

(1994) 02 AHC CK 0080

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 28983 of 1992

Padam Singh Verma

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 17-02-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 1(2), Order 39 Rule 2, Order 39 Rule 2(2), Order 39 Rule 2A
Specific Relief Act, 1963 — Section 38, 38(3), 41
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 10, 12, 3

Citation : (1994) 3 AWC 1452

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : Vipin Saxena, for the Appellant;

Final Decision : Allowed

Judgement

R.B. Mehrotra, J.—Sri Nehru Smarak Uchchatar Madhyamik Vidyalaya Jaithra, District, Etah (hereinafter referred to as "the institution") is a recognized, institution under U.P. Intermediate Education Act, 1921. The institution receives grant-in-aid from the Government and is within the purview of U.P. High School and Intermediate Colleges (payment of salaries to teachers and other employees) Act, 1971 (hereinafter referred to as U. P Act No. 24 of 1171") One Brij Raj Singh, a Head Master of the institution retired on 30-6-1990 and the post of Head Master fell vacant. The Management of the Institution appointed Sri Raj Veer Singh, the seniormost L.T. Grade teacher as adhoc Head Master of the institution. One Sri Ram Veer Singh of C.T. grade teacher was promoted on adhoc basis to the post of L.T. grade teacher. The District Inspector of Schools Initially gave his approval to the said appointment on 21-3-91, however, on 18-9-91, that District Inspector of Schools disapproved the promotion of aforesaid Ram Veer Singh on the post of L.T. grade teacher on ad hoc basis. Aggrieved by the said order, Sri Ram Veer Singh filed a writ petition in this Hon''ble Court, being

writ petition No. 28223 of 1991 however, no interim order was passed in the said petition. Consequent thereto, Sri Ram Veer Singh was reverted back in the C.T. Grade.

2. Initially when Ram Veer Singh's adhoc promotion to L.T. grade was approved by the District Inspector of Schools, the Committee of Management, vide its resolution dated 18-8-1991, appointed one Sri Raj Bahadur as a C.T. grade teacher by direct recruitment on adhoc basis till Sri Ram Veer Singh joins back to the post of C.T. grade teacher.

3. As a consequence of Sri Ram Veer Singh's coming back to his post of C.T. grade teacher, the services of Sri Raj Bahadur Singh should have been terminated by the Management in terms of his appointment. The management instead of terminating his services appointed him as L.T. grade teacher by direct recruitment,

4. It is, however, relevant to state here that Sri Padam Singh Verma, the present Petitioner in the writ petition, had been claiming that he is the seniormost teacher in C.T. grade and is entitled to be promoted as a L.T. grade teacher under the provisions of U.P. Secondary Education Services Commission (Removal of Difficulties (Second)) Order, 1981 and the Petitioner had been moving applications to the District Inspector of Schools, seeking a direction that since the Petitioner is the seniormost teacher in C.T. grade, he should be promoted to L.T. grade. Three of such applications, which are dated 10-1-91, 7-3-91 and 1-7-91 have been filed as Annexures-3, 4 and 5 respectively to the writ petition. The District Inspector of Schools, vide his letter dated 31-7-91, asked the Manager of the institution to inform him in regard to the problems of the employees and the teachers of the institution detailed in the aforesaid letter by 3rd of August, 1991. One of the queries in the aforesaid letter was in respect of the Petitioner, as to why the Petitioner being the seniormost teacher, has not been recommended for promotion to the post of L.T. grade teacher, instead the junior teacher was promoted. In reply to the aforesaid letter, the Manager of the institution, vide letter dated 24-8-91, informed the District Inspector of Schools that by 3-9-91 all the disputes will be resolved. The letter of the District Inspector of Schools dated 3-7-91 and the letter of the Manager of the institution dated 24-8-91 have been filed as Annexure 6 and 7 to the writ petition.

5. In the meantime, Sri Raj Bahadur Singh, the Respondent No. 3 in the present writ petition, filed a civil suit in the court of Civil Judge, Etah, being Original Suit No. 118 of 1992, wherein the District Inspector of Schools, Etah, Accounts Officer in the Office of District Inspector of Schools, Etah, and the State of U.P. through Collector, Etah and the Institution through its Manager were arrayed as Defendants. In the said suit, the following reliefs were claimed:

(a) The suit of the Plaintiff for mandatory injunction be decreed and the Defendants be directed to pay salary to the Plaintiff since 26-8-91 till this date with a direction to continue to pay salary for each month and the Defendants to

be restrained from interfering in the working of the Plaintiff.

