
(2012) 05 AHC CK 0309

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28500 of 2011

Mukti Nath Tiwari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-05-2012

Acts Referred:

Citation : (2012) 8 ADJ 37

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : S.C. Tripathi and Radha Kant Ojha, for the Appellant; A.K. Yadav, Brij Raj Singh, Hari Pratap Gupta, R.C. Dwivedi and C.S.C., for the Respondent

Judgement

Hon''ble Arun Tandon, J.—Writ Petition No. 28500 of 2011 has been filed by petitioner Mukti Nath Tiwari for quashing of the select panel notified by the U.P. Secondary Education Selection Board dated 7.5.2011 (Annexure-16 to the writ petition) in so far as it pertains to Udit Narain Inter College, Padrauna, District Kushi Nagar. It is then prayed that the respondents may be directed to declare the result afresh by treating the petitioner to be senior-most Lecturer of the institution. It is also prayed that the respondent may be commanded not to interfere in the work of the petitioner as Officiating Principal. From the impugned select panel, it is apparently clear that for Udit Narain Inter College, Padrauna, District Kushi Nagar, one Mr. Rajendra Kumar Singh (Respondent No. 4) has been placed at serial No. 1 of the select panel.

2. Facts in short leading to the present writ petition are as follows:

Udit Narain Inter College (hereinafter referred to as the institution) is an aided and recognized intermediate college. The provisions of the Intermediate Education Act, the Regulations framed thereunder and those of U.P. Act No. 5 of 1982 and U.P. Act No. 24 of 1971 are fully applicable to the teachers of the said institution.

3. According to the petitioner, respondent No. 4 Rajendra Kumar Singh claims to

have been appointed in the institution, namely Udit Narain Inter College Padrauna, District Kushi Nagar in the year 1976. For the purposes of salary and for approval of his appointment he alongwith others filed Writ Petition No. 1131 of 1978. The writ petition was dismissed by a Division Bench of this Court on 3.9.1979. A copy of the order of the Division Bench is enclosed as Annexure 5 to the present writ petition. The High Court held that there were serious disputed issues of fact with regard to (a) there being a resolution of the Committee of Management offering appointment to Rajendra Kumar Singh and (b) the claim of Rajendra Kumar Singh that he had been appointed under the Removal of Difficulties Order. According to the stand taken by the District Inspector of Schools in his counter-affidavit, no such appointment was made, as there was no vacancy against which Rajendra Kumar Singh could be so appointed.

4. This Court after examining the matter in detail on 1.9.2011 passed a detail order, which reads as follows:

There are allegation and counter allegations between the petitioner and respondent No. 4 qua there appointment being fraudulent and being perpetuated with the help of the education authorities of the State of U.P. including the Director of Education and the District Inspector of Schools of the district concerned.

According to the petitioner, respondent No. 4 Rajendra Kumar Singh claims to have been appointed in the institution, namely Udit Narain Inter College Padrauna, District Kushi Nagar in the year 1976. For the purposes of salary and for approval of his appointment he alongwith others filed Writ Petition No. 1131 of 1978. The writ petition was dismissed by a. Division Bench of this Court on 3.9.1979. A copy of the order of the Division Bench is enclosed -as Annexure 5 to the present writ petition. The High Court held that there were serious disputed issues of fact with regard to (a) there being a resolution of the Committee of Management offering appointment to Rajendra Kumar Singh and (b) the claim of Rajendra Kumar Singh that he had been appointed under the Removal of Difficulties Order. According to the stand taken by the District Inspector of Schools in his counter affidavit, no such appointment was made, as there was no vacancy against which Rajendra Kumar Singh could be so appointed.

The Division Bench held that such disputed issues of fact cannot be examined in a writ petition. The only remedy available to the petitioner was to file a suit where title could be determined after considering the material evidence. The Court further went to hold that if a suit proceedings are instituted by the petitioners for declaration of their title, the Civil Court will try to dispose it of as expeditiously as possible. This judgment has admittedly been permitted to become final between the parties. Respondent No. 4 Sri Rajendra Kumar Singh was petitioner No. 8 in the said petition.

