
(2012) 01 AHC CK 0691

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 42469 of 2011

Naseem Ahmad and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 18, 22, 5

Citation : (2012) 2 ADJ 412

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Hon"ble Sudhir Agarwal, J.—Heard Sri Lakshmi Kant Trigunait, learned counsel for the petitioners, Sri M.C. Chaturvedi, learned Chief Standing Counsel and Sri Suresh Singh, learned Additional Chief Standing Counsel for the respondents. Sri Brijesh Mishra, District Basic Education Officer, Allahabad (hereinafter referred to as "DBEO") is also present and has been given opportunity to make his submission and to clarify his position.

2. With the consent of learned counsel for the parties, I proceed to decide this matter finally under the Rules of the Court at this stage.

3. The grievance of the petitioners for redressal whereof they have knocked the door of justice by filing this writ petition under Article 226 of Constitution of India is very simple. They are victims of total inaction on the part of the respondents. Their pain is regarding non-promotion despite issuance of order of promotion long back which was stayed by the respondent No. 3 and for the last two years nothing was done thereafter. The petitioners have sought a writ of mandamus commanding respondent No. 3 to grant promotional benefits to them on the post of Head-Master in Junior Primary Schools and Junior High schools in Nagar Kshetra under Basic Shiksha Parishad at Allahabad and to ensure payment of salary on the promoted posts month by month.

4. The facts in brief giving rise to the present writ petition are as under :

5. All the petitioners are working either as Assistant Teachers in Junior Primary Schools or Assistant Teachers in Senior Primary Schools or Head-Masters in Junior Primary Schools. These Primary Schools are maintained by the Board of Basic Education (hereinafter referred to as the "Board") governed by the provisions of U.P. Basic Education Act 1972 (hereinafter referred to as "Act, 1972") and the conditions of service and recruitment of the teachers are governed by U.P. Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as "Rules, 1981").

6. The petitioner Nos. 1, 16, 17, 19, 21, 22, 23, 27, 28, 29, 30, 31, and 32 are working as Assistant Teachers in Junior Primary Schools while petitioner Nos. 11, 13, 14, 15, 18, 20, 25, 26 and 33 are working as Assistant Teachers in Junior High Schools i.e. Senior Primary Schools.

7. The teachers of the Primary Schools are entitled to be considered for promotion under Rule 5 read with Rule 18 of 1981. For the post of Head-Master in Senior Basic Schools i.e. Junior High School, the Teachers working as Head-Master/Headmistress of Junior Basic Schools and Assistant Teachers of Senior Basic Schools are eligible to be considered for promotion. The procedure for promotion is that an eligibility list of candidates is prepared in order of seniority and thereafter selection is made by Selection Committee on the basis of character rolls and other record of candidates as it considers proper. The selected candidates recommended by the Selection Committee are arranged in order of seniority and thereafter promotions are made by the Appointing Authority.

8. All these petitioners claimed to have been appointed between 1979 to 1985 in accordance with the procedure prescribed in 1981 Rules. There were 173 Junior Basic Schools and 32 Senior Basic Schools in Nagar Kshetra, Allahabad, which came under management of the Board after enforcement of Act, 1972.

9. A seniority list was prepared as per Rule 22 of 1981 Rules and on the basis thereof an order of promotion was issued by DBEO on 14.10.2009 (Annexure-2 to the writ petition), making promotion of 82 teachers as Assistant Teachers of Senior Basic Schools or Head-Masters of Junior Basic Schools in the pay scale of 9300-34800 with grade pay of 4600. The names of the petitioners are mentioned at Serial Nos. 24, 33, 28, 77, 37, 52, 12, 34, 21, 54, 55, 78, 16, 39, 53, 58, 56, 15, 61, 68, 30, 13, 43, 59, 42, 11, 29, 44, 65 and 74.

10. However, before the said order of promotion could be given effect to and the petitioners and other could join, the DBEO passed an order on 4.11.2009, staying the aforesaid order of promotion until further orders. Since thereafter nothing proceeded further and the petitioners continued to wait for their career advancement hoping that this period of postponement would end within a reasonable time but nothing happened leaving no option for them but to approach this Court by means of the present writ petition.