(b) The costs of the suit and the fee of the counsel be decreed against the Defendants.

(c) Any other relief to which the Plaintiff may be found entitled, may be decreed.

6. In paragraph 6 of the plaint, it has been stated that the Defendant No. 4, namely, the Manager of the Institution initially appointed the Plaintiff in C.T. grade in the leave vacancy but on dis-approval of the promotion of C.T. grade teacher to L.T. grade, the Plaintiff was appointed in L.T. grade in place of Sri Raj Veer Singh and the District Inspector of Schools was duly informed by the Manager of the, Institution. In view of this fact, the Plaintiff was entitled to get his salary alongwith D.A. from the Defendants from 26-8-1991.

7. The Respondent No. 3, Plaintiff of the aforesaid suit also filed an application for interim injunction in the aforesaid suit. The Civil Judge, Etah, vide his order dated 30-5-92, after hearing the counsel for the parties, passed an order of interim injunction in favour of Plaintiff, Raj Bahadur (Respondent No. 3 in the present petition) that the Plaintiff be paid his salary since 26-8-91 in the C.T. grade and since 16-10-91 in L.T. grade and further restrain the Defendants from interfering in any manner in the working of the Plaintiff.

8. On coming to know of the aforesaid order of interim injunction dated 30-5-92, the present Petitioner, Sri Padam Singh Verma has filed the present writ petition in this Hon'ble Court, praying for the following reliefs:

(i) issue a writ in the nature of mandamus directing the Respondents to appoint the Petitioner in short term vacancy in L.T. grade.

(ii) issue a writ order or direction in the nature of prohibition quashing the suit No. 118 of 1992, pending in the court of Civil Judge, Etah,

(iii) issue a writ, order or direction in the nature of certiorari quashing the order dated 30-5-92, passed by the Civil Judge, Etah in suit No. 118 of 1992.

(iv) issue a writ, order of direction in the nature of certiorari quashing the appointment of Respondent No. 3 in short term vacancy in L.T. grade.

9. In the present writ petition, the Petitioner has arrayed the District Inspector of Schools, the Managing Committee of the Institution through Us Manager, Sri Raj Bahadur Singh, the Plaintiff of Suit No. 118 of 1992 and lastly the Civil Judge, Etah. This Court on 6-8-92 granted six weeks' time to Standing Counsel to file counter affidavit on behalf of District Inspector of Schools and permitted the Petitioner to serve Respondent Nos. 2 and 3 personally and by registered post. The notice was not issued to the Respondent No. 4. who was a formal party. This Hon'ble Court also stayed the operation of the injunction order dated 30-5-92, passed by the Civil Judge, Etah in civil suit No. 118 of 1992.

10. Dasti notices were given and notices were sent by registered post on 7-8-92.

A counter affidavit has been filed on behalf of the Respondent No. 3. No counter affidavits have been filed either on behalf of District Inspector of Schools or on behalf of Committee of Management of the Institution.

11. In the counter affidavit filed on behalf of the Respondent No. 3, it has been stressed that the Petitioner was not qualified for being promoted to the post of L.T. grade teacher, as the post of Hindi teacher was required in the Institution, whereas the Petitioner was only a trained Science Graduate and was not qualified to be promoted to the post having fallen vacant as a L.T. grade teacher. It has also been contended that the Petitioner has an alternative remedy of filing an appeal against the injunction order passed by the Civil Judge, Etah (impugned in the present writ petition). As such, the present writ petition is liable to be dismissed on the said ground. It has also been contended that the Civil Suit filed by Sri Raj Bahadur Singh was cognizable by the Civil Judge, as such, the plaint of the suit is not liable to be quashed.

12. I have heard the learned Counsel for the Petitioner and the learned Counsel for the Respondents. The writ petition is being disposed of at the admission stage with the consent of the parties in accordance with the provisions of the Rules of the Court.

