

(1993) 11 AHC CK 0054

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11229 of 1982

Rajendra Misra and Another

APPELLANT

Vs

The District Inspector of School and Others

RESPONDENT

Date of Decision : 11-11-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Section 12, 16, 16G, 33

Citation : (1994) 1 AWC 269 : (1994) 2 UPLBEC 834

Hon'ble Judges : A.P. Singh, J

Bench : Single Bench

Advocate : R.N. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

A.P. Singh, J.—Post of L.T. grade teacher in S.V. Inter College, Lahua Kalan, Azamgarh for short the College, is the bone of contention in the above two writ petitions. While Rajendra Misra, Petitioner No. 1 in writ petition No. 11229 of 1982, for short the Petitioner of the 1st writ petition, claims this post by way of promotion from C. T. grade on, ad hoc basis under Removal of Difficulties Order 1981 issued u/s 33 of the U.P. Act No. 5 of 1982, on that said post falling vacant either due to the promotion of a L.T grade teacher of the College in the lecturer" grade or due to the creation of the post of Geography teacher in that grade, which is, however, disputed by the District Inspector of Schools, for short DIOS. However, for settlement of the present dispute it is not necessary to resolve they controversy as to on which post Petitioner of 1st writ petition, Rajendra Misra, was appointed. On the other hand, Shyam Sunder Singh, Petitioner in writ petition No. 2734 (A) of 1989, for short Petitioner of IInd writ petition, claims this post under Rule 2 (chha) of Chapter II of the Regulations framed under U.P. Intermediate Education Act, 1921, for short the 1921 Act and " Regulations coupled with the order dated 2-1-88 of the Regional Deputy Director of Education VIIth Region, Gorakhpur. for short the D.D.R., who is Respondent No. 4 in the

Had writ petition.

2. By an order dated 14-2-1989 passed in the IInd writ petition both writ petitions were connected and are thus being decided together by a common judgment more so because the post, the parties and the questions involved in both the cases are common.

3. Petitioner of the 1st writ petition is Respondent No. 5 in IInd writ petition whereas Petitioner of IInd writ petition is Respondent No. 4 in the 1st writ petition by virtue of the order dated 4-12-1989 passed in the 1st writ petition on an application for impleadment filed by Petitioner of the IInd writ petition in the 1st writ petition.

4. In short, the facts of the 1st writ petition may be stated as follows:

Petitioner No. 1 was appointed by the managing committee of the College by resolution dated 26-1-1982 by way of ad-hoc promotion from C.T. grade to the L.T. grade the Committee sent the said resolution to the DIOS, Azamgarh for grant of approval. By the same resolution the managing committee also appointed Petitioner No. 2 as C.T. grade teacher to fill up the vacancy caused in the C.T. grade due to the ad-hoc promotion of Petitioner No. 1.

Both these appointments were approved by the DIOS, Azamgarh by his order dated 28-6-1982. Subsequently, on a complaint/representation filed by Ram Janam Singh, Respondent No. 3, who happened to be the senior most teacher of the College in the C.T. grade, the DIOS, Azamgarh by the impugned order dated 4-9-1982 (which has been filed as annexure 8 to the writ petition) recalled his order dated 28-6-1982 on the grounds that petitioner's promotion in L.T. grade Was made in violation of Regulation 6 of Chapter III of the Regulations inasmuch as the claim for promotion, in the said grade, of the seniormost teacher in C.T. grade was not considered by the Managing Committee while passing the resolution promoting the Petitioner of the 1st writ petition. Both Rajendra Misra and Om Prakash Singh feeling aggrieved by the above noted impugned order dated 4-3-82 of the DIOS filed this writ petition and obtained stay order on 28-9-1982 which was, however, vacated by this Court vide order dated 4-2-1989 at the instance of Shyam Sunder Singh Petitioner of the IInd writ petition, who as stated above, also claimed a lien on the post by virtue of Regulation 2 (chha) of Chapter II of the Regulations and also by virtue of the order passed by the D.D.R. Gorakhpur dated 2-1-1988.

5. Similarly, it is necessary to notice in short the facts of the IInd writ petition which are as follows:

The College was a Junior High! School prior to 5th October, 1971 on which date it was raised to the level of High School and came to be governed by the provisions of 1921 Act.

