

(2015) 07 AHC CK 0132
In the Allahabad High Court
Case No : Special Appeal No. 696 of 2006

Ram Veer Singh and Others	Vs	APPELLANT
District Inspector of Schools, Muzaffarnagar and Others		RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Constitution of India, 1950 — Article 21A, 41, 45

Citation : (2015) 6 ADJ 628 : (2015) 5 AWC 4506 : (2015) 3 ESC 1736

Hon'ble Judges : Rajes Kumar, J;S.B. Singh, J

Bench : Division Bench

Advocate : Nalin Kumar Sharma, Ashok Khare, Rekha Singh and Virendra Singh Tomar, for the Appellant; Saroj Pathi and Udayan Nandan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J—This Special Appeal is directed against the judgment and order dated 16th May, 2006, passed by the learned Single Judge, in Writ Petition No. 19747 of 1989 [Ramveer Singh and others v. District Inspector of Schools, Muzaffar Nagar and others). The brief facts, giving rise to the present Appeal, are that the D.A.V. Inter College, Jansath, Muzaffar Nagar is a recognised and aided Intermediate College. The appellant No. 1 (petitioner No. 1) claimed that one Sri Sukhvir Dev, who was a permanent teacher in C.T. Grade, proceeded on leave without pay, on account of which a short term vacancy arose in the C.T. Grade against which the appellant No. 1 was appointed as a C.T. Grade teacher temporarily, purely on ad hoc basis. The appointment letter, dated 31st January, 1989, is Annexure-1 to the affidavit filed in support of the Stay Application, which offered appointment to the appellant on a fixed salary of Rs. 450/- per month plus usual Dearness Allowances etc. Said appointment was made subject to the approval to be accorded by the District Inspector of Schools purely on temporary basis. In pursuance of the appointment letter, appellant No. 1 joined on 1st of February, 1989, Approval to the appointment has been accorded by the

District Inspector of Schools, vide order dated 4th February, 1989 (Annexure-2A to the affidavit filed in support of the Stay Application) wherein it is categorically stated that the appellant's appointment is absolutely temporary and for the period till Sukhvir Dev joins or till 30th April, 1989, whichever is earlier.

2. The appellant No. 2 (Petitioner No. 2 in the writ petition) claimed that on account of promotion of one Sri Om Pal Singh, who was a C.T. Grade Teacher, as a L.T. Grade teacher, one vacancy arose in C.T. Grade against which vacancy, appellant No. 2 was appointed by the Committee of Management on 31st January, 1989. A copy of the appointment letter is Annexure-1-A to the Affidavit filed in support of the Stay Application. The approval to such appointment has been accorded by the District Inspector of Schools, Muzaffar Nagar on 4th February, 1989 (Annexure-2B to the affidavit filed in support of the Stay Application). In the said appointment letter, it is categorically stated that the appointment of the appellant No. 2 is purely temporary and on a fixed salary of Rs. 450/- per month plus Dearness Allowance etc. In the approval order of the District Inspector of Schools, dated 4th February, 1989, it is categorically stated that the appointment is absolutely temporary and shall continue till Sri O.P. Singh joins or till 30th April, 1989, whichever is earlier.

3. Both the appellants accordingly joined the posts. When the salary could not be paid to the appellants, for the period, after 30th April, 1989, the appellants filed the writ petition. In the writ petition, the District Inspector of Schools, Muzaffar Nagar was impleaded as respondent No. 1, Uttar Pradesh Secondary Education Service Commission and Selection Board as respondent No. 2 and the Committee of Management, DAV Inter College, Muzaffar Nagar as respondent No. 3. On 21st October, 1990, the writ petition was admitted. The Standing Counsel, who appeared on behalf of the respondent No. 1 was granted time to file the counter-affidavit. Notices were issued to the respondent Nos. 2 and 3. An interim order has also been passed to the effect that until further orders of this Court, the petitioners shall be allowed to continue on the post so long as the vacancy exists and they shall be paid salary if and when falls due. It appears that when no steps have been taken to serve the respondent Nos. 2 and 3, the Court passed the order on 7th February, 2003 to take steps to serve respondent No. 2. In pursuance thereof, steps were taken to serve the respondent No. . 2. The notice was sent by the Registered Post. The writ petition has been dismissed in default on 21st November, 2003. A Recall Application has been moved on 2nd December, 2003. On 16th May, 2006, the Recall Application has been allowed, the writ petition has been restored to its original number and on the same day the writ petition has been heard on merits and dismissed on the same day and the interim order, dated 21st November, 1990 stood discharged."