It is admitted on record that Sri Rajendra Kumar Singh did not file any suit for declaration of his title, as was permitted by the High Court.

Rajendra Kumar Singh thought it proper to exercise political pressure and approached the education authorities in defiance to the decision of the writ petition filed by him, as would be apparent from the following facts:

Officer on Special Duty (Vishesh Karya Adhikari) U.P. Government forwarded a letter dated 30th July, 1980 asking the Director of Education to submit his report with regard to the legality or otherwise of 16 teachers appointed in Udit Narain Inter College Padrauna, District Kushi Nagar. These 16 teachers were none other than those who had filed Writ Petition No. 1131 of 1978.

The Director of Education forwarded a reply on 30 March, 1981 stating therein that four vacancies are available and therefore against these four vacancies, four teachers can be absorbed in order of seniority and thereafter 9 teachers will remain, their claim can be considered with reference to the number of post which may become available/created having regard to the strength of the students admitted, qua which information is to be asked for from the District Inspector of Schools.

Thereafter on record is an order of the District Inspector of Schools dated 25.1.1985 i.e. after 6 years of the High Court's judgment and four years after the letter of Director of Education. This order of District Inspector of Schools refers to a letter of the Secretary, Secondary Education with reference to the letter of local M.L.A. of Padrauna constituency Sri B.K. Mishra dated 10.10.1984 and the letter of the Director of Education dated 20.11.1984 as well as to the letter sent by the Rajendra Kumar Singh alongwith other teachers. Under this letter Rajendra Kumar Singh has been directed to be absorbed against the vacancy of one Gopi Chandra Srivastava w.e.f. 10.12.1984 as Lecturer Civics.

Under which statutory provision such absorption has been directed is not known.

On the strength of such fraudulent order passed by the District Inspector of Schools, Rajendra Kumar Singh claims to have worked in the institution and to have drawn salary from the State Exchequer.

Such absorption and continuance of Rajendra Kumar Singh would have been perpetuated only if he had not applied for the post of Principal of a recognized Inter College and his consequent selection, which is subject-matter of challenge in the present writ petition.

Sri P.S. Baghel, Senior Advocate intervened after said part of the order was dictated. He comes up with a plea that Rajendra Kumar Singh was appointed for the first time under the First Removal of Difficulties Order on 1.8.1976 and that he joined on 02nd August, 1976. Therefore, in view of Section 16GG, which has been introduced in the Intermediate Education Act on 21.4.1977, his services stood absorbed as regular teacher. The submission has only been made to be rejected by this Court.

All these issues qua appointment and absorption were under consideration in the writ petition filed by Rajendra Kumar Singh himself, being Writ Petition No. 1131

of 1978. The same was dismissed by this Court vide order dated 03rd September, 1979. The Division Bench specifically held that there are serious disputed issues of fact (a) as to whether Rajendra Kumar Singh was ever appointed under the Removal of Difficulties Order and (b) as to whether there was any resolution of the Committee of Management offering appointment to the petitioner as teacher in the institution. The District Inspector of Schools in his counter-affidavit filed in the said petition had specifically denied the appointment claimed.

It is, in this background that the Division Bench permitted the petitioner to file a civil suit for declaration of his title. The judgment of the Division Bench has become final and therefore neither the State Government nor the District Inspector of Schools nor Rajendra Kumar Singh can escape the consequences of the judgment. The only course open to Rajendra Kumar Singh was to file a civil suit for declaration of his title but he did not do so. He decided to approach the politicians, Secretary and the Director of Education.

The situation is alarming. None of the education authorities, who had earlier disputed the appointment claimed by Rajendra Kumar Singh by filing a counter-affidavit in his petition, cared to notice the direction issued by the Division Bench of this Court although they were party to the writ petition. Instead of insisting upon to Rajendra Kumar Singh to file a civil suit, an order has been issued for his absorption. How, why and under which statutory provision such absorption is being done has not been recorded in any of the orders.