Petitioner was appointed as Head Master of the Junior High School on 6-8-1968 but could not be selected for appointment as Head Master of the College after it

no more remained a Junior High School and another person was selected and appointed as its Principal by the Managing Committee by order dated 1-7-1972. Consequently, Petitioner started working as an Assistant teacher of L.T. grade. The Management sent a request to the DIOS, Azamgarh for granting approval for petitioner's appointment but the same was refused twice by the DIOS, Azamgarh whereupon the Management by order passed in June 1974 terminated the services of the Petitioner. From the facts noticed by the D.D.R., Gorakhpur, in his order dated 2-1-1988 it is established that Petitioner worked as Assistant teacher in the College through-cut and was paid his salary after 5-10-1971 (when the institution was raised to High School from Junior High School). Against the order of his termination, Petitioner filed Writ Petition in this Court which was numbered as Civil Misc. Writ No. 11874 of 1975. This writ petition was, however, dismissed by this Court vide judgment and order dated 2-8-1983. While dismissing the said writ petition, this Court in its above mentioned judgment observed thus: The Petitioner may, if he is so advised approach the Regional Deputy Director of Education, against the order of termination of service who may enquire into the matter and do justice.

Strengthened by the above observation made in the judgment Petitioner approached the D.D.R., Gorakhpur through a representation seeking setting aside of the termination order. The D.D.R., Gorakhpur gave opportunity of hearing to the Managing Committee of the College, the DIOS, Azamgarh and the Petitioner and held detailed enquiry and concluded that termination of petitioner's services by the Management of the College on the basis of the order of DIOS, Azamgarh, refusing approval for petitioner's appointment as L.T. grade teacher, was wrong inasmuch as Petitioner had a right under Regulation 2 (chha) of Chapter II of the Regulations to continue in service of the College as Assistant Teacher Of L.T. grade by virtue of his having worked as Head Master of the Junior High School prior to 5-10-1971 when the Junior High School was elevated to the status of High School. The D.D.R. also held that no resolution for appointment of the Petitioner was required to be passed by the Managing Committee of the College nor the approval order was required to be passed in that respect by the DIOS for the lawful continuance of the Petitioner as Assistant Teacher of the College in the L.P. grade. The D.D.R., therefore, accordingly, directed the Inspector and the Managing Committee to allow the Petitioner to work against the vacancy - against which Petitioner of the first writ petition had been promoted from the C.T. grade on ad-hoc basis. The Managing Committee complied with the - above order of the D.D.R., Gorakhpur by appointing Petitioner of order dated 8-1-1988 and reverted Petitioner of its Writ Petition as C.T. grade teacher. The DIOS Azamgarh however, did not relent and refused to pay salary to the Petitioner maintaining that Petitioner of the 1st writ petition who had been promoted as L.T. grade teacher was entitled to continue (order of DIOS is dated 24-1-88) in service.

Against the said order of the DIOS, Azamgarh, Petitioner filed writ petition in which the High Court directed the DIOS, Azamgarh to implement the order of the

DDR dated 2-1-1988 whereafter the DIOS heard the matter and passed the impugned order dated 19-7-1988 holding that since Petitioner of the first writ petition was already working as LT grade teacher and since his ad-hoc promotion on that post had duly been approved as such the Petitioner of the IInd writ petition could not be appointed on that post nor he could be paid salary, he accordingly ruled that the order of the DDR, Gorakhpur could not be implemented.

6. The question which now arises for decision in these writ petitions is as to who between the -Petitioner of the first writ petition and Petitioner of second writ petition is entitled to continue to work and receive payment of salary as LT grade teacher of the College.

7. Sri Vinod Kumar Singh, learned Counsel for the Petitioner of the 1st writ petition has assailed the impugned order passed by the DIOS, Azamgarh in the 1st writ petition on the ground that the DIO St Azamgarh had no power (jurisdiction) under the law to recall and cancel his earlier order dated 28-6-1982 as that order had not been procured either by the Managing Committee of the College or by the said Petitioner by giving wrong facts or by making misrepresentation or by playing fraud. It was also argued that the said order in any case was void ab-initio as before passing the said order the DIOS, Azamgarh had not afforded opportunity of hearing to the IInd Petitioner of the 1st writ petition, namely, Om Prakash Singh, whose appointment in the CT grade was also approved by the order of the DIOS dated 28-6-1982 which too stood terminated as result of the passing of the impugned order.

