrained and, therefore, the error in giving her trained pay scale be rectified so that any complication in future may not arise but no action appears to have been taken. It appears that during the above period the certificates and other documents submitted by petitioner were under verification, therefore, she did not get salary for which she made representation on 24.5.1995. Besides, she also requested for her transfer to another Primary School nearer to her parents residence vide representation dated 16.6.1995. However, on 18.6.1995 the D.B.E.O. issued a show-cause notice to the petitioner stating that her training certificate of Moallim-a-Urdu of the year 1977 was found false on verification from the Registrar, Zamia Urdu, Aligarh, therefore, she may explain as to why she may not be terminated. The petitioner submitted her reply vide representation dated 26.6.1995 (Annexure-14 to the writ petition) wherein her case was that she never submitted any training certificate. The respondents ultimately passed an order dated 29.7.1995 terminating her services on the ground that she submitted a wrong and fabricated document regarding her training.

10. Challenging the said order dated 29.7.1995 the petitioner filed Writ Petition No. 33963 of 1995 which was entertained by this Court on 27.11.1995 and the following interim order was passed:

It has been contended that a certificate of Moallim-a-Urdu in question was never filed by the petitioner. He placed reliance on the declaration form, a copy of which is set out in Annexure-IV to the writ petition. There is no reference about the certificate in question in the declaration form filed on 5.12.94. It has further been contended that even ignoring a certificate of Moallim-a-Urdu in question petitioner was qualified to be appointed on the post in question. Therefore, there was no justification for the respondents to cancel the appointment. Prima facie the submission made on behalf of the petitioner seem to be correct.

In view of the aforesaid facts, I direct that until further orders of this Court the operation of the impugned order dated 29.7.95 shall remain stayed. Further

respondents are directed to make the payment of salary to the petitioner, if she is discharging her duties in the institution.

11. The above writ petition came to be finally decided by this Court vide judgment dated 31.3.2006 wherein this Court observed that the question as to whether the petitioner actually submitted a training certificate or not involves investigation into the facts and, therefore, at the first instance let this inquiry be made by the Chairman, U.P. Basic Education Board and he may pass appropriate order after making necessary inquiry. With the above direction the writ petition was finally disposed of. It is pursuant to this judgment of the Court the respondent No. 2 has passed the impugned order dated 10.11.2006 holding that the petitioner submitted a forged certificate of training, i.e., Moallim-a-Urdu and, therefore, termination of services vide order dated 29.7.1995 was valid.

12. The two questions need to be considered in this matter are:

(i) Whether the petitioner had submitted a forged certificate regarding her training of Moallim-a-Urdu pursuant where to and after considering thereof she was appointed on the post of Assistant Teacher?

(ii) If the first question is answered in negative that the petitioner did not submit any certificate but in view of the admitted fact that she did not possess the requisite qualification whether any relief can be granted to her?

13. It is not in dispute that recruitment to the post in question is governed by U.P. Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as the "1981 Rules"). Rule 8 of 1981 Rules deals with academic qualification needs to be possessed by a candidate seeking appointment on the post of Assistant Teacher in a Primary School. The above Rule has undergone various amendments from time to time and, therefore, it would be necessary to consider the Rule as it existed at the time of selection and appointment. Rule 8 of 1981 Rules as substituted vide notification dated 28.6.1993 and which admittedly was operating at the time when the petitioner was selected and appointed pursuant to the advertisement dated 24.9.1994, reads as under:

8. Academic qualifications.--(1) The essential qualifications of candidates for appointment to a post referred to in Clause (a) of Rule 5 shall be as shown below against each:

-----	Post	Academic	qualification
-----	(i)	Mistress of Certificate of Nursery Teaching School (Nursery)	from a recognised training institution in Uttar Pradesh or any other training qualification recognised by the Government as equivalent thereto.