Section 16GG heavily relied by Sri Baghel was existing on the date writ petition was dismissed. The contention raised by the counsel for Rajendra Kumar Singh is only an attempt to justify the void appointment of Rajendra Kumar Singh.

What is further argued is that this Court should close its eyes to the nature of appointment of Rajendra Kumar Singh and his continuance at this stage, as while adjudicating the inter se seniority the District Inspector of Schools has found that Rajendra Kumar Singh is senior to the other teachers.

The judgments in the cases of Smt. Bharti Roy v. Deputy Director of Education-II, Kanpur and others; 2008(2) ESC 911 (All), Vijai Narain Sharma v. District Inspector of Schools, Etawa and others; 1986 UPLBEC 44 and Smt. Manju Keshi Dixit v. State of U.P. and others; 2004 (5) ESC 234, have been relied upon for contending that this Court may not interfere with the order of absorption of Rajendra Kumar Singh.

The law, with regard to an order outcome of fraud and the effort of the Court of Law to ensure that same is brought to an end as soon as it is known and no plea of statutory bar, or lack of power be permitted to be raised, has been settled by the Apex Court in the case of Indian Bank v. Satyarn fibres (India) Put. Ltd.; JT 1996 (7) SC 135, wherein after making reference to a number of earlier decisions rendered by different High Courts in India, stated the legal position thus:

Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and -also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudice a party, the Court has the inherent power to recall its order.

In All Bengal Excise Licensees Association Vs. Raghabendra Singh and Others, , in paragraphs-26 and 27 it has held as follows:

26.....It is settled law that a party to the litigation cannot be allowed to take an unfair advantage by committing breach of an interim order and escape the consequences thereof by pleading misunderstanding and thereafter retain the said advantage gained in breach of the order of the Court.

27.....As already observed by the Full Bench of the Madras High Court in Century Flour Mills Ltd. Vs. S. Suppiah and Others, , that as a matter of judicial policy, the Court should guard against itself being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the Court's orders.....

In Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another, , the Hon"ble Supreme Court has held as follows:

The principal that a contemnor ought not to be permitted to enjoy and/ or keep the fruits of his contempt is well-settled.

In Clarke v. Chadburn, (1985) 1 ALL ER 211, Sir Robert Megarry V-C observed:

I need not cite authority for the proposition that it is of high importance that orders of the Court should be obeyed. Wilful disobedience to an order of the Court is punishable as a contempt of Court, and I feel no doubt that such disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some change in the rights and liabilities of others, I cannot seek what it should be said that although they were liable to penalties for contempt of Court for doing what they did, nevertheless those acts were validly done. Of course, if act is done, it is not undone merely by pointing out that it was done in breach in law.....what has been done in breach of the law may plainly be very much affected by the illegality. It seems to me on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them.

What is true in respect of an order passed by a Court of Law is equally true in the matter of orders obtained from statutory authorities, specifically when they adversely affect the, public exchequer.

The facts of this case are akin to what has been noticed above. Absorption of Rajendra Kumar Singh as teacher in the institution under order dated 25.1.1985

and his continuance thereof is nothing but a fraud both upon the statutory provision as well as upon the judgment of this Court passed by the Division Bench. Rajendra Kumar Singh in collusion with the education authorities cannot be permitted to render the judgment passed by the Division Bench on a petition filed by him a mere waste paper.

This Court, therefore, holds that Rajendra Kumar Singh could not have absorbed except after obtaining declaration of his title after filing a civil suit, which he has not done.

In the connected petition filed by Rajendra Kumar Singh, being Writ Petition No. 1784 of 2009, an order of the District Inspector of Schools dated 29.12.2008 has been challenged. By means of the said order the District Inspector of Schools has declared Mukti Nath Tiwari to be the senior to Rajendra Kumar Singh. It is pointed out that the appointment of Mukti Nath Tiwari itself is a fraud, as it was made without there being any post available in the institution. In any view of the matter the appointment offered to Mukti Nath Tiwari in the year 1974 was only on 2/3 of the trained graduate grade, inasmuch as he was not trained on the relevant date. He obtained a degree of B. Ed. in the year 1997. In support of the said allegation, reference has been made to the appointment letter (Annexure 19 to the writ petition) as well as to the letter filed by Mukti Nath Tiwari in his Writ Petition No. 28500 of 2011 dated 25.5.1976 issued by the District Inspector of Schools, wherein the Committee of Management has recommended promotion of Mukti Nath Tiwari as Lecturer History under the Removal of Difficulties Order.