8. To substantiate his above contentions, Sri Singh placed reliance on the following judgments of this Court to demonstrate that the DIOS possessed no power to recall or review his orders in normal course or in any case without giving opportunity of hearing:

- (a) Jaswant Singh v. DIOS, (1980) UPLBEC 43.
- (b) Mohan Lal Sharma v. DIOS, (1982) UPLBEC 213.
- (c) Radhey Shyam Chaubey v. DIOS, 1978 ALR 14, and
- (d) Gauri Shanker v. Ram Lakhan Pandey, (1984) UPLBEC 16.

9. This Court through a Division Bench in the case of Jaswant Singh laid down situations in which the DIOS could review an order passed by him earlier. To quote the words of the Division Bench:

(6) The District Inspector of Schools having once passed an order in the manner stated above does not have jurisdiction to review his order unless it is established that the said order had been obtained by misrepresentation or fraud or -was the result of mistake in the sense" that it was passed on incorrect facts and would not have at all been passed if the correct facts had been brought to his notice. These facts should, however, be such which go to the very root of the

matter. The District Inspector of Schools has no power to review his earlier order on a fresh assessment of facts or law.

(7) Even in those cases where it is established that the earlier order had been obtained by misrepresentation or fraud or had been given under mistake as aforesaid the District Inspector of Schools must not recall or revoke the said order without giving an opportunity of hearing to the person in whose favour the said order had been passed.

(8) The opportunity of hearing which the District Inspector of Schools had to give either at the stage of passing the initial order recalling or revoking it in the circumstances, stated above is to be confined to giving the persons concerned an opportunity to put forward their case. It is not to be converted into a regular hearing as is done by a Civil Court. The District Inspector of Schools has to keep in mind that the enquiry to be made by him is of a summary nature and on an administrative level meant to satisfy himself as to who, according to him, are the validly elected office bearers of the committee of management. In other words the District Inspector of Schools, should not arrogate to himself the jurisdiction of a Civil Court and thereby assume the power to decide the fate of the parties before him.

10. The same view has been reiterated in other judgments cited at the bar by the learned counsel for the Petitioner.

11. Now coming to the facts of the present case, it is to be seen that the DIOS, Azamgarh by order dated 28-6-82 approved the appointments of both Petitioners respectively in the LT and CT grades. The order reads as follows:

Preshak,

Zila Vidyalaya Nirikshak,

Azamgarh.

Sewa me,

Prahandhak/Pradhanacharya,

S. B. Inter College Lahua Kala,

Azamgarh.

Patrank: 373 Dinank 28-6-82

Vishay: Adhyapakon ki tadarth padonnati/niyukti ke sambandh me.

Mahodaya,

Uparukt vishay apke patra sankhya tadarth niyukti 8-1-82 dinank 28-6-82 tatha tadarth niyukti/81-82 dinank 10-2-82 dwara prapta prastaw evam sanstuti ke adhar par vjdyalaya me Bhugol evam Arthasastra ki navin manyata milne ke phalaswarup visay padhane ki avashyakta ko dekh'e hue Sree Rajendra Mishra ki

tadarth padonnati C. T. vetankram se snatak vetankram me ki gai hai ko sahamati pradaa ki jati hai.

Sri Rajendra Mishra dwara C. T. vetankram ke pad rikta hone ke phalaswarup unke rikta sthan par Sri Qm Prakash Singh ki tadarth niyukti ki sahmati karyabhar grahan karae ki tithi se pradan ki jati hai. Board evam Ayog se chayaniti abhyarthi ko aa jane par inki sewaen swatah samapta ho jayegi.

Bhavdiya,

Hastakshar Ashpasht

Zila Vidyalaya Nirikshak

Azamgarh.

12. After passing the above order the DIOS, Azamgarh appears to have received the complaint of Respondent No. 3, Ram Janam Singh, in pursuance thereto he sent a notice dated 6-7-82 to the Manager of the College and a copy was also endorsed to the first Petitioner both of whom were required to submit their reply whereas the Principal of the College was required to submit his report. In the said letter the DIOS, Azamgarh raised following objections and disclosed his mind that if satisfactory reply was not received the approval order will be cancelled. The objections were:

(i) that the post had lapsed under Regulation 20 of Chapter II of the Regulations inasmuch as the said post had fallen vacant in February 1979 due to the promotion of Raj Narain Dixit in the lecturer's grade and had not been filled up within 3 months from the date of the occurrence of the vacancy and therefore for that reason the promotion of Petitioner of the 1st writ petition was illegal.