(ii) Assistant A Bachelor's Master and Degree from a Assistant University Mistress of established by Junior Basic law in India or a Schools Degree recognised by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate, Hindustani

Teacher's of Teaching or any other training course recognised by the Government as equivalent thereto: -----
Provided that the essential qualification for candidate who has passed the required training course shall be the same which was prescribed for admission to the said training course

(2) The essential qualification of candidates for appointment to a post referred to in Sub-clauses (iii) and (iv) of Clause (h) of Rule 5 for teaching science, mathematics, craft or any language other than Hindi shall be as follows:

(i) Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh, or any other examination recognised by the State Government as equivalent thereto with science, mathematics, craft or particular language, as the case may be, as one of the subjects, and

(ii) Training qualification consisting of a Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course recognised by the State Government as equivalent thereto.

(3) The minimum experience of candidates for promotion to a post referred to in Clause (b) of Rule 5 shall be as shown below against each:

-----	Post	Experience
-----	(i) Headmistress At least five of Nursery years" teaching School experience as permanent Mistress of Nursery School.	

(ii) Head Master At least five or Head years" teaching Mistress of experience as Junior Basic permanent School and Assistant Master Assistant or Assistant Master or Mistress of Assistant Junior Basic Mistress of School. Senior Basic School

(iii) Head Master At least three or Head years" experience Mistress of as permanent Senior Basic Head Master or School Head Mistress of Junior Basic School or permanent Assistant Master, or Assistant Mistress of Senior Basic School, as the case may be: ----- Provided that if sufficient number of suitable eligible candidates are not available for promotion to the posts mentioned at serial number (ii) or (iii) the field of eligibility may be extended by the Board by giving relaxation in the period of experience.

14. A perusal of the above Rule makes it clear that teacher's training qualification consisted of Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course recognised by the State of U.P. or equivalent thereof. It was essential qualification for appointment to the post of Assistant Teacher. It may also be noticed at this stage that 1981 Rules nowhere confer any power upon the State Government or any one else to relax any of the provision of 1981 Rules and in particular the Rules pertaining recruitment and selection except of the cases covered under Rule 10 which are applicable to ex-servicemen, disabled

military personnel, dependants of military personnel dying in action, dependants of Board's servants dying-in-harness and sportsmen. Besides the cases covered by Rule 10, there is no provision under 1981 Rules which empower the State Government or any other authority to relax the provisions pertaining to qualification etc. and none could be placed before this Court by learned Counsel for the parties.

15. The learned Counsel for the petitioner, however, submits that there is a Government order issued subsequently providing for relaxation and he may be given some time to produce the said Government order before this Court. However, in my view, no purpose would be served for the reason that it is well-settled that an executive order cannot override the statutory Rules. In the absence of any power conferred upon the Government to relax statutory rules, the effect and operation of the statutory rules cannot be diluted by an executive fiat and, therefore, any Government order which is inconsistent with 1981 Rules would be inoperative and to that extent ultra vires. The law in this regard is well-settled and for ready reference the following authorities of Apex Court may be referred : *Indra Sawhney and Ors. v. Union of India and Ors.* 1992 (Supp) 3 SCC 217 ; *Chandraprakash Madhavrao Dadwa and Others Vs. Union of India and Others*, *K. Kuppusamy and Another Vs. State of T.N. and Others*, and *Laxman Dundappa Dhamanekar and Another Vs. Management of Vishwa Bharata Seva Samiti and Another*,

16. Now coming to the basic issues, the first one, the petitioner, whether actually submitted forged certificate regarding training or not. It may be noted that as per the counter-affidavit, 14 persons were appointed pursuant to the advertisement dated 24.9.1994 and all the teachers were trained, i.e., possess requisite training qualification as prescribed under Rule 8 of 1981 Rules. Para 8 of the counter-affidavit further says that in fact the petitioner was also appointed by the authorities considering her certificate of Moallim-a-Urdu, a training qualification which was declared by the State Government as equivalent to B.T.C. and, therefore, she was appointed on the ground that she possess training qualification. Had she not claimed or submitted such training certificate, there was no question of her appointment.