13. A preliminary objection has been raised by the counsel for the Respondent No. 3 that the present writ petition is not maintainable, as the Petitioner has an alternative remedy of filing appeal under Order-43 of the Code of Civil Procedure, as under Order 43, Rule 1, Sub-rule (r), an order passed under Rule 1, Rule 2, 2-A and Rule 4 of Order, 39 are appealable. The present Petitioner was admittedly not impleaded as a party in the suit filed by Respondent No. 3. The question whether a person who is not a party to a suit, has a right to file appeal, came up for consideration before the Hon'ble Supreme Court in *State of Punjab (Now Haryana) and Others Vs. Amar Singh and Another*, . In the said elaborate judgment Hon'ble Mr. Justice Krishna Iyer held that a person, who is not a party to a suit, has no right to file appeal as a matter of right, The relevant portion of the judgment is extracted as under:

An order like Annexure "A" ordinarily binds the parties only and here the State which the Appellant is seriously prejudiced by that order but is not a party to it. Therefore, it cannot bind the State proprio vigore. It was argued by Shri Dhingra that the State could have moved by way of appeal or review and got the order set aside if there was ground and that not having done so it was bound by the order. As a matter of fact, the State, which is not a party to the proceedings, does not have a right of appeal. The ordinary rule is that only a party to a suit adversely affected by the decree or any of his representatives-in-interest may file an appeal. Under such circumstances a person who is not a party may prefer an appeal with the leave of the appellate court "If he would be prejudicially affected by the judgment and if it would be binding on him as res-judicata under Explanation 6 to Section 11" (See Mulla CPC 18th edn. vol. 1, p. 421), Section 82 of the Punjab Tenancy Act, 1887, which may perhaps be invoked by a party even

under the Act, also speaks of applications by any party interested. Thus, no right of review or of appeal u/s 18 can be availed of by the state as of right.

14. The learned Counsel for the Respondent No. 3 has, however, placed reliance on a minority view in the same judgment, wherein Hon"ble Mr. Justice Sarkaria held that a person affected by the order can prefer an appeal to the court. As a rule leave to appeal will not be refused to a person who is prejudicially affected by the order.

15. In view of the majority decision, it is clear that the Petitioner could not have filed an appeal against the order of injunction passed in suit No. 118 of 1992 filed in the court of Civil Judge, Etah as a matter of right. Even otherwise it is settled by the Judicial decision that merely an existence of alternative remedy is not a bar to the exercise of the jurisdiction by the High Court. It is in the discretion of the High Court to refuse to grant relief to a person on the ground that an alternative remedy is available to the Petitioner. See *State of U.P. v. Mohd. Nooh* AIR 1958 SC 86).

16. Primarily three questions require consideration in the present matter:

(i) Whether in view of State Amendment in Order 39, Rule 2, Sub-rule (2) of CPC the Court was competent to issue an interim injunction in the present matter?

(ii) Whether the suit filed by the Respondent No. 3 is impliedly barred by the provisions of U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981, as amended from time to time and the provisions of U.P. High School and Intermediate Colleges (payment of Salary to teachers and other employees) Act, 1971?

(iii) Whether the suit for permanent injunction filed by the Respondent No. 3 is maintainable in view of the provisions of Sections 38 and 41 of the Specific Relief Act?

17. The first question which requires consideration is question No. (ii).

18. The State Government promulgated U.P. Secondary Education Services Commission and Selection Board Ordinance, 1981 (Ordinance No. 8 of 1981), which was later on substituted by U.P. Act No. 5 of 1982. In exercise of powers u/s 33 of U.P. Ordinance No. 8 of 1981, the Governor issued U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981, generally referred to as "First Removal of Difficulties Order". The aforesaid Removal of Difficulties Order, 1981 prescribed a complete code for making adhoc appointment of the Principal and Head Master of High School and Intermediate Colleges and also for adhoc appointment of teachers and Lecturers in Intermediate Colleges and the High Schools. Initially the First Removal of Difficulties Order contemplated that the duration of the adhoc appointment will be valid only till the candidate recommended by the Commission or the Board joins the post or when the period of six months from the date of such adhoc appointment expires. Subsequently, by issuing Removal of Difficulties Third Order