11. This Court had anxiety to know why the order of promotion which was stayed on 4.11.2009, i.e. almost two years back remained stayed for such a long time and what action thereafter was taken by DBEO. Initially while entertaining this writ petition as fresh, the Court had directed learned Standing Counsel to seek instructions about further action and inform the Court. Thereafter what proceeded, it would be better to refer my detailed order passed on 9.12.2011 which I propose to reproduce in its entirety as under:

1. The petitioners have come up in this writ petition with a prayer for issuance of a writ of mandamus commanding respondent No. 3 to consider for promotion on the post of Head-Master.

2. It is averred that in fact the petitioners were already promoted by order dated 14.10.2009 but thereafter, for the reasons best known to respondent No. 3, the aforesaid order of promotion was stayed and deferred by order dated 4.11.2009 and it was not given effect at all and since then nothing has been done.

3. This Court initially granted time to the respondents to file counter-affidavit vide order dated 29.7.2011. The respondents as usual did not respond at all. Again the matter was taken up on 25.11.2011 when after hearing counsel for the parties, the Court found that respondents on one hand are not only guilty of total inaction but also have the audacity of negligence and carelessness even to this Court by not filing its response despite specific order. It is in these circumstances, the Court directed respondent No. 3 to appear and explain as to what has been done after order dated 4.11.2009 and also to produce record to show why matter is lying pending for the last two years.

4. Pursuant thereto a counter-affidavit has been filed by respondent No. 2 stating therein that in urban area of Allahabad, there were 125 Junior Primary Schools and 32 Senior Primary Schools in the year 2009. In the Junior Primary Schools, there existed 63 posts of Head-Masters and in Senior Primary Schools there existed 64 posts of Assistant Teachers. The said strength of teachers was as on 2008.

5. The State Government issued an order on 20.3.2010 directing District Magistrate, Allahabad to adjust running schools, which are running in one campus and/or have less strength of students. Having given effect to the said Government Order, District Magistrate, Allahabad examined the matter and reduced number of Junior Primary Schools from 125 to 88. As a result of reduction of Junior Primary Schools, District Basic Education Officer sought clarification from higher authorities but having received no response, the matter remained pending. However in January 2011, 9 persons were promoted.

6. In the entire counter-affidavit it is not the case of respondents that number of sanctioned post of Head-Master of Junior Primary Schools and Assistant Teachers in Senior Primary Schools, as it stood in 2008, have got reduced or that any post was abolished as a result of reduction of number of Junior Primary Schools from 125 to 88. It also appears that after the order was passed by this Court requiring

respondent No. 2 to appear in person on 29.11.2011, he issued an order of promotion on 5.12.2011 giving promotion to 27 persons as Head-Masters in Junior Primary Schools and 11 persons as Assistant Teachers in Senior Primary Schools which included writ petitioner Nos. 3, 5, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 22, 24, 26, 27, 28, 30 and 31. It is said that no further vacancy is available at the moment and therefore the writ petition has become infructuous.

7. The entire reply does not contain as to what actually happened after the order dated 4.11.2009 was passed by respondent No. 2 staying promotion order dated 14.10.2009. In this regard the Court also perused the original record placed before it. It shows that on 22.8.2009 Nagar Shiksha Adhikari, Allahabad prepared a chart as under:

Number of Schools

Number of Sanctioned Post

Number of teachers working

Vacancies

32 (Senior Primary School)

96

61

35

125 (Junior Primary School)

12

55

70

5

8. It is pursuant to the aforesaid report submitted by Nagar Shiksha Adhikari, promotion of Assistant Teachers of Junior Primary Schools were considered and thereafter order of promotion was passed on 14.10.2011 by Dr. Brajesh Mishra respondent No. 3.

9. The record contains several letters given by various teachers promoted, requesting for change of posting on promoted post. There was some error also at item No. 81 Column 5 of order dated 14.10.2009 for which a corrigendum was issued on 27.10.2009.

10. One Jagdamba Prasad, Adhyaksh, Brashtachar Nivaran Samiti. Allahabad made a complaint (undated) stating that 53 primary schools have been abolished as a result whereof instead of 173 only 120 Primary Schools exist and therefore, promotion of 20 teachers beyond existing number of Primary Schools have been

made.