17. Vide order dated 9.7.2009 this Court directed the respondents to produce the record including application form submitted by the petitioner.

18. Sri K.S. Kushwaha, learned Counsel has produced the original record before this Court. He also points out that the original application form of petitioner is not available in the office record but its photocopy is available.

19. From the perusal of the photocopy of the application form as available in the official records it is apparent that in column 9 under the heading of "Prashikshan Yogyata" the candidate, i.e., the petitioner has mentioned the name of the institution of training as Zamia Urdu, Aligarh, year of obtaining qualification as 1977 and division as Second. The petitioner has also mentioned the marks

obtained by her, i.e., 199 in written and 127 in practical, i.e., teaching in classes. At the bottom the details of enclosures is also given and the same is as under:

- 1- vadi= gkbZLdwy nks izfr A
- 2- izek.k&i= gkbZLdwy QksVksdkih nks izfr A
- 3- vadi= b.VjehfM;V QksVksdkih nks izfr A
- 4- izek.k&i= QksVksdkih b.VjehfM;V nks izfr A
- 5- vkfnc vadi= rFkk izek.k&i= QksVksdkih ,d&d izfr A
- 6- vkfnc ekfgj vad i= rFkk izek.k&i= QksVksdkih ,d&d izfr A
- 7- vkfncs dkfey vadi= rFkk izek.k&i= QksVksdkih ,d&d izfr A
- 8- vadi= eqvYyhe mnwZ QksVksdkih ,d izfr A
- 9- vkokl izek.k&i= QksVksdkih ,d izfr A
- 10- tkfr izek.k&i= QksVksdkih ,d izfr A

20. The mention about Moallim-a-Urdu is at serial No. 8 while at serial Nos. 9 and 10 there are some other documents, i.e., certificate verifying residential address as well as caste is clear and in conformity. The above form/document contained two signatures of petitioner and I have compared the said signatures alongwith the signatures the petitioner has made in the writ petition and found the same tally. There is neither any overwriting or cutting in the Photostat copy of the application form nor there is anything else which may create any doubt or suspicion on the genuinity of the said document.

21. Besides, Sri Kushwaha has also produced the original certificate which were required to be surrendered by the candidates at the time of joining and those certificate of petitioner in original have been produced for perusal of this Court are as under:

- (i) Marks sheet of High School ;
- (ii) Passed Certificate of High School Examination, 1973 ;
- (iii) Marks sheet of Intermediate Examination, 1975 ;
- (iv) Medical certificate issued by the Chief Medical Officer verifying the medical fitness of petitioner as on 5.12.1994 and the said certificate also contained petitioner's signature ;
- (v) Moallim-a-Urdu certificate said to have been issued on 27.7.1979 which is in Urdu.

22. The marks contained in Moallim-a-Urdu certificate available in the official record tally with the marks mentioned in the application form of the petitioner.

23. Learned Counsel for the petitioner, however, submitted that under the

Evidence Act photocopy of a document is not admissible unless the document is proved by placing original record also. The submission is thoroughly misconceived inasmuch as in exercise of powers under Article 226 of the Constitution, i.e., in writ jurisdiction, the Evidence Act as such does not apply though the principle thereof are being observed by the Courts from time to time. The respondents have taken the plea of loss of original form and in the absence of anything otherwise, it is always open to prove a document by means of secondary evidence which they have tried to prove by producing the photocopy of the application form and supporting the same with the original certificates which they have obtained from the candidate concerned at the time of joining which include High School and Intermediate marks sheet as well as the above Moallim-a-Urdu training certificate.