It is further stated that absolutely no records qua the appointment of Mukti Nath Tiwari are available in the institution. Selection proceedings, as contemplated u/s 16G of the Intermediate Education Act read with Removal of Difficulties Order as then applicable, have neither been disclosed nor are available on record.

Sri P.S. Baghel points out that in fact the Director of Education had issued an order on 24.11.1978 directing that Mukti Nath Tiwari to be treated to have been appointed in Lecturers Grade w.e.f. 7.11.1974 u/s 16G. When as a matter of fact from the order of the District Inspector of Schools his promotion as Lecturer was approved under the Removal of Difficulties Order. He submits that the order of the Director of Education is the root cause for Mukti Nath Tiwari being treated as Lecturer when in fact he was never appointed as such in accordance with the statutory provisions applicable, namely Section 16G.

Let the Secretary, Secondary Education hold a detail enquiry in the matter of appointment and continuance of Mukti Nath Tiwari. He will also examine as to who is responsible for fraudulent absorption of Rajendra Kumar Singh, in light of the findings recorded above. He shall record a categorical finding as to under which statutory provision Mukti Nath Tiwari has been appointed, the relevant documents which could support such appointment must also be referred to.

The Secretary is directed to summon all the original records, as may be available in the office of the District Inspector of Schools as well as with the Committee of

Management, and in the office of Director of Education for the purpose. Mukti Nath Tiwari and Rajendra Kumar Singh are granted liberty to file such documents as may be available with them in support of their respective case. The Secretary shall submit his report alongwith an affidavit within 5 weeks from today and recommend as to what action in the facts of the case is required to be taken against all responsible.

Standing Counsel is directed to communicate the order passed today to the Secretary, Secondary Education immediately.

Put up on 10.10.2011.

5. In compliance of the order passed by this Court dated 1.9.2011, the Secretary of the Secondary Education, U.P. Government, Lucknow has got an enquiry conducted in the matter of appointment of petitioner and Respondent No. 4, The report of the Secretary has been brought on record alongwith an affidavit. The report has been submitted after affording opportunity of hearing to the petitioner as well as respondent No. 4. The findings recorded by the Secretary in his report qua the appointment of the petitioner and qua the appointment of respondent No. 4 are as follows:

IN RESPECT OF RESPONDENT NO. 4 RAJENDRA KUMAR SINGH

After the writ petition filed by Rajendra Kumar Singh being Writ Petition No. 1131 of 1978 was dismissed by the Division Bench of this Court on 3.10.1979, on noticing the serious disputed issues of facts involved with liberty to Rajendra Kumar Singh to file a civil suit. No civil suit was filed. The District Inspector of Schools in clear violation of the order of High Court had passed an order on 25.1.1985 regularizing the appointment of Rajendra Kumar Singh. Since that date, Rajendra Kumar Singh started getting salary. It has been then recorded that Rajendra Kumar Singh filed a complaint before the District Consumer Forum being Complaint No. 74 of 2000 and under orders of the District Consumer Forum dated 12.5.2005, payment of salary is being made to said Rajendra Kumar Singh directly by the office of the District Inspector of Schools. It has categorically been recorded that the appointment of Rajendra Kumar Singh has been made against a non-sanctioned and non-available post. His absorption is patently illegal and that the order by the District Inspector of Schools dated 25.1.1985 is non est

6. This Court may record that counsel for respondent No. 4 could not successfully assail any of the findings so recorded by the Secretary in the order. It is admitted to the respondent No. 4 that after dismissal of his writ petition by the Division Bench of this High Court on 3.10.1979, he did not file any civil suit. Yet he was directed to be absorbed by the District Inspector of Schools under order dated 25.1.1985. The source of power for such regularization is not known, nor could be disclosed to this Court.