11. It is self evident that the order of promotion dated 14.10.2009 contains 82 names of teachers who were promoted. On 29.10.2009 Dr. Brajesh Mishra, holding office of respondent No. 3 passed an order directing Nagar Shiksha Adhikari, Allahabad to submit a detailed report about number of Primary Schools (Junior and Senior), how many thereof are closed, and, how many have been included in urban area.

12. On the very next date i.e. 30.10.2009 respondent No. 3 sent a letter to Secretary, U.P. Basic Education stating that against 125 Junior Primary Schools only 63 posts of Head-Masters were sanctioned and 62 Primary Schools did not have any sanctioned post of Head-Master. Besides some schools are such wherein only one Assistant Teacher is working and many schools are lying closed. In case the sole Assistant Teachers working in Primary Schools are promoted, the schools shall stand closed. He thus sought guidelines from Secretary, Basic Education Board, whether the schools wherein no sanctioned post of Head-Masters exist, can be provided a Head-Master or not. Having issued the said letter dated 30.10.2009, respondent No. 3 issued order dated 4.11.2009 staying promotion order dated 14.10.2009. Again a reminder was given on 28.3.2010 to the Secretary, Basic Education Board and another reminder dated 31.3.2010 to Nagar Shiksha Adhikari, Allahabad.

13. In the meantime, Government Order dated 20.3.2010 having been received, the District Magistrate proceeded to amalgamate Primary Schools running in the same campus and closure of non functional Primary Schools. The said exercise completed and formal order was issued to that effect by respondent No. 3 on 2.7.2010.

14. Since no further action was taken in respect to the stayed promotion order, one Mahmood Ullah filed writ petition No. 51409 of 2010 which was disposed of on 28.8.2010 directing respondent No. 3 to look into the matter and complete proceedings within three months from the date of receipt of certified copy of the order. The said judgment of this Court was communicated to respondent No. 3 alongwith letter dated 6.9.2010, served in the office of respondent No. 3 on the same date. The said order having not been complied, Sri Mahmood Ullah filed contempt petition No. 36 of 2011 wherein again Court directed Dr. Brajesh Mishra, to comply this Court's order within one week. It is only thereafter Nagar Shiksha Adhikari appears to have submitted report on 11.2.2011 giving details of number of sanctioned posts of Head-Masters and Assistant Teachers as in February, 2011. The respondent No. 3 thereafter prepared his own chart showing 32 headmasters and 64 Assistant Teachers in Senior Primary School whereagainst one Head-Master and 61 Assistant Teachers in February, 2011 were working. Similarly 47 Head-Masters and 135 assistant teachers in Junior Primary Schools against which 41 Head-Masters and 120 assistant teachers are working in February, 2011. Having done so, he disposed of representation of Sri Mahmood Ullah by order dated 28.2.2011 by promoting 9 persons which included

Sri Mahmood Ullah also as Head-Master.

15. Nothing moved on thereafter except the orders passed in the present writ petition. These are the documents which are contained in entire file but it had only one notesheet of 24th February, 2011 and no other note-sheet.

16. When this Court asked Sri Suresh Singh, learned counsel appearing for respondents whether any note-sheet was prepared in 2009, he could not give any reply. In these circumstances, this Court prima facie feels that file made available to the Court is incomplete and also has several gaps. The respondent No. 3 is, therefore, directed to file an affidavit clarifying :

(i) Whether any note-sheet was prepared in the matter in question before 24.2.2011 or thereafter or not?

(ii) In what manner number of sanctioned posts have been verified, whether by perusing the sanctioned orders or on mere guess work?

(iii) Why there is variance in number of sanctioned post in the report submitted by Nagar Shiksha Adhikari, Allahabad, the order passed by respondent No. 3 on the representation of Mahmood Ullah and counter-affidavit filed before this Court now in the present case?

(iv) Whether it is a normal practice in the office of respondent No. 3 that the files do not contain regular note-sheets showing consideration of the matter in regular course?

17. An affidavit explaining all these aspect shall be filed within ten days from today.

18. List this matter for further hearing on 2.1.2012 on which date the respondent No. 3 shall also appear in person.

12. Pursuant thereto a counter-affidavit as well as affidavit have been filed, sworn by Sri Brijesh Mishra, District Basic Education Officer, Allahabad, respondent No. 3 himself.