4. Against the said order, the present Appeal has been filed on 1st of July, 2006. The District Inspector of Schools, Muzaffar Nagar, Uttar Pradesh Secondary Education Service Commission and Selection Board and the Committee of Management, DAV Inter College were impleaded as the party-respondents 1, 2

and 3 respectively. The notice on behalf of the respondent No. 1 has been accepted by the Chief Standing Counsel on 1st of July, 2006. Principal, DAV Inter College and State of U.P. through Principal Secretary, Secondary Education, have been impleaded as respondents Nos. 4 and 5 in compliance of the order dated 23rd April, 2015, passed by this Court. Notices were issued to the newly added respondents. The respondent Nos. 1 and 5 are represented by the Standing Counsel, respondent Nos. 3 and 4 are represented by Sri Udayan Nandan. On 5th July, 2006, the Court directed to list the Special Appeal alongwith the record of the writ petition, but no interim order has been passed. Special Appeal has been dismissed in default on 24th January, 2012, however, the said order has been recalled on 6th July, 2012.

5. The writ petition has been dismissed by the learned Single Judge on the ground that the petitioners were appointed purely on ad hoc basis. They were just engaged against the leave vacancy or the short term vacancy for a short and fixed period, but were allowed to continue under the interim orders, passed by this Court. The petitioners' appointments are de hors the Rules and, thus, they are not entitled for regularisation, under Section 33(1-B) of the U.P. Secondary Education Service Commission and Selection Board Act, 1982.

6. When the Special Appeal came up for consideration before this Court on 31st March, 2015, certain queries were made by the Court and the District Inspector of Schools, Muzaffar Nagar was asked to file the affidavit. On 17th April, 2015, the District Inspector of Schools, Muzaffar Nagar appeared in person, but instead of filing his own affidavit, he filed the affidavit of one Sri Anoop Singh, Vice Principal of the DAV Inter College, Muzaffar Nagar, who has nothing to do with the case. On that day, the District Inspector of Schools, Muzaffar Nagar was directed to file the affidavit explaining as to how the appellants were allowed to continue in service and paid salary from the State Exchequer, despite the writ petition having been dismissed, firstly, on 21st November, 2003 in default and thereafter on merits as well on 16th May, 2006. The District Inspector of Schools has been further directed to furnish the details that how much amount has been paid to the appellants either by way of salary or by way of pensionary benefit. The Court has further asked the District Inspector of Schools to show-cause that for the illegal payment of salary etc. why necessary action may not be recommended against the erring officials. The appellants were also directed to file an affidavit to explain that as to why after dismissal of the writ petition, they continued in service and received salary in the absence of any interim order in the Special Appeal and show-cause that why the amount received by them by concealing the fact and misrepresentation may not be recovered from them and action may not be taken vide order dated 23rd April, 2015, the Principal, DAV Inter College and the State of U.P. were directed to be impleaded as the respondent Nos. 4 and 5. The Committee of the Management and the Principal of the College have been directed to explain that how the appellants have been allowed to continue in service and how the salary has been paid, after dismissal of the writ petition, vide order dated 17th May, 2015, the District Inspector of

Schools and the Committee of Management of the College has been directed to explain that what procedure has been followed in the appointment of the appellants and to produce the record.

7. The necessary affidavits have been exchanged. The matter has been heard on 27th May, 2015. Sarvasri Nalin Kumar Sharma and Virendra Singh Tomar, Advocates, appeared on behalf of the appellants, Smt. Saroj Rathi, Standing Counsel appeared on behalf of the respondent Nos. 1 and 5 and Sri Udayah Nandan, Advocate, appeared on behalf of the appellant Nos. 3 and 4.

8. Sri Udayan Nanda, learned counsel, has produced the Register relating to the resolution being passed by the Committee of Management, DAV Inter College and original copies of the correspondence letters.

9. First of all, we propose to deal with the matter with regard to the appointments of the appellants on merit and whether the appellants are entitled for any relief on merits or not. In this regard, it would be appropriate to examine the validity of the appointment of the appellants and further their claim to continue after 30th April, 1989 upto which date they have been appointed and accorded approval by the District Inspector of Schools and whether they were entitled for the salary for the period thereafter.