1982 the second condition was done away with and the adhoc appointments made under the Removal of Difficulties Order were to continue till a candidate recommended by the Commission or Board joins the post. Para 4 of the First Removal of Difficulties Order provided the procedure for making adhoc appointment by promotion. Para-5 of the said Removal of Difficulties Order provided that where any vacancy cannot be filled by promotion, the same may be filled by direct recruitment. Para-3(4) provided that best candidate shall be selected on the basis of the quality point marks specified in the appendix prescribing the quality point marks on the basis of the academic qualifications and the divisions obtained in different examinations by the candidates. Para 6 of the said Removal of Difficulties Order provided the eligibility condition for appointment of teachers under Removal of Difficulties Order. Para-7 as amended by Removal of Difficulties Order (Fourth) 1982 (contemplated that the dispute connected with the promotion or direct recruitment under this Order shall be referred to the Deputy Director of the Region concerned and his decision will be appealable to Director, whose decision shall be final. Sub-clause (7) of para-7 provided that without prejudice to the generality of Clause (1), the Director shall have the power to look into the complaint, if any, regarding the award of the quality points mentioned in the appendix or the validity or propriety of any promotion or direct recruitment in accordance with this order and to cancel any promotion, recruitment or appointment made in continuation of such order.

19. The scheme of Removal of Difficulties Orders clearly contemplate a procedure and exhaustive code in the matter of adhoc appointment of teachers in High School and Intermediate Colleges after promulgation of U.P. Ordinance No. 8 of 1981, substituted by U.P. Act No. 5 of 1982.

20. In the aforesaid background, the averments made by the Respondent No. 3 in the suit are to be examined. The narration of the facts In the plaint state that one Ram Veer Singh, Assistant Teacher in CT. Grade was promoted on adhoc basis to L.T. Grade but as dispute arose in regard to his appointment, consequent thereto, the promotion of Sri Ram Veer Singh was cancelled and the post on which Ram Veer Singh was promoted, having fell vacant, was advertised by the Committee of Management and the Applicants were called for interview and the Plaintiff was selected on the aforesaid post and was appointed on 26-8-1991. It is further stated that due to retirement of Sri Brij Raj Singh, the Principal of thd College, Sri Raj Veer Singh was given the charge of the Principal of the College. The requisition was sent for filling up the post of Principal of the College under the provisions of U.P. Secondary Education Services Commission and Selection Boards Act. 1992 (U.P. Act No. 5 of 1982) 31 4 the said promotion was duly approved by the District Inspector of Schools The said post of Sri Raj Veer Singh fell vacant on which the Plaintiff was appointed. It was further stated that since the Plaintiff has been working from the date of his appointment, he is entitled to get salary on the said post On the basis of the aforesaid facts, the reliefs claimed in the plaint, are quoted earlier in this judgment. A perusal of the narration of the facts shows that the Plaintiff claims his appointment on adhoc basis in the

institution. u/s 18 of U.P. Act No. 5 of 1982 the adhoc appointments are contemplated. A detailed procedure is provided under various Removal of Difficulties Orders referred earlier for making adhoc appointments in substantive Vacancies as well as in short term vacancies. The question, as to whether the Plaintiff was rightfully appointed on adhoc basis under Removal of Difficulties Order could have been decided under the provisions of Removal of Difficulties Orders and as noticed earlier in case of dispute the matter could have been referred to the Deputy Director of Education and the aggrieved person could have filed appeal against the order of the Deputy Director of Education to the Director of Education.

21. Likewise, another aspect of the matter is that in the plaint the Plaintiff was claiming a direction by the court that the Defendants in the suit namely the District Inspector of Schools, the Accounts Officer in the office of District Inspector of Schools and the State of U.P. should be directed to make payment of salary to the Plaintiff.

22. The institution in the present case was within the purview of U.P. Act No. 24 of 1971, Section 10 of the aforesaid Act contemplates that the State Government is liable for the payment of salary of the teachers and employees of every institution due in respect of any period on or before March 31, 1971. U.P. Act No. 24 of 1971 is a complete code in itself and the provisions of the Act are self contained. The State Government have statutory obligation to ensure that a teacher, who is entitled to get his salary under the provisions of the aforesaid Act, should be paid his salary in accordance with the provisions of the aforesaid Act every month on the date prescribed for payment of salary. In case where the teacher is not getting his due salary, which he otherwise is entitled under law to get under the provisions of the said Act, the teacher can approach the District Inspector of Schools for payment of his salary under the procedure prescribed by Section 3 of Act No. 24 of 1971 and the District Inspector of Schools will ensure payment of salary to the teacher, who is entitled for salary under the provisions of the Act.