13. Learned counsel for the petitioners stated that he does not propose to file rejoinder-affidavit and that is how the matter was heard finally on 2.1.2012.

14. The common averments in both the affidavits of Sri Brijesh Mishra, DBEO are that in 2009 there were 125 Primary Schools (Junior) and 32 Senior Basic Schools in Nagar Kshetra, Allahabad. Therein 63 posts of Head-Masters in Junior Primary Schools and 64 posts of Assistant Teachers in Senior Primary Schools were existing as sanctioned posts. This was as per register of "Teachers" strength in school in 2008" approved by Board. On 20.3.2010 a Government Order was issued directing District Magistrate, Allahabad to adjust running schools in one campus or having lesser strength of students.. Pursuant thereof, a number of schools were abolished/adjusted, resulting in reduction of Junior Primary Schools to 88 from 125 while the number of Senior Primary Schools

remained the same. The order to this effect was issued on 2.7.2010. In the meantime guidance was also sought from Board vide letter dated 30.10.2009 (Annexure CA 24) whether in Primary Schools wherein there is no post of Head-Master, or where the schools are being closed, in what manner adjustment shall be made. Obviously, this letter issued in 2009 for all practical purposes stood replied by the Government vide Government Order dated 20.3.2010.

15. Another letter was sent to Secretary, Basic Education, Allahabad by DBEO on 28.3.2010, i.e. after the Government Order dated 20.3.2010 to the effect that schools wherein only one teacher is working, if promoted, would result in closure of institution, hence he sought guidance as to in what manner such schools should be managed. Besides the above, reference is made to another letter dated 29.10.2009 of DBEO addressed to City Education Officer, Allahabad (Nagar Shiksha Adhikari) enquiring as to how many Girls and Boys Primary Schools, Senior Basic Schools and Nursery Schools were existing at the time of abolition of posts of Education Superintendent and Education Superintendent (Girls) and how many Junior and Senior Primary Schools were included in urban area. A reminder was issued to Nagar Shiksha Adhikari on 31.3.2010.

16. Later on District Magistrate appointed DBEO as Reserve Officer in the process of Panchayat Election by order dated 8.6.2010 and by order dated 30.8.2010 he was appointed as Election Officer in Block Sankargarh for conducting Panchayat Election which position continued upto 12.11.2010. His involvement in election process resulted in several absence in the office. This is in fact an explanation for inaction offered by respondent No. 3.

17. Be that as it may, it is said that after adjustment of Primary Schools by order dated 2.7.2010, in the light of the Government Order dated 20.3.2010, it was noticed that against 47 sanctioned posts of Head-Masters in Junior Primary Schools (which were reduced to 88) only 41 persons were working, hence, there existed vacancies of 6. In Senior Basic Schools, against sanctioned strength of 64 Assistant Teachers, only 61 were working and there was vacancy of 3. However, Secretary by order dated 2.12.2011 Unformed that against 88 Junior Basic Schools in fact, there were 63 posts of Head-Masters and not 47, meaning thereby numbers of vacancies were much more than shown in the chart (Annexure CA 9).

18. Consequently by order dated 5.12.2011, 27 persons were promoted as Head-Masters in Primary Schools and 11 were promoted as Assistant Teachers in Senior Basic Schools. Respondent No. 3 claimed that their promotions resulted in filling of all the vacancies of Head-Masters in Junior Basic Schools and Assistant Teachers in Senior Basic Schools. This also resulted in promotion of petitioner Nos. 3, 5, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 22, 24, 26, 27, 28, 30 and 31.

19. Learned Chief Standing Counsel contended that as and when further vacancies would be available, the matter of promotion of petitioners would be considered.

20. Learned counsel for the petitioners on the contrary submitted that the real issue in the writ petition has not been replied by the respondents despite repeated opportunity given by this Court and an attempt to hush up the matter by referring to certain irrelevant inconsistent data and that too with several long time gap has been made. This attempt on the part of DBEO, the present Officer holding the office is deliberate and is an intentional act to mislead the Court to cover up his arbitrary and illegal inaction of denying not only right of consideration for promotion to the petitioners but also effective promotional benefits accruing after issuance of order of promotion but not allowed to be enjoyed by petitioners for no fault of them. The respondent No. 3 is trying to make himself free of any accountability or responsibility despite having caused an insuperable loss to the petitioners.