(ii) From the complaint filed by Ram Janam Singh it was apparent that there were teachers in the College who were available for teaching the sanctioned subject of Geography and therefore the contention of the management that senior teacher was not promoted as he did not possess the requisite educational qualification for appointment as Geography teacher was wrong; and since the Rule of seniority was violated (Rule 6 of Chapter II of the Regulations) as such the promotion was illegal, the time table which was supplied to him for seeking approval was also not verified by the Principal of College.

(iii) As per the complaint the post in question had fallen vacant due to the promotion of R.N. Dixit which post had been filled up by promoting Pramod Kumar Singh against which the complainant had filed objection in this office and till the objection was decided there was no occasion for making the promotion.

(iv) Promotion of Petitioner as teacher of Geography was made on the basis of the order granting recognition for instruction in the subjects of History and Geography which was illegal as the sanction for creation of post had not been given till then as such the proposal for promotion was illegal.

(Original order is in Hindi)

13. Both the Managing Committee and Petitioner of the first writ petition filed identical objections". However, the DIOS, Azamgarh passed the impugned order only on the ground No. II referred to in the notice dated 6-7-1982. In view of the contention of the learned counsel for the Petitioner it is necessary to extract the relevant portion of the order verbatim:

Uparukta visayak is karyalpya ke patrank 4444-46-82/83 dinank 6-7-82 dwara mangi gai akhya ke adhar par prakaran ki janch ki gai tatha jancho-parant yah tathya paya gaya ki C. T. vetankram se ki gai tadarth padonnati prapta varisthata kram ki suchi me ankit varistha adhyapak ko chhor kar kanistha adhyapak ki ki gai hai. Pradhanacharya dwara prapta samaysarani evam anya abhilekhon ko dekhne se bhi yah gnat hota hai ki varistha adhyapak ko enhorne ka auchitya pramanit nahi hai.

Aisi dasa me is karyalaya ko patrank 3731 dinank 28-6-82 dwara C.T. vetankram se L.T. vetankram me Sri Rajendra Mishra ki gai tadarth padonnati nirasta ki jati hai. Sath hi yah bhi suchya hai ki C.T. vetankram me rikta pad par tadarth niyukti karne ka prashna hi nahi uthta hai.

14. Reverting back to the contention of Sri V. K. Singh, learned counsel for the Petitioner, it has been argued that the impugned order is void-ab-initio first for the reason that the DIOS, Azamgarh, who passed the order dated 28-6-1982 and the impugned order dated 4-9-82, had no power to review the said order as (i) the order had not been procured by misrepresentation of facts or by practising fraud on the DIOS or by furnishing wrong information, and (ii).no opportunity of hearing had, admittedly, been afforded to the Petitioner No. 2 of the first writ petition before passing the said order although by that order the valuable right of Petitioner No. 2, which had accrued in his favour by virtue of the reviewed order, has been taken away.

15. Now it is necessary to test the above arguments of the learned counsel on the touchstone of the facts of the case noticed above.

16. In para (ii) of the notice dated 6-7-1982, the DIOS Azamgarh had specifically alleged that the order dated 28-6-1922 was obtained by the Management wrongly saying that the claim for promotion of the seniormost teacher of the College in the C.T. Grade was overlooked as there was necessity for appointing Geography teacher and the seniormost teacher of that grade was not qualified for appointment in that grade, which fact on enquiry was found wrong inasmuch as the DIOS found that from amongst the teachers of the College the need for teaching the subject of Geography could be satisfied without making the promotion of Petitioner of the first writ petition by overlooking the lawful claim for promotion of Respondent No. 3 of the 1st writ petition which was further substantiated from the fact that unverified time table was submitted by the Managing Committee with the requisition sent by it for seeking approval of the promotion of the Petitioner of the first writ petition.

17. In the impugned order too, the DIOS, Azamgarh has reviewed his earlier order dated 28-6-82 only on this ground holding that from the report and the time table submitted by the Principal of the College it was clear that there existed no justification whatsoever for ignoring the claim of the seniormost teacher of the College in C.T. grade for his promotion on the post of L.T. grade.