23. In *Mahipal Singh Pawar v. State of U.P.* 1992 (2) UP LB EC 1947 a Division Bench of this Court held:

In our opinion, Act No. 24 of 1971 is self contained, exhaustive and is a complete code in itself, as far as payment of salary to a teacher by the State Government is concerned and in view of the provisions contained in Act No. 24 of 1971, we are of the considered opinion that the Petitioners have statutory, efficacious alternative remedy of making representation before the District Inspector of Schools and as such the petitions filed by the Petitioners without exhausting the remedy under Act No. 24 of 1971, deserves to be dismissed on the ground of alternative remedy.

24. Section-12 of U.P. Act No. 24 of 1971 makes it clear that an order passed by the authorities under the Act shall not be called in question in any court. This gives finality to the orders of the District Inspector of Schools passed under the

Act. Section 12 of the Act is reproduced below:

Section 12 No order made or direction given by the State Government the Director, the Regional Deputy Director of Education or the Inspector or other officer in exercise of any power conferred by or under this Act shall be called in question in Court.

25. In the aforesaid background, the question which requires consideration is whether in view of the provisions of the Removal of Difficulties Orders referred earlier and the provisions of the U.P. Act No. 24 of 1971, a civil suit claiming relief for issuing mandatory injunction to the Defendants for a direction to pay salary to the Plaintiff is cognizable by a civil court u/s 9 of the Code of Civil Procedure?

26. In *Dhula Bhal v. State of M.P.* AIR 1968 SC 78, the Hon. Supreme Court held as under:

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. (2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

27. In *Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI)*, , the Hon"ble Supreme Court held:

The question turns on the scope of the exclusionary clause in the statute. The effect of clauses excluding the civil court's jurisdiction ore considered in several pronouncements of the judicial Committee and of this Court See *Secy. of State v. Mask & Co.* AIR 1040 P 105 *K.S. Venkataraman and Co. Vs. State of Madras*, : *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, , *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, . Generally speaking, the broad guiding considerations are that wherever a right, not pre-existing in common-law. is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and

the remedy having been created *uno flatu* and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the civil Court's jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the civil courts' jurisdiction then both the common-law and the statutory remedies might become concurrent remedies leaving open an element of election to the persons of Inherence. To what extent, and on what area and under what circumstances and conditions, the civil courts' jurisdiction is preserved even where there is an express clause excluding their jurisdiction, are considered in *Dhulabhai's* case.

28. In *Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another*, , the Hon''ble Supreme Court held:

It is therefore clear that this Act i.e. Industrial Disputes Act not only confers the right on a worker for reinstatement and backwages If the order of termination or dismissal is not in accordance with the Standing Orders but also provides a detailed procedure and machinery for getting this relief. Under these circumstances, therefore there is an apparent implied exclusion of the jurisdiction of the civil court. In *Dhulabhai's* case, (AIR 1969 SC 78 a five Judges Bench of this Court considered the language of Section 9 and the scope thereof in respect of exclusion of jurisdiction and it was observed (at page of 88 of AIR)...

It is therefore clear that the scheme of the Industrial Disputes Act clearly excludes the Jurisdiction of the civil court by implication in respect of remedies which are available under this Act and for which a complete procedure and machinery has been provided in this Act.

29. An analysis of the provisions of Removal of Difficulties Orders, referred earlier, read with the provisions of U.P. Act No. 24 of 1971 shows that a complete code of procedure has been prescribed for determining the dispute in regard to the matter of *ad hoc* appointments in High School and Intermediate Colleges recognised under U.P. Intermediate Education Act. The right of the Plaintiff for a direction to get salary from the Defendants is not a common law right but is a creation of statute i.e. U.P. Act No. 24 of 1971 and a complete code is provided for payment of salary to such teachers under the said statute. A civil suit claiming mandatory Injunction for a direction to make payment of salary to the Plaintiff on the basis of his alleged appointment on *ad hoc* basis in the High School and Intermediate College is impliedly barred and the civil court has no jurisdiction to entertain such suit.

30. Question Nos. (i) and (ii) can be examined together.

31. The relevant portion of State Amendment made in Order 39, Rule 2, Sub Rule (2) adding the proviso is under:

Provided that no such injunction shall be granted (a) where no perpetual injunction could be granted in view of the provision of Section 38 and 41 of the

Specific Relief Act, 1962...and any order for Injunction granted In contravention of these provisions shall be void.