21. In two affidavits filed by respondent No. 3 he has tried to suggest that promotions granted by order dated 14.10.2009 were in excess to sanctioned posts. When a complaint was received, order of promotion was stayed. However, it is not his case that the said order of promotion has been cancelled or modified subsequently by issuing any order by the competent authority. No such order, at least, placed before this Court. There is no such averment made in the counter-affidavit as well as affidavit filed by respondent No. 3. Besides, he has said that as per teachers' strength in Primary Schools 2008, only 63 posts of Head-Masters in Primary Schools against 125 Junior Primary Schools were available. Similarly he says that there were only 64 sanctioned posts of Assistant Teachers in Senior Primary Schools in Nagar Kshetra, Allahabad. During the course of argument, he admits that there are 32 posts of Head-Masters in Senior Primary Schools and thereagainst only one post is occupied at the moment and rests are vacant. The number of posts, vacancies and sanctioned strength is varying in various documents.

22. In 2008 it is not in dispute that there were 125 Junior Basic Schools and 32 Senior Basic Schools in Nagar Kshetra, Allahabad. The Nagar Shiksha Adhikari, Allahabad in his report dated 22.8.2009 has said that in 125 Junior Primary Schools number of sanctioned posts was 125. In Senior Primary Schools, the number of sanctioned posts has been mentioned as 96. The respondent No. 3 tried to explain that the aforesaid sanctioned strength includes Head-Masters as well as Assistant Teachers and says that the break up of vacancies is as under :

Senior Primary Schools

The Total sanctioned posts are 96 (32 Head-Masters and 64 Assistant Teachers)

Junior Primary Schools

The total sanctioned posts are 125 (This figure relates to only Assistant Teachers and numbers of Head-Masters in Junior Primary Schools was 63).

23. Sri Brijesh Mishra said that all Junior Primary Schools do not have a Head-Master but there are several single manned Junior Primary Schools, namely there

is only one teacher who is holding the post of Assistant Teacher and also performing the job of Head-Master though there is no sanctioned post of Head-Master. It means that in 2008 out of 125 Junior Primary Schools, 62 such schools did not have any Head-Master. Nagar Shiksha Adhikari, according to Sri Brijesh Mishra, wrongly treated as if all Junior Primary Schools had post of Head-Master and, therefore, treating 125 sanctioned posts, he worked out 70 vacancies therein since 55 teachers at that time were working. Assuming what has been said by Sri Mishra to be correct, it cannot be doubted that 35 promotions could have been made in August, 2009 (based on the report of Nagar Shiksha Adhikari, Allahabad) in Senior Primary Schools on the post of Head-Master as well as Assistant Teachers. Similarly 8 promotions on the post of Head-Master could have been made in Junior Primary Schools. It was not done though to this extent no inaccuracy as such could be pointed out and yet after staying promotion order, respondent No. 3 maintained total silence. He could not explain anything why the aforesaid promotions were not allowed immediately after making necessary scrutiny of number of vacancies and sanctioned strength in Primary Schools in Nagar Kshetra, Allahabad. The poor Assistant Teachers who have suffered on account of such inaction by not getting promotional status, pay scale, actual salary on promoted posts etc. have not been compensated in any manner. On the contrary it appears that respondent No. 3 had the confidence that his inaction even though may result in a permanent loss to the petitioners and similarly placed others, would not make any dent in his career prospects. This is really unfortunate and this attitude of total apathy and unaccountability towards unauthorized and illegal inaction cannot sustain and cannot be appreciated.

24. The question of review of Primary Schools came into light much later i.e. pursuant to Government Order dated 20.3.2010 but for this almost five months before it, there was no justification whatsoever for respondent No. 3 in not granting/effecting promotion to the Assistant Teachers who had a clear order in their favour for promotion. The vacancies being also available and yet promotion orders were not allowed to operate even in those cases.