10. In order to appreciate the controversy, it would be appropriate to refer relevant resolution No. 5, dated 6th January, 1989, passed by the Committee of Management, DAV Inter College, which reads as under:

11. It appears that on the strength of the aforesaid resolution, the appointment letters have been issued by the then Manager of the College on which approval has also been accorded by the District Inspector of Schools, without raising any objection or without seeking any further details, vide orders dated 4th February, 1989. The aforesaid resolution reveals that the appointment has been proposed absolutely on temporary basis upto the period of 30th April, 1989 for which the approval has also been accorded by the District Inspector of Schools, Muzaffar Nagar. The register of the Committee of the Management of the College which has been produced before us, reveals that after 6th January, 1989, no resolution relating to the procedure to be followed for the selection and appointment has been passed. The next resolution in the Register is dated 18th April, 1989. Therefore, it is apparent that for the selection and the appointment of the appellants, neither any selection committee has been constituted nor the selection has been approved by the Committee of Management. On a query being made by the District Inspector of Schools vide letter dated 14th May, 2015, the Manager of the College categorically informed that there is no document relating to the information about the vacancy being displayed on the notice board of the College. Alongwith the letter dated 18th May, 2015, which is Annexure CA-2 to the counter-affidavit, filed by Sri Dinesh Singh on 27th May, 2015, a copy of the resolution dated 6th January, 1989 only has been appended. It has not been explained that whether any publication in the daily news paper has

been made or not; how the selection was made; who were the members of the Selection Committee, if constituted; how many persons appeared; and how the selection of the appellants was made.

12. In the affidavit, filed by the Committee of Management, dated 25th May, 2015, also no details, with regard to selection and appointment of the appellants, have been given, instead only vague assertion has been made that after the resolution dated 6th January, 1989, proceedings were initiated to fill up the vacancy under the provisions of the Removal of Difficulties Order, 1981. The said vacancies were notified to the District Inspector of Schools and they were also notified on the notice board of the institution, thereafter, the names of the appellants, who have secured required quality point marks, under the supervision of the Head of the Institution, were forwarded to the District Inspector of Schools for approval and thereafter on the approval having been accorded by the District Inspector of Schools on 4th February, 1989, the appellants were appointed. However, no documents have been appended alongwith the supplementary counter-affidavit, dated 25th May, 2015 to support the assertions made therein.

13. The District Inspector of Schools, in his counter-affidavit, has stated that no such document is on the record.

14. In view of the aforesaid facts and circumstances, it is apparent that after the resolution, dated 6th January, 1989, proposing to appoint teachers temporarily upto the period of 30th April, 1989, neither any further proceeding of selection and appointment has been carried out by the Committee of Management nor the Manager or the Principal of the College. It is also crystal clear that straightaway, the appointment letters were issued and the same got approval of the District Inspector of Schools vide order dated 4th February, 1989.

15. We are of the view that the appointments of the appellants were ab initio illegal and de hors the rules. There appears to be some foul play in making the appointment of the appellants.

16. Whether the appointments were made against the short term vacancies, or on ad hoc basis or temporarily, by direct recruitment, such appointments could only be made in the manner laid down in Paragraph 5 of the Ist Removal of Difficulties Order, which provides that the Management shall, as soon as may be, inform the District Inspector of Schools about the details of the vacancy and and such Inspector shall invite applications from the local Employment Exchange and also through public advertisement in at least two newspapers having adequate circulation in Uttar Pradesh.

17. Sub paragraph (3) of Paragraph 5 further provides that Every application referred to in clause (2) shall be addressed to the District Inspector of Schools and shall be accompanied (a) by a crossed postal order worth ten rupees payable to such Inspector; (b) by a self addressed envelopes bearing postal stamp for purposes of registration.

18. Sub paragraph (4) of Paragraph 5 of the Removal of Difficulties Order further provides that the District Inspector of Schools shall cause the best candidates selected on the basis of quality specified in Appendix. The compilation of quality points may be done on remunerative basis by the retired Gazetted Government servants under the personal supervision of such Inspector.