18. The ground (u) in the notice dated 6-7-1982 and the order dated 7-9-82 squarely show that the order dated 28-6-1982 was procured by the Managing Committee by submitting wrong time table and wrong information to the effect that the seniormost teacher of the C.T. grade could not be given promotion in the LT. grade as the need for teaching the subject of Geography was not possible to be met until the junior person, viz., the Petitioner of the 1st writ petition was given promotion to meet the requirement. The DIOS, Azamgarh obviously would not have given the approval for the promotion of Petitioner of the 1st writ petition had this wrong information not been given to him by the Managing Committee of the College. Can it be said in the above circumstances that the DIOS, Azamgarh acted illegally by cancelling his earlier order dated 28-6-82 by the impugned order dated 7-9-82 ? The answer, in my opinion, is in the negative. On the other hand, on getting the complaint from the seniormost teacher of the College, who under Regulation 6 of Chapter II of Regulations, had a vested right of promotion on the post was duty bound to review or recall his earlier order dated 28-6-82 which had been procured by the Managing Committee of the College not only by making misrepresentation of the facts but also by submitting wholly false time table to deceitfully procure the approval order regarding the promotion of Petitioner of the 1st writ petition as L.T. grade teacher of the College.

19. Promotion of the Petitioner, Rajendra Misra, was made in utter violation of Regulation 6 of Chapter II of the Regulations which required that all the teachers of the grade from which promotion was required to be made should have been considered for promotion in the L.T. grade by the Managing Committee without their filing application for the same. A perusal of, the resolution of the Managing Committee would show that while making promotion of Rajendra Misra as L.T. grade teacher, the Managing Committee did not at all consider the claims of other teachers of the C.T. grade working in the College including the claim of the seniormost teacher, Ram Janam Singh, who as per the law, had a preferential claim for promotion as opposed to the claim of Sri Rajendra Misra.

20. The authorities cited by the learned counsel for the Petitioner for illustrating the extent of power which the Inspector of Schools under the 1921 Act has in the matter as a matter of fact boomerangs against his own arguments. As observed above, the Inspector of Schools obviously has power to cancel his earlier order granting approval if he is faced with the situation that the order in question was procured from him by deceitful means or by supplying incomplete or incorrect information. Unfortunately, in the present case the order dated 28-6-1982 was passed by him granting approval to the promotion of Petitioner of the 1st writ

petition in the belief that the seniormost teacher of C.T. grade was not qualified for promotion as Geography teacher of the LT. grade for want of the requisite educational qualification and the promotion of Petitioner of the first writ petition who was possessed of the requisite qualification for promotion was a matter of necessity inasmuch as there was need of a Geography teacher. This information supplied to him by the Managing Committee was a crucial piece of information which, however, was found wrong by the DIOS Azamgarh after he made enquiries in the matter consequent to the filing of complaint by Ram Janam Singh against the promotion order dated 28-6-1982. But for this wrong information in the normal course promotion of Petitioner of the 1st writ petition was not possible under the law and the DIOS Azamgarh would not have passed the order of approval dated 28-6-1982 in favour of Petitioners of 1st writ petition.

21. It is noteworthy that in the writ petition too the Petitioners of the 1st writ petition have not contested the finding of the DIOS, Azamgarh to the effect that the requirement of teaching the subject of Geography in the College could very well be met without promoting Petitioner of the 1st writ petition in the L.T. grade for teaching the said subject.

22. In the background of the facts of the case and the mandate of the law and the authorities cited by the learned counsel for the Petitioner himself I find no illegality in the impugned order passed by the DIOS, Azamgrah for cancelling his earlier order dated 28-6-1982, therefore, the argument of the learned counsel that the DIOS, Azamgrah acted without authority of law and outside his domain of authority cancelling the said order, is liable to be rejected.

23. Now remains the question as to whether the impugned order is liable to be set aside for the reason that it was passed admittedly, without giving any opportunity of hearing to Sri Om Prakash Singh, Petitioner No. 2 of the 1st writ petition. A perusal of the resolution dated 26-1-1992 (annexure I to the 1st writ petition) would show that Petitioner No. 2 was given appointment in the C.T. grade by the Managing Committee of the College by the same resolution by which promotion was given to the Petitioner No. 1 Rajendra Mishra from C.T. grade to the L.T. grade.

24. But for the wrongful promotion of the 1st Petitioner from the CT. to the L.T. grade, there arose no occasion or vacancy, whatsoever, in the C.T. Grade justifying the appointment of Petitioner No. 2, Om Prakash Singh in that grade. The appointment of Om Prakash Singh in the C.T. grade was subject to and dependant on the continuance of Rajendra Mishra, 1st Petitioner on the promoted post of L.T. grade. In other words, the appointment of Om Prakash Singh in the C.T. grade being consequential to the pro motion of Rajendra Mishra from that grade to the L.T. grade was liable to be terminated as soon as Rajendra M?hra had for any reason to revert to his post in the C.T. grade.