25. Now I come to the effect of Government Order dated 20.3.2010. The position of all Junior Primary Schools was reviewed as a result whereof 37 Junior Primary Schools were closed/abolished/adjusted by merger in other Primary Schools in the same premises etc., resulting in reduction of Junior Primary Schools in Nagar Kshetra, Allahabad from 125 to 88. It is said that 37 Junior Primary Schools which were closed under the order dated 27.7.2010, 16 post of Head-Master existed. Thus 16 posts also stood adjusted/abolished, leaving only 47 posts of Head-Masters sanctioned against 88 Primary Schools. At this stage, respondent No. 3 was required to demonstrate wherefrom he could ascertain as to which Junior Primary School was sanctioned how many posts of Assistant Teachers and that of Head-Masters but he could not produce any order of creation of posts issued by the competent authority and, instead sought to place reliance a Register of the Board wherein the strength was mentioned in abrupt manner

without referring to any documentary foundation to generate confidence therein.

26. With regard to the Senior Primary Schools, the number of teachers has remained the same i.e. 96 (64 Assistant Teachers and 32 Head-Masters) but in regard to the Junior Primary Schools the strength has varied. Without showing details on the basis whereof one can ascertain that it was a sanctioned post, it is difficult to believe. On repeated query, ultimately it was admitted and accepted by respondents that they did not maintain or keep any record including the order of sanctioned of posts and whatever is mentioned in the Register of Board, that is taken sacrosanct and conclusive. A question was put to the learned counsel for respondents that on abolition of 37 Junior Primary Schools, existing posts of Head-Master which was already only 63 against the then existing 125 Junior Basic Schools could have been treated to be the sanctioned posts against remaining 88 and instead of treating abolition when there is no documentary evidence to show that in a particular institution the post was created the same could have treated in remaining schools but why it was not done and to this he could not give any reply whatsoever. The respondents only insisted that when vacancies became available, the same have been filled in in February, 2011 and rest would be filled as and when occurred.

27. Though much can be said hereat with respect to the sanctioned posts in Junior Primary Schools and the manner in which the matter of promotion has been dealt with by the respondent No. 3 but I proceed to consider the matter in the context of Senior Basic Schools with respect whereto there is no dispute at all.

28. The documents on record show that in February, 2011 against 32 posts of Head-Masters in Senior Primary Schools only one was occupied and 31 were vacant. No reason or explanation has been offered or could be offered, why 31 posts of Head-Masters are continuing vacant and no promotion has been made. Why such large number of vacancies had been allowed to continue for such a long time. No explanation whatsoever came forth from the respondents. It is really startling for the Court that the matter of maintenance, management and supervision of Primary Schools which are imparting education to young children is being dealt with in such a lethargic and lackadaisical manner. It is more serious in the context that for the last more than a decade, Apex Court is consistently reminding the State that Primary Education constitutes a fundamental right of young children and recognizing the same, even the Parliament has intervened by amending Constitution, enacting an Act for providing free education to children and by arranging a massive amount from Public Exchequer to achieve the aforesaid goal. But all is in vain so far is the authorities of this State are concerned who are responsible for effective and proper management of Primary Schools. These authorities do not care whether the primary institutions have requisite strength of teachers, whether the posts are vacant or not and many other things. One cannot expect that an institution can run and discharge its public obligation of providing effective primary

education to young children efficiently if not managed and maintained adequately and properly. It appears that authorities responsible at the helm of affairs have no concern to monitor the situation and to take effective measures to remove any complicity in arrangement. Besides, the fact that this dispassionate attitude of authorities in not enforcing the statutory provisions is not only affecting the poor young children for whose benefit basically these institutions are meant but in the same context even the persons who have to actually impart education and have undertaken it as a career, suffer due to stagnation and denial of fundamental right of consideration for promotion in a wholly arbitrary and irrational manner. It is now depending totally on the whims, capricious and unmindful attitude of educational authorities, in particular, respondent No. 3 in the present case. Respondent No. 3 could not explain why against the available vacancies in 2009 the petitioners and similarly placed other persons could not be promoted and why this Court should not direct to give effect to such promotions from the date the order of promotion was passed with all consequential benefits. Obviously if such a benefit is allowed to the petitioners and others, which they have otherwise suffered on account of wholly illegal and arbitrary slackness and inaction of the respondent No. 3, it may do away their sufferance to some extent.