19. Ist Removal of Difficulties Order, dated 11.9.1989, II Removal of Difficulties Order, dated 30.1.1982 and the III Removal of Difficulties Order, dated 14.4.1982, came up for consideration before a Full Bench of this Court with reference to the ad hoc appointment by way of direct recruitment, against short term vacancy or otherwise, in the case of Kumari Radha Raizada Vs. Committee of Management, Vidyawati Darbari Girls Inter College and Others, (1995) 2 UPLBEC 1137 . The Full Bench, while considering all the Removal of Difficulties Orders, with reference to Section 18 of the Act of 1982, has laid down law relating to the ad hoc appointment of teachers by direct recruitment during the period 1982 to 31.7.1992 and held as follows:

"Ad hoc appointment of Teachers by direct recruitment (During the Period 1982 to 31.7.1992):

41. It has already been noticed that Section 18 of the Principal Act provides for power to appoint a teacher purely on ad hoc basis either by promotion or by direct recruitment against the substantive vacancy in the institution when the condition precedent for exercise of powers exist namely that the Management has notified the said vacancy to the Commission in accordance with the provisions of the Act and the Commission has failed to recommend the name of any suitable candidate for being appointed as a teacher within one year from the date of such notification of the post of such teacher has actually remained vacant for more than two months. However, since the State Government was alive to the situation that the establishment of the Commission may take long time and even after it is established, it may take long time to make available the required teacher in the institution and as such issued three Removal of Difficulties Orders namely Removal of Difficulties Order dated 11.9.1981, Removal of Difficulties Order, dated 30.1.1982 and Removal of Difficulties Order dated 14.4.1982. In fact these Removal of Difficulties Orders were issued to remove the difficulties coming in the way of a Management in running the institution in absence of teachers. This power to appoint ad hoc teachers by direct recruitment, thus, is available only when pre-conditions mentioned in Section 18 of the Act are satisfied, secondly, the vacancy is substantive vacancy and thirdly, the vacancy could not be filled by promotion. Neither the Act nor the Removal of Difficulties Order defines vacancy. However, the vacancy has been defined in Rule 2(11) of U.P. Secondary Education Services Commission Rules, 1983. "Vacancy" means a vacancy arising out as a result of death, retirement, resignation, termination, dismissal, creation of new post or appointment/promotion of the incumbent to any higher post in substantive capacity. Thus, both under Section 18 of the Act and under the Removal of Difficulties Order the Management of an institution is

empowered to make ad hoc appointment by direct recruitment, in the manner laid down in paragraph 5 of the First Removal of Difficulties Order only when such vacancy cannot be filled by promotion and for a period till a candidate duly selected by the Commission joins the post. As noticed earlier both Section 18 of the Act and the provisions of First Removal of Difficulties Order provide for ad hoc appointment of teacher in the institution, later further providing for method and manner of such appointments are part of one scheme. Scheme being provision for ad hoc appointment of teacher in the absence of duly selected teachers by the Commission. The provisions may be two but the power to appoint is one and the same and therefore, the provisions contained in Section 18 and Removal of Difficulties Order are to be harmonized. It is, therefore, not correct to say that appointment of a teacher on ad hoc basis is either under Section 18 of the Act or under the Removal of Difficulties Order. Thus, if contingency arises for ad hoc appointment of teacher by direct recruitment, the procedure provided under the First Removal of Difficulties Order has to be followed. Paragraph 5 of the First Removal of Difficulties Order provides that the management shall, as soon as may be, inform the District Inspector of Schools about the details of vacancy and the District Inspector of Schools shall invite application from the local Employment Exchange and also through public advertisement in at least two news papers having adequate circulation in Uttar Pradesh. Sub paragraph (3) of paragraph 5 further provides that every such application shall be addressed to the District Inspector of Schools. Sub-paragraph (4) of paragraph 5 of the Removal of Difficulties Order provides that the District Inspector of Schools shall cause the best candidate selected on the basis of quality point specified in Appendix. The compilation of quality point may be done by the Retired Government Gazetted Officer, in the personal supervision of the Inspector. Paragraph 6 of the First Removal of Difficulties Order further provides for appointment of such teacher under paragraph 5 who shall possess such essential qualification as laid down in Appendix A referred to in the Regulation I of Chapter II of the Regulations made in the Intermediate Education Act.