25. Both promotions of Rajendra Mishra in the L.T. grade and appointment of Om Prakash Singh in the the consequential vacancy in the C.T. grade were of ad-hoc

nature. While the promotion in the L.T. grade was made against a substantive vacancy, the appointment of Om Prakash Singh was made against a short term vacancy.

26. Procedure for making ad hoc promotions and appointments against short term vacancies have been provided in the U.P. Secondary Education (Removal of Difficulties (Und) Order 1981 issued by the State Government u/s 33 of U.P. Act No. 5 of 1982.

27. However, before dealing with the procedure for making appointment against short term vacancies it is also necessary to notice that u/s 16 of the said Act substantive appointment either by way of direct recruitment or by way of promotion on the post of L.T. grade teacher in the College could only be made by appointing a candidate duly selected by the Secondary Education Service Commission under that Act and not otherwise. Similarly, appointment on the post of C.T. grade teacher in the College too could be made by the Managing Committee of the College on substantive basis by appointing a candidate selected and recommended for the purpose by the Secondary Education Board established u/s 12 of the said Act. Only ad-hoc appointments either against substantive or short term vacancies, as noticed above, could be made by the Managing Committee by taking resort to the procedure provided for the purpose under the 1st or IIInd Removal of Difficulties Order, as the case be.

28. As observed above, for making appointments against short term vacancies resort is to be had to the Removal of Dfficulties lind Order 1981, which in short requires the vacancy to be notified to the DIOS and in the notice Board of the institution inviting application to be made to the manager. As provided in para 3 (c) of the said Order, the appointment made under the said Order, ceases automatically as soon as the vacancy ceases to exist.

29. Since 1st Petitioner of the 1st writ petition reverted back to his substantive post of C.T. grade consequent to the passing of the impugned order by the DIOS, Azamgrah, as such, the vacancy in C.T. grade, which had been caused due to his promotion in the L.T. grade ceased to exist causing automatic cessation of the appointment of the IIInd Petitioner of the 1st writ petition.

30. In view of the above legal and factual position it was not at all necessary for the DIOS Azamgarh to have heard, after giving notice of bearing to, the Second Petitioner of the 1st writ petition as his fate was dependant on the fate of 1st Petitioner of the 1st writ petition who admittedly was afforded the opportunity of hearing as required by law. I, therefore, do not agree with the second contention of learned counsel for the Petitioner and his contention that the order under challenge in the first writ petition is void for not affording opportunity of hearing to the IIInd Petitioner of that writ petition is rejected as untenable both on facts and law.

31. Now I revert to the relief claimed by Petitioner of the IIInd wiit petition. Sri Prakash Padia, his learned counsel is absolutelly right in his contention that the

DIOS had no lawful authority to reject the claim of the said Petitioner for payment of salary in as much as the order of the D.D.R. dated 2-1-1988 in which he held that the said Petitioner was legally entitled to work as L. T. grade teacher of the College had become final for want of challenge against the said order, therefore there existed no impediment whatsoever to deny salary to the Petitioner of IInd writ petition. He has also rightly assailed the reasoning given in the order of the DIOS, Azamgarh under challenge in the IInd writ petition asserting that since services of the said petitioner had wrongly been terminated by the Management and since under the law he always continued in the service of the College as L.T, grade teacher, the order of the termination, notwithstanding, there (existed no vacancy in the said grade justifying promotion of Petitioner of the 1st writ petition in that grade which, therefore, had to automatically fall through with the reinstatement of Petitioner of the IInd writ petition in the service of the college by virtue of the order of the D.D.R. mentioned above.

32. To test the validity of the order of the D.D.R. dated 2-1-88 and the argument of Sri Padia, it is necessary to quote the relevant provision of Regulation 2 (chha) of Chapter II of the Regulations which is relevant for the purpose; the said Regulation reads as follows :

(chha) Kisi High School ka pradhan Adhyapak jo kramonnata intermediate college ka principal ke rup me padonnati ke yogya na paya jai ya kisi aise junior high school ka koi pradhan adhyapak jiska uske high school ke rup me kramonnat kiye jane par chayan samiti dwara aise kramonnat high school ke pradhan adhyapak ke pad ke liye chayan na kiya gaya ho aise uchchatam pad par j"ske liye wah arha ho, sahayak adhyapak ke rup me rakha jayega kintu pratibandh yah ha? ki uska vetan man ghataya nahi jayega.