29. The other side of the picture is that State Exchequer shall suffer as it would have a heavy financial burden and that too in a matter where the large number of persons would be paid higher salary without actually performing duty of higher post. When I considered this aspect so as to balance and make equilibrium for imparting justice to both, I find that right of persons entitled for promotion against vacancies available in October, 2009, in the context of the institutions as they were available on that date, cannot be denied, otherwise, it would amount to denying justice to them for all times to come and that too for a reason and fault they have no any role to play and are not responsible. So far as the State Exchequer is concerned, a via media may be worked out so that the person responsible for resulting in such a huge loss on account of his illegal and unmindful action be made to restore this loss to the State Exchequer. This view in my mind would meet the ends of justice in a most effective and appropriate manner.

30. Before parting I propose to consider another aspect of the matter which has been pointed out by learned counsel for the petitioners during the course of the argument. He sated that petitioners' repeated request for promotion remained unheeded on the part of respondent No. 3 for the reason that the petitioners could not satisfy his requirement other than legal. When enquired, learned counsel for the petitioners conceded that he has not made any specific averment in the entire writ petition and that too deliberately for the reason that the petitioners have yet to serve as teachers in the Primary Schools for long and everyday will have to be supervised and monitored by respondent No. 3. If they take any serious tussle with him, it would become very difficult for them to perform their duties peacefully inasmuch as there are thousand of ways in which respondent No. 3 having much wider powers under various statutes, can harass

them. The experience of the Court in dealing with similar matters everyday shows that apprehension and reason stated at the bar by the petitioners is not wholly unfounded. In fact, taking things with twisted arms has become everyday's fashion and is an easy tool in the hands of strong bureaucracy. This is also a facet of corruption which has deeply embedded in the society though unfortunately. Commenting upon the various facets of corruption under which the entire country is presently reeling, this Court in the case of Smt. Mithilesh Kumari v. State of U.P. and others, 2011(1) ADJ 40 in paragraphs No. 52 to 56 held as under:

52. In general the well accepted meaning of corruption is the act of corrupting or of impairing integrity, virtue, or moral principle; the state of being corrupted or debased; lost of purity or integrity; depravity; wickedness; impurity; bribery. It further says, "the act of changing or of being changed, for the worse; departure from what is pure, simple, or correct; use of a position of trust for dishonest gain.

53. Though in a civilised society, corruption has always been viewed with particular distaste to be condemned and criticised by everybody but still one loves to engage himself in it if finds opportunity, ordinarily, since it is difficult to resist temptation. It is often, a kind, parallel to the Word "bribery", meaning whereof in the context of the politicians or bureaucrats, induced to become corrupt. The Greek Philosopher Plato, in 4th Century BC said, "in the Republic that only politicians who gain no personal advantage from the policies they pursued would be fit to govern. This is recognised also in the aphorism that those who want to hold power are most likely those least fit to do so." While giving speech before the House of Lords William Pitt in the later half of 18th Century said, "Unlimited power is apt to corrupt the minds of those who possess it." Lord Acton in his letter addressed to Bishop Creighton is now one of the famous quotation, "Power tends to corrupt and absolute power corrupts absolutely."

54. Corruption is a term known to all of us. Precise meaning is illegal, immoral or unauthorized act done in due course of employment but literally it means "inducement (as of a public official) by improper means (as bribery) to violate duty (as by committing a felony)." It is an specially pernicious form of discrimination. Apparently its purpose is to seek favourable, privileged treatment from those who are in authority. No one would indulge in corruption at all if those who are in authority, discharge their service by treating all equally.

55. We can look into it from another angle. Corruption also violates human rights. It discriminates against the poor by denying them access to public services and preventing from exercising their political rights on account of their incapability of indulging in corruption, of course on account of poverty and other similar related factors. Corruption is, therefore, divisive and makes a significant contribution to social inequality and conflict. It undermines respect for authority and increases cynicism. It discourages participation of individuals in civilised society and elevates self interest as a guide to conduct. In social terms we can

say that corruption develops a range bound field of behaviour, attitude and beliefs. Corruption is antithesis of good governance and democratic politics. It is said, that when corruption is pervasive, it permeates every aspect of people's lives. It can affect the air they breathe, the water they drink and the food they eat. If we go further, we can give some terminology also to different shades of corruption like, financial corruption, cultural corruption, moral corruption, ideological corruption etc. The fact remains that from whatever angle we look into it, the ultimate result borne out is that, and the real impact of corruption is, the poor suffers most, the poverty groves darker, and rich become richer.