32. Sections 38 and 41 of the Specific Relief Act are also being quoted below:

Section-38: Perpetual injunction when granted:

(1) Subject to the other provisions contained In or referred by the chapter, a perpetual injunction may be granted to the Plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the Defendant invades or threatens to invade the Plaintiff's rights to, or enjoyment of, property, the court may grant a perpetual injunction In the following cases, namely:

(a) Where the Defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion !

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

"Section 41 injunction when refused : An injunction cannot be granted:

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is no reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the Plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.

33. Section 38(3)(b) of the Specific Relief Act contemplates a situation that the court may grant a perpetual injunction where there exists no standard for ascertaining actual damage caused or likely to be caused Likewise Section 41(h) of the Specific Relief Act mandates that an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.

34. There is another aspect of the matter that the suit of the Plaintiff Respondent No. 3 was essentially for payment of salary for a particular period and for future. A suit for perpetual injunction for payment of salary is barred by Section 38(3)

(b) of the Specific Relief Act as for non-payment of salary the actual damage caused or likely to be caused can be ascertained. It is not the case where damage is of such a nature that they cannot be ascertained. The relief in the suit to the extent it seeks a direction by perpetual injunction to make payment of salary, which became due to the Plaintiff, is barred by the provisions of Section 38(3)(b) of the Specific Relief Act and since the Plaintiff had equally efficacious remedy under the provisions of U.P. Act No. 24 of 1971; the suit of the Plaintiff for permanent injunction was barred by Section 41(h) of the Specific Relief Act. Since the Plaintiff was not entitled to get perpetual Injunction in view of the provisions of Sections 38 and 41 of the Specific Relief Act, no temporary injunction could have been granted to the Plaintiff in view of the State Amendment in Order 39 Rule 1 Sub-rule (2), proviso (a).

35. In view of the above discussion, I am satisfied that the interim injunction passed in favour of the Respondent No. 3 by the Civil Judge, Etah on 30-5-1992 in Original Suit No. 118 of 1992, filed as Annexure-9 to the present writ petition, was in the teeth of the provisions of Order 39, Rule 2, Sub-rule (2), proviso (a), as amended by the State of U.P. so the order of injunction is void. A writ of certiorari is issued quashing the order, aforesaid of Civil Judge, Etah dated 30-5-1992, filed as Annexure-9 to the writ petition

36. I am also satisfied that the suit for mandatory injunction filed by the Plaintiff Respondent No. 3, being suit No. 118 of 1992, Raj Bahadur Singh v. D.I.O.S. Etah. is also barred by the provisions of Section 41(h) of the Specific Relief Act and the plaint as such is not maintainable.

37. For the reasons given above, a writ of certiorari is issued quashing the plaint of suit No. 118 of 1992 filed as Annexure-3 to the writ petition.

38. In view of the above discussion, it is clear that the preliminary Objection raised by the Respondent's counsel that the Petitioner has an alternative remedy of filing appeal, is wholly misconceived and the present writ petition cannot be thrown out on the ground of availability of alternative remedy.

39. So far as the relief claimed by the Petitioner that the District Inspector of Schools be directed to appoint him on the post of L.T. Grade teacher, the Petitioner had been approaching the District inspector of Schools for the said relief. It seems that in view of the injunction issued against the District Inspector of Schools he was not in a position to consider the case of the Petitioner. Since the aforesaid injunction order has been quashed and the plaint of the said suit has also been quashed, it is expected that the District Inspector of Schools will take decision in the matter of the Petitioner in accordance with the procedure prescribed by law. It is further being made clear that a complete code is provided in Removal of Difficulties Orders for referring the dispute to the Deputy Director of Education and thereafter filing of appeal to the Director of Education. The Petitioner's remedy lies in approaching the concerned authorities in the matter, However, since the District Inspector of Schools has not taken any

decision so far in the matter, 8 wit of mandamus is issued directing the District Inspector of Schools to decide the Petitioner's representation in accordance with law after hearing all concerned within a period of three months from the date of the receipt of the certified copy of this order alongwith the representation given by the Petitioner to the District Inspector of Schools.

40. The writ petition is accordingly allowed with costs.