7. This Court was surprised that the teacher Rajendra Kumar Singh working in an

intermediate college has approached the District Consumer Forum for payment of his salary and the authorities of the State including the District Inspector of Schools have chosen to accept the order of the District Consumer Forum dated 12.5.2000 for payment of salary to Rajendra Kumar Singh directly without challenging the order of the District Consumer Forum in either before the State Consumer Forum or before the High Court. This Court may record that a teacher does not answer the description of consumer under the Consumer Protection Act and therefore the proceedings and the order of District Consumer Forum dated 12.5.2000 are declined with jurisdiction and therefore void ab initio.

8. This Court fails to understand that once the writ petition of Rajendra Kumar Singh had been dismissed as early in the year 1979, how can the State Authority direct for his absorption and for payment of salary through State Exchequer. Fraud in the matter of absorption and payment of salary to Rajendra Kumar Singh is therefore writ large on record. The Secretary is legally justified in recording the finding that the absorption of Rajendra Kumar Singh is fraudulent and aimed to defraud the public exchequer in collusion with the officers of the education department at the relevant time. The Secretary also appears to be justified in directing action against all responsible for the situation. The order stopping the salary of Rajendra Kumar Singh is also in accordance with law.

The Secretary shall take all necessary action as may be warranted to ensure that the loss, which has been caused to the State Government because of such fraudulent orders of regularization of Rajendra Kumar Singh and payment of salary under the order of the District Consumer Forum are recovered from all responsible within three months after affording opportunity to the persons concerned and determining their liability. Action taken shall be reported to the Court. In view of the said conclusion drawn by this Court, appointment of Rajendra Kumar Singh as per the select panel dated 7.5.2011 is also held to be bad. This Court has no hesitation to further record that the experience gained on the strength of such fraudulent order by absorption has to be nullified, inasmuch as no person can be permitted to take benefit of the fraud played by him. This Court holds that Rajendra Kumar Singh was clearly ineligible to be considered for the post of Principal of recognized intermediate college. The select panel to that extent is therefore quashed.

9. This takes the Court to other prayers made in the present writ petition namely whether the petitioner Mukti Nath Tiwari is entitled to any of the other reliefs, which have been prayed for.

10. So far as Mukti Nath Tiwari is concerned, it is stated by him that he was selected for the post of Lecturer History on the strength of an application made by him on 17.9.1973. The appointment was offered on 19.9.1973. It is then stated that on the relevant date there was no post of Lecturer History available and therefore he was appointed as L.T. Grade teacher on 2/3 of the pay scale admissible, as he was not trained. On 31st December, 1974 the District Inspector of Schools, Deoria passed an order sanctioning a post of Lecturer History and

approving the appointment of the petitioner for teaching Intermediate Classes. On 17th November, 1975 a letter was written by the Manager of the institution that a vacancy is available in the institution on the post of Lecturer History since 31.12.1974 and Mukti Nath Tiwari while working as L.T. Grade Teacher has been continuously teaching the said subject to Intermediate Classes. Having regard to the resolution of the Committee of Management made earlier, he may be approved as Lecturer History. Reference is also made to the letter of the District Inspector of Schools, Deoria dated 25.5.1976 wherein it has been recorded that approval is granted to the appointment of Mukti Nath Tiwari as Lecturer History on temporary basis under Removal of Difficulties Order and such approval shall take effect from 18th August, 1975.

11. On record is another order of the District Inspector of Schools, Deoria dated 19th October, 1978 whereby the District Inspector of Schools had sought permission from the Deputy Director of Education in the matter of grant of Lecturer's pay scale to Mukti Nath Tiwari w.e.f. 7.11.1974 and thereafter an order has been issued by the Deputy Director of Education in December 1978 directing that Mukti Nath Tiwari may be paid arrears of salary as Lecturer w.e.f. 7.11.1974.

12. On record is the order of the District Inspector of Schools dated 30.8.1980 whereby the appointment of Mukti Nath Tiwari as Lecturer has been regularized in terms of the order of the Deputy Director of Education dated 24.11.1978.