56. In the case in hand, it may not be necessary for this Court to go in the concept of corruption a bit more deep but I find that here is a case where a senior officer of the Government, in the rank of Director, indulged himself in a sheer illegal act but giving it a colour of compliance of this Court's order and that is how has also tried to overlook a complete defiance on the part of a petty employee, i.e., a staff nurse, who could dare to disobey and defy order of a much superior officer, i.e., Chief Medical Officer and remain absent for almost two years. He has also tried to give an occasion to such a defying employee to claim condonation of such defiance and reward with all benefits without any loss. This would result ultimately a loss to public exchequer also inasmuch as a non-worker, if paid salary for such a long time for her/his sheer audacity of remaining absent, it would also amount to a breach of trust with public revenue to which every public servant owe a duty and responsibility. In P.K. Chinnasamy Vs. Government of Tamil Nadu and Others, , the Apex Court said that every public servant holds the office in trust to the public and, therefore, to justify expenditure of public revenue, duties commensurating to the office must be allowed to be discharged by every public servant. Admittedly, that has not happened in this case. The petitioner has failed to perform her duty without any authority on her part. From the point of view of petitioner or some public servant, it could have been a small matter, but this Court has no hesitation in putting on record that omission of small level of corruption ultimately grow cancerously. This country has now reached a stage where we find level of corruption running in several thousand of crores and going to even lacs of crores. Everyone wherever is possible, indulging in such activities depending on one's capacity, capability and opportunity. This Court do not mean to say that all are corrupt. Fortunately that is not so. Still we have sufficiently large number of people who do not indulge in such activities and bold enough to discard any attempt, if made by someone, but those who want to take advantage of such widespread corruption, have now become so fearless that they can dare to approach and go to any extent to lure those who are in authority, to seek favour in one or the other manner. In their belief, everyone has some price, degree may defer. Fortunately, this country still have sufficiently large number of people who are beyond such vice. Probably it is for this reason we are still marching ahead and developing with galloping pace but now time has come when stern steps have to be taken with determination and cementised will to nip out corruption at

every level, lest it may be too late.

31. The aforesaid observations are very apt and attracted with full force in the present case also.

32. Considering the entire matter in the context and in the light of the discussions made above, in my view this writ petition deserves to be disposed of with certain directions.

33. I accordingly dispose of this writ petition with the following directions:

(I) The Secretary, Basic Education shall constitute three members committee consisting of officers not below the rank of Assistant Director (Basic) but headed by Director, Basic Education to examine the actual strength of Primary Schools, the sanctioned number of posts in Nagar Kshetra, Allahabad prior to its adjustment vide order dated 2.7.2010 and the number of vacancies as on 13.10.2009. The Committee shall submit report founded on relevant documents. This exercise shall be completed within two months.

(ii) The number of vacancies as are reported by the aforesaid committee existing at the time when the promotion order dated 14.10.2009 was passed, shall be filled in by promoting teachers including petitioners according to their entitlement in seniority etc. from the date the order of promotion was passed i.e. 14.10.2009 with all consequential benefits. Regarding future vacancies, as and when the vacancies become available, the petitioners and similarly placed other persons in order of their entitlement vis a vis seniority etc; and with reference to promotion order dated 14.10.2009, shall be granted promotion from the date of occurrence of the vacancies with all consequential benefits.

(iii) The inaction on the part of respondent No. 3 shall be examined by holding a departmental enquiry by the Secretary, Basic Education in accordance with Rules. He shall finalize the same expeditiously but not beyond four months. He shall submit report informing final order passed by him in the matter. The burden of payment of arrears of salary on the promoted posts to the persons for the period they actually could not work on the higher posts due to illegal order of stay passed by the respondent No. 3, shall be credited to the person(s) responsible. Such amount may be recovered from the person(s) responsible by respondent No. 1 for it in accordance with law. This liberty is granted to respondent No. 1.

(iv) The petitioners shall be entitled to cost which I quantify to Rs. 10,000/- against respondent No. 3.