33. Reading of the Regulation 2 (chha) of Chapter IIInd of the Regulation makes it crystal clear that a Head Master of a Junior High School which has been raised to the level of High School, if not selected for appointment as Principal of the High School is to be retained in service as Assistant Teacher in the grade for which he is qualified without causing any diminution in his pay scale.

34. In the background of the above provision the order of the DIOS Azamgarh refusing grant of approval for the appointment and retention of the Petitioner of the IInd writ petition as L.T. grade teacher of the College was not at all legally justified and the D D.R., Gorakhpur was absolutely right in directing the said DIOS and Management of the College to allow continuance of the said Petitioner in the service of the College and for the reason noticed above the promotee in that grade, namely, the Petitioner of the 1st writ petition had no legal right to continue in service as opposed to the right of the Petitioner of the IInd writ petition to continue on that post.

35. Sri V. K. Singh, ?earned counsel for Petitioner of the 1st writ petition however, contended that since the order of the D.D.R. (2-1-88) was obtained by

collusion between the Petitioner of the IInd writ petition, the Principal of the College and the DIOS Azamgarh as such the same should not at all be given any value so as to revive the said petitioner's service in the College which had been terminated by the Management of the College long back against which this Court too dismissed his two earlier writ petitions which had been filed by him to stage a comeback as L.T. grade teacher of the College. He has also contended that earlier to the passing of the order of termination of the services of the said Petitioner by the Managing Committee of the College, the DIOS, Azamgarh had on two occasions refused to grant approval for the appointment and continuance of Shyam Sunder Singh in the service of the College and those orders having become final the subsequent order of the D.D.R., will have no primacy as the same had been obtained by collusion.

36. This contention of the learned counsel too deserves to be rejected summarily. As seen above, under the provisions of Regulation 2 (chha) the Petitioner of the IInd writ petition had a vested right to continue in service of the College, that right of the said Petitioner could only be taken away by passing an order of termination in accordance with the provisions of section 16-G of the 1921 Act and not otherwise. The orders of the DIOS refusing to approve the appointment of that Petitioner as L.T. grade teacher of the College, which post, admittedly, he was qualified to hold; In the face of the above provision were void-ab-initio and non-est and, therefore, are liable to be ignored notwithstanding that those orders were not challenged by the said Petitioner either before the D.D.R., Gorakhpur or in Court of law. A void order can be ignored and set aside even in collateral proceedings is an established principle of law -- See Chiranjilal Shrilal Goenka v. Jasjit Singh, 1993 ACJ 880. This apart, the termination order passed by the Managing Committee on the basis of the order of disapproval passed by the DIOS Azamgarh too was set aside by a competent authority (D.D.R. Gorakhpur) by order dated 2-1-83, who had been authorised by this Court's order dated 2-8-1983 to examine the legality of the termination order and in pursuance whereof the D.D.R. Gorakhpur by his order dated 2-1-88 set aside the termination order and obviously the orders of disapproval passed by the DIOS, Azamgarh. In the above circumstances, it is not possible under the law to set up the disapproval orders of the DIOS and the consequent termination order passed by the Managing Committee for denying the fruits of the order of D.D.R., Gorakhpur dated 2-1-88 to the Petitioner of the IInd writ petition.

37. No substantial material has been brought on record by the Petitioner of the 1st writ petition to show that the order of the D.D.R., Gorakhpur dated 2-1-1988 was procured by the Petitioner of the IInd writ petition in collusion of the DIOS, Azamgarh and the Principal of the College. The D.D.R. is not alleged to be in collusion either with the Principal, the said Petitioner or the DIOS. The order dated 2-1-1988 was passed on merits by the D.D.R. on a representation duly filed by the Petitioner of the IInd writ petition as per the observations made by this Court in the order dated 2-8-1983 in Civil Misc. Writ No. 11874 of 1975. Even the learned counsel Sri V. K. Singh has failed to show any illegality in the

order of the D.D.R., the said order is fully justified by the provisions of Regulation 2 (chha) of Chapter II of the Regulations. An order, even if collusive, which is not otherwise illegal but on the other hand serves the interest of justice, cannot be set aside by this Court in exercise of its jurisdiction under Article 226 of the Constitution specially so when that order is not under challenge and has been allowed to become final.