24. Learned Counsel for the petitioner, however, further submits that had he been guilty, there would not have an attempt on her part to request the authority concerned to correct the pay scale allowed to her at the time of her appointment inasmuch as, she, on her own, sent a letter on 27.1.1995, requesting the authorities to rectify the pay scale mentioned in her appointment letter since the said pay scale was for trained teachers and she was not trained. However, from the record it appears that the respondents took steps for verification of the record by sending Moallim-a-Urdu certificate of petitioner to Registrar, Zamia Urdu, Aligarh vide letter dated 13.1.1995. Sri Kushwaha submitted that probably after getting information that the document of training certificate has been sent to concerned institution for verification, the petitioner apprehending that now the falsity of document would become apparent and, therefore, tried to wriggle out of the above situation by sending letter dated 27.1.1995, requesting the authorities to rectify the pay scale mentioned in her appointment letter. He submits that this letter of petitioner would not improve the situation for the reason that the respondents have appointed the petitioner relying on the training certificate in respect where to, mention was made in the application form and the certificate was also submitted and treating the petitioner as trained teacher she was appointed. This Court in the facts and circumstances of the case as discussed above does not find any reason to disbelieve the stand taken by the respondents and, therefore, is of the view that the appointment of petitioner was made considering her claim that she possessed training qualification of Moallim-a-Urdu which was not found to be correct and, therefore, there is no error in the order terminating her services.

25. Even assuming that the petitioner did not submit the training qualification but the fact remains and is also admitted by learned Counsel for the petitioner that she did not possess the training qualification though it is an essential qualification under the Rules. If that be so, the question is whether the petitioner can be allowed to continue in service since pursuant to an interim order passed in earlier writ petition she was continued to work from 1995 to 2006 and whether she would be entitled for salary for the period she has worked and even thereafter.

26. Once it is admitted that training qualification constitute an essential qualification for the purpose of recruitment to the post of Assistant Teacher and the petitioner did not possess the same, in my view, neither the petitioner could be appointed nor the appointment, if any, made by the respondents even under some misconception or mistake can be treated to be valid. An essential qualification is one which cannot be relaxed particularly in the absence of any power to do so under the rules. 1981, Rules does not contain any provision empowering the respondents to relax the requisite essential qualification except of the cases covered under Rule 10 of 1981 Rules. It is not the case of either parties that Rule 10 is attracted in this matter.

27. In *State of M.P. and Others Vs. Shyama Pardhi etc. etc.*, the Apex Court held that an appointment made in the absence of requisite qualification prescribed under Rules is void ab initio and neither it confer any right upon the person concerned to hold the post or continue if he/she has been appointed though did not possess requisite qualification nor any direction for payment of salary can be issued in such cases.

28. A similar controversy arose in the case of *Mohd. Sartaj and Another Vs. State of U.P. and Others*, and the Apex Court held that an appointment lacking requisite qualification would be a nullity. A question also raised before the Apex Court that if subsequently the candidate has attained the requisite qualification whether that would validate the appointment but it was replied by the Apex Court that the validity of an appointment has to be considered at the time of appointment and if the appointment was made by ignoring the requisite qualification or if it is found that the candidate did not possess requisite qualification at that time of appointment, the appointment would be void ab initio.

29. Recently, in the case of *Shesh Mani Shukla v. District Inspector of Schools, Deoria* JT 2009 (10) SC 309, the Apex Court has also considered the question where the appointment was made not in accordance with the procedure prescribed in Rule but continued for more than a decade pursuant to an interim order passed by this Court and an argument was raised that since the candidate was not at fault for non-compliance of the procedure, therefore, he should be allowed to continue on the ground of compassion and sympathy but the Apex Court held that compassion, sympathy, hardship etc. have no place where the appointment is void ab initio being in the teeth of the statute and the Court cannot decide the matters contrary to rule of law since it is bound by oath to implement the rule of law and not to decide the matters on compassion, sympathy, hardship etc. The Apex Court held that the appointment being void ab initio no benefit can be given to the candidate concerned.