13. Sri R.K. Ojha has also made reference to the report of the District Inspector of Schools, Deoria wherein the orders dated 31.12.1974 as well as the approval granted by the District Inspector of Schools under Removal of Difficulties Orders have been referred to. According to Sri Ojha, the aforesaid facts demonstrate that there was material evidence on record qua appointment of Mukti Nath Tiwari as Lecturer in the institution in the year 1974 and his regularization thereafter. Such orders of appointment and regularization cannot be examined at this stage when the issue of inter se seniority is involved and for the purpose he has placed reliance upon the judgment of this Court in the case of *Jaldeo Singh v. Deputy Director of Education, Jhansi Region, Jhansi and another*, (1995) 3 UPLBEC 1554.

14. Sri R.C. Dwivedi in reply points out that the document, which is the sheet anchor of the claim set up by Mukti Nath Tiwari i.e. the order of the District Inspector of Schools dated 31.12.1974, whereby the post of Lecturer History is said to have been created, is a fabricated document. It bears no signatures and that such document was never produced before the Secretary, Secondary Education at the time the order impugned was passed. For the purpose reference is made to the findings recorded in Para 3.4 of the report submitted by the Secretary dated 1.10.2011 in response to the order of this Court dated 1.9.2011 passed in the present petition.

15. According to Sri R.C. Dwivedi, the Secretary, after examining the evidence brought on record, has come to a conclusion that Mukti Nath Tiwari had been

appointed without there being any post of Lecturer History available and that his regularization is not in accordance with the rules. It has been then recorded that the relevant records in the matter of first appointment of Mukti Nath Tiwari are not available in the office of the District Inspector of Schools or in the office of the institution and therefore no final conclusion can be recorded as to whether his appointment was in accordance with the provisions of the Intermediate Education Act or not.

16. I have heard learned counsel for the parties and have examined the records in respect of the claim of Mukti Nath Tiwari.

17. The Secretary in his report has recorded that from the letter of the District Inspector of Schools dated 15.07, 1976 it is established that Mukti Nath Tiwari was appointed on 2/3 of the L.T. Grade and his appointment was approved till 30th June, 1976 as such. He has also drawn salary in 2/3 of the L.T. Grade up to 30th June, 1976. If Sri Mukti Nath Tiwari has been appointed as Lecturer in 1974, as is claimed by him, where was the occasion for Sri Tiwari to have accepted salary in 2/3 of the L.T. Grade up to 30th June, 1976. It has been then recorded that there was only one sanctioned post of Lecturer History in the institution on which Sri Babumani Tripathi was already working. There was no necessity of any second post of Lecturer History being created nor any such order of the District Inspector of Schools is available on record nor could be filed by Sri Mukti Nath Tiwari. It has also been recorded that the District Inspector of Schools, Deoria in his letter dated 23.11.1976 had recorded that the promotion granted to Mukti Nath Tiwari was illegal. The Secretary has mentioned that recommendation was made by the District Inspector of Schools for regularization of Sri Tiwari under letter dated 27.11.1976. If the claim set up by Sri Tiwari is accepted that he had already been appointed as Lecturer on 7.11.1974, where was the occasion for his being regularized in 1976.

18. This Court may now examine the legal provisions which have been referred to by Sri R.K. Ojha in the matter of regularization of Sri Mukti Nath Tiwari.

19. Initially it was contended that Mukti Nath Tiwari was entitled to regularization u/s 16GG which case has been later given up. It is stated that Mukti Nath Tiwari was entitled for regularization under the U.P. Secondary Removal of Difficulties Order (Fifth) of 1976. Paragraph 3 of the Removal of Difficulties Order has been read alongwith the preamble. For ready reference Clause 3 of the Removal of Difficulties Order is quoted below:

3. Where any person was appointed by the Committee of Management as a teacher on or before 30th June, 1975 for any period as a temporary measure with the approval or permission of the Inspector and such person has worked thereafter up to 15th November, 1976 he shall be deemed to have been appointed in a substantive capacity:

(a) in case the appointment was initially made in a clear vacancy, from the date of appointment;

(b) in case the appointment was initially made in a leave vacancy or a vacancy occurring for a part of the session or otherwise then in clear vacancy, from the date when such vacancy assumed the character of clear vacancy;

(c) in case the appointment was initially made on a post, the creation of which was sanctioned subsequently by a competent authority in that behalf, from the date of such sanction;

(d) in case he did not possess the prescribed training qualifications at the time of initial appointment from the date of acquisition of such training qualification:

Provided that in cases referred to in sub-clauses (a), (b) and (c), such person possesses the prescribed qualification or has been exempted from the requirements of minimum qualifications and was duly selected and appointed in accordance with law for the time being in force.

20. From a simple reading of Clause 3 of the said Removal of Difficulties Order, proviso, it is apparently clear that only such persons were entitled to be regularization who were appointed in accordance with law at the time being in force.

21. This Court made a pointed query to the counsel to disclose if the petitioner claims appointment as Lecturer in 1974, was he appointed after following the procedure prescribed by law on the relevant date i.e. on 31.12.1974 when the second post of Lecturer History is stated to have been created by the District Inspector of Schools and the petitioner was directed to work as such. Counsel for Mukti Nath Tiwari refers to the provisions of Removal of Difficulties Order of 1975 and Removal of Difficulties Order of 1976 and submits that at the relevant time the procedure of notice being published on the notice board and selection committee being constituted alone was provided and such procedure has been followed in his case.

22. The contention so raised by the counsel for Mukti Nath Tiwari has only been raised to be rejected. This Court finds from the records that neither there is any pleading nor any evidence worth consideration which could demonstrate that the procedure as has been provided under the U.P. Secondary Education (Removal of Difficulties) Order, 1975 and U.P. Secondary Education (Removal of Difficulties) Order, 1976 was applicable on 31.12.1974. Even otherwise if the contention raised by Sri Ojha is accepted, there is no pleading nor there is any evidence that any selection committee was constituted in terms of the Removal of Difficulties Orders before offering appointment to the petitioner against anticipated post.

23. Such being the situation, this Court has no hesitation to hold that the claim set up by Sri Mukti Nath Tiwari for his regularization under the Removal of Difficulties Orders patently appears to be after thought.

24. It will not be out of place to mention that in the letter of Director of Education, VII Region, Gorakhpur dated 06th July, 1978 addressed to the District Inspector of Schools, Deoria, there is a specific mention that the claim of Mukti

Nath Tiwari for such regularization be considered u/s 16GG, which claim is not being pressed by Sri R.K. Ojha, counsel for Mukti Nath Tiwari himself.

25. In the totality of the circumstances on record this Court is in agreement with the findings recorded by the Secretary in his report that the order of regularization made in favour of Mukti Nath Tiwari is patently illegal.

26. What follows once this Court finds that Mukti Nath Tiwari has not been appointed as Lecturer in accordance with law at any point of time. Although this Court may not interfere with the continuance of Mukti Nath Tiwari in the institution after such a long duration but this Court will definitely hold that Mukti Nath Tiwari "has not become a member of the cadre of Lecturers because of illegality in his appointment. Therefore, he cannot be assigned a place in the cadre of Lecturer so has to be entitled to be called for interview in the matter of selection for the post of Principal. Such conclusion is being drawn by this Court in the background that merely because the teachers of aided and recognized institution with the help of the education authorities create a situation where their illegal continuance is perpetuated decades together, may not take help of the High Court in getting further promotion despite there being a direct report of the Head of the Department against them in the matter of regularization, if any on record. This Court will not come to the rescue of a person who has continued in the institution only with the help of the education authorities without there being legal right in him to have been continued or regularized on the post of Lecturer History, as has been done in the facts of the present case.

27. In view of the aforesaid, this Court feels it just and proper to refuse the second relief which has been prayed for by Mukti Nath Tiwari in the present petition. In view of the aforesaid, writ petition is partly allowed. Selection of Rajendra Kumar Singh as Principal of the College is hereby quashed. No other relief is being granted to the petitioner.