38. The emphasis of the learned counsel for the Petitioner on earlier two orders of this Court dated 2-8-83 passed in Civil Misc. Writ No. 11874 of 1975 and the order dated 26-2-88 passed in Civil Misc. Writ No. 11874 of 1983 *Shyam Sunder Singh v. District Inspector of Schools, Azamgarh* and another for defeating the claim of the Petitioner of the IInd writ petition appears wholly unjustified. A perusal of both these orders would show that neither of the two writ petitions was dismissed on merit. While the first writ petition was dismissed on the ground of alternative remedy as this Court felt that disputed questions of fact could not be resolved in the proceedings under Article 226 of the Constitution and the Court, accordingly, relegated Petitioner of the IInd writ petition to approach the D.D.R., Gorakhpur for the appropriate relief. Similarly, the IInd writ petition of 1988 too was dismissed as premature as the Court found that there was no cause of action justifying filing of the writ petition inasmuch as the DIOS, Azamgarh was still in the process of implementing the order of the D.D.R., Gorakhpur; who, however, by that order of this Court was required to conclude the matter regarding implementation of the order of the D.D.R., Gorakhpur within two months from the date a certified copy of that order was served on him. The DIOS, accordingly, passed the order impugned in the IInd writ petition.

39. The contentions of the learned counsel for the Petitioner of the 1st writ petition, as noticed above, that the order dated 2-1-88 is collusive or that the IInd writ petition is barred by the principles of *res judicata* or that the relief claimed in the IInd writ petition by the Petitioner of that writ petition is barred by earlier orders of disapproval passed by the DIOS Azamgarh, are therefore, liable to be rejected and are, accordingly, repelled for the facts and reasons given above in this judgment.

40. It was last contended by the learned counsel for the 1st Petitioner of the 1st writ petition that since the order dated 4-9-1982 was passed by the DIOS Azamgarh at the instance of Ram Janam Singh, Respondent No. 3 of the 1st writ petition and since Ram Janam Singh is now dead as such that order has become infructuous and no advantage of that order can accrue in any manner to the Petitioner of the IInd writ petition.

41. This contention of the learned counsel too deserves rejection without much deliberation. The legal impact of the order dated 4-9-1982, impugned in the 1st writ petition, is that the post of L.T. grade teacher which was illegally occupied by the petitioner of the 1st writ petition by virtue of his illegal promotion order having been approved by the DIOS by his order dated 28-6-1982, became vacant and the said Petitioner automatically reverted back to his original post of

C.T. grade teacher of the College. The DIOS by his aforesaid order (dated 4-9-82) had not rightly, directed for promotion of Ram Janam Singh had it been so, there was some scope for making this argument by the learned counsel for the Petitioner of the 1st writ petition but without that the argument is without any foundation and, is, accordingly, rejected summarily.

42. After the order dated 28-6-1982 was set aside by order dated 4-9-82 the deck" in any case, was cleared for adjustment of Petitioner of the IInd writ petition in the service of the College, who for a very long time since 1974 had been illegally deprived, by the management of the College and the DIOS, Azamgarh, of his lawfull right to continue in the service of College as L.T. grade teacher, and to receive salary in that capacity.

43. No other contention has been raised by Sri V. K. Singh learned counsel for the 1st writ petition either in support of the 1st writ petition or in opposition of the lind writ petition.

44. In view of the discussions made above] and for the reasons given during the discussion, the order dated 4-9-82 challenged in the 1st writ petition is upheld and that writ petition is dismissed but without any order as to cost-The IInd writ petition is, however, allowed with costs and the order of the DIOS, Azamgarh dated 19-7-1988, filed as annexure 14 to the said writ petition and impugned in that writ petition, is quashed. The DIOS Azamgarh and the committee of Management of the College by whatever name called are directed to reinstate the Petitioner of the IInd writ petition, Sri Shyam Sunder Singh, in the service of the College with effect from the date his services were terminated and to pay him the salary strictly in accordance with the law treating him always in service as L.T. grade teacher of the College with effect from 5-10-1971. The arrears of his salary shall be paid by the Respondents of the IInd writ petition within a period of three months from the date of production of the certified copy of this order by the said Petitioner before them and the current salary from the month of December 1993 (payble for the month of November, 1993) shall be paid to him on the date on which under the law it becomes payable and the same shall? be paid regularly month to month so long the said Petitioner continue in service. The costs of the case shall be payable by the Respondent No. 1 which is assessed at Rs. 500/ -- .