30. In the case in hand, even if it is presumed that the petitioner is not guilty of submitting forged certificate but once this fact is admitted that she did not possess the training qualification which is an essential qualification under Rule 8 of 1981 Rules, the appointment of petitioner cannot be said to be valid in any manner and she cannot continue in service at all. Her continuance pursuant to an

interim order granted in Writ Petition No. 33963 of 1995 does not confer any benefit upon her for the reason that no person can claim benefit of an interim order if ultimately the writ petition is not decided in his/her favour. Here in the present case the earlier writ petition was not allowed and the order of termination dated 29.7.1995 was not set aside by the Court. On the contrary, the writ petition was disposed of by directing the respondent No. 2 to consider the defence taken by petitioner and record his own finding. Meaning thereby, the matter was relegated to consider at first instance to a higher authority of the department. The respondent No. 2 by means of the impugned order dated 10.11.2006 has upheld the order of termination which means that the order of termination continued to operate from the date it has been passed and that being so, in my view, no effective relief can be granted to the petitioner applying any principle of law.

31. Learned Counsel for the petitioner has placed reliance on some judgments of the Apex Court as well as this Court, i.e., *Ram Sarup Vs. State of Haryana and Others*, *Smt. Shanti Devi Verma v. Deputy Director of Education, Region I, Meerut and Ors.* 1982 UPLBEC 365 ; *National Insurance Co. Ltd. Vs. Sarojini and Others*, and *State of Bihar and Ors. v. Krishna Paswan and Anr.* JT 2008 (11) SC 631.

32. In *Ram Sarup* (supra) para 2 of the judgment makes it clear that there was a provision permitting the Government to relax the qualification prescribed in the Rules. Besides, the Apex Court considered the question as to whether non-possession of one of the three qualifications prescribed in Rule 4(1) of Punjab Labour Services (Class I and II) Rules, 1955 would be an irregularity or illegality and took a view that it is mere an irregularity. However, Rule 8 of 1981 Rules applicable in the present case has been considered by the Apex Court in *Mohd. Sartaj* (supra) and it has been held mandatory, besides that the qualification under Rule 8 if are not possessed by a candidate would render the appointment in nullity. Since I am concerned in this case with Rule 8 of 1981 Rules which itself came up for consideration before the Apex Court in *Mohd. Sartaj* (supra), this Court is bound by the Apex Court's decision in *Mohd. Sartaj* (supra) wherein this very rule was considered and interpreted.

33. *Smt. Shanti Devi Verma* (supra) is a case where it was observed that if a candidate did not possess the requisite experience at the time of appointment, after a long time his appointment ought not to be terminated. The judgment also nowhere lay down a law that the appointment would stand validated after the incumbent acquired requisite qualification. Moreover, there also this Court considered Section 16F of U.P. Intermediate Education Act, 1921 and observed that Section 16F (proviso) enabled the D.I.O.S. in certain circumstances, to waive the requirement about prescribed qualification. The Court further observed that the Rule does not provide the minimum prescribed qualification which must be possessed by a candidate on the occurrence of vacancy and interpreting the provision in that way it was held that the appointment of incumbent concerned

was not nullity or void ab initio, therefore, the above judgment also does not help the petitioner.

34. So far as the judgment in Rajendra Prasad Srivastava (supra) is concerned, that was not a case where the incumbent lacked requisite educational or other qualification prescribed in the Rules. There the incumbent was a relative to the committee of management who was appointed though there was a prohibition for such appointment. Considering the nature of the validity of appointment, this Court held that after about 20 years of appointment, the mere ground that at the time of initial appointment the petitioner was relative of a member of committee of management would not be fair and just warranting termination particularly since after such a long time the position of committee of management has changed and, therefore, this Court declined to interfere in the matter. The judgment was pronounced on the facts of its own and has no application to the facts of this case.

35. From the judgment in Krishna Paswan (supra) it does appear that there was no provision like 1981 Rules requiring appointment on the post of Assistant Teacher of the incumbent possessing particular qualification. There the untrained and trained teacher both could have been appointed and the only question whether the appointment was made as trained or untrained was under consideration. The above judgment nowhere shows that the appointment of untrained teachers was contrary to the Rules.

36. In the circumstances, I do not find any merit in this writ petition. It is accordingly dismissed. No costs.