42. In view of these provisions the ad hoc appointment of a teacher by direct recruitment can be resorted to only when the condition precedent for exercise of such powers as stated in paragraph 18 of the Act are present and only in the manner provided for in paragraph 5 of the Removal of Difficulties Order. This view of mine finds support in a number of decisions, namely, Suresh Chandra Vs. District Inspector of Schools and Others, (1991) 1 AWC 676 : (1991) 2 UPLBEC 1079 and Lalita Prasad Yadav and others v. State of U.P., 1988 UPLBEC 345. When a teacher is appointed on ad hoc basis in accordance with the paragraph 5 of the First Removal of Difficulties Order there is further no requirement of approval or prior approval of the District Inspector of Schools for such appointment. However, it goes without saying that if a management without following the procedure indicated above makes an ad hoc appointment the District Inspector of Schools possess general power under the Payment of

Salaries Act to stop payment of salary to such teacher."

The question has been answered as follows:

The substantive vacancy in the post of teacher is firstly required to be filled by promotion. If not available, then by direct recruitment in the manner laid down in paragraph 5 of the First Removal of Difficulties Order. Short term appointments are to be made in accordance with the provisions of Second Removal of Difficulties Order only after advertising the vacancy in the manner laid down under sub paragraph (2) of paragraph 5 of the First Removal of Difficulties Order in addition to notifying the short term vacancy on the notice board of the institution. Ad hoc appointment of head of institution is to be made by promotion on the basis of seniority subject to rejection of the unfit."

20. In the case of Prabhat Kumar Sharma and others Vs. State of U.P. and others, AIR 1996 SC 2638 : (1996) 6 JT 579 : (1996) LabIC 2268 : (1996) 5 SCALE 404 : (1996) 10 SCC 62 : (1996) 3 SCR 424 Supp : (1996) 3 SLJ 21 : (1996) 2 UJ 643 , the Apex Court has upheld the view taken by the Full Bench of this Court in the case of Radha Raizada v. Committee of Management, VDGIC and others (Supra). After affirming the view of the Full Bench of this Court, the Apex Court has observed as follows:

"7. It would thus be clear that any ad hoc appointment of the teachers under Section 18 shall be only transient in nature, pending allotment of the teachers selected by the Commission and recommended for appointment. Such ad hoc appointments should also be made in accordance with the procedure prescribed in para 5 of the First 1981 Order which was later streamlined in the amended Section 18 of the Act with which we are not presently concerned. Any appointment made in transgression thereof is illegal appointment and is void and confers no right on the appointees. The removal of difficulties envisaged under Section 33 was effective not only during the period when the Commission was not constituted but also even thereafter as is evident from the second para of the preamble to the First 1981 Order which reads as under:

"And whereas the establishment of the Commission and the Selection Board is likely to take some time and even after the establishment of the said Commission and Boards, it is not possible to make selection of the teachers for the first few months."

[Emphasis Provided]

10. ... It is seen that when intimation was given by the college to the Commission for allotment of the teachers, the Act envisaged that within one year the recommendation would be made by the Commission for appointment; but within two months from the date of the intimation if the allotment of the selected candidates is not made to obviate the difficulty of the Management in imparting education to the students, Section 18 gives power to the Management to make ad hoc appointments. Section 16 is mandatory. Any appointment in violation

thereof is void. As seen prior to the Amendment Act of 1982 the First 1981 Order envisages recruitment as per the procedure prescribed in para 5 thereof. It is an inbuilt procedure to avoid manipulation and nepotism in selection and appointment of the teachers by the Management to any posts in an aided institution. It is obvious that when the salary is paid by the State to the Government-aided private educational institutions, public interest demands that the teachers' selection must be in accordance with the procedure prescribed under the Act read with the First 1981 Order. Therefore, the Order is a permanent one but not transient as contended for. The Full Bench of the High Court has elaborately considered the effect of the Order and for cogent and valid reasons it has held that the Order will supplement the power to select and appoint ad hoc teachers as per the procedure prescribed under Section 18 of the Act....."

[Emphasis Provided]

21. In view of the above, we are of the view that there is no provision for appointment of the temporary teacher. The appointment of the ad hoc teacher, by direct recruitment, either against the short term vacancy or otherwise, can only be made under the Removal of Difficulties Orders, referred to above, which provides the appointment to be made by following procedure prescribed under Paragraph 5 of the First Removal of Difficulties Order.

22. In the present case, as stated above, no such procedure has been followed and, therefore, the appointments were ab initio illegal and de hors the Rules. The District Inspector of Schools has illegally, without applying his mind about the procedure followed by the Committee of Management in the said appointments have granted approval mechanically, causing loss to the State Exchequer.

23. In any view of the matter, the appointments were only upto 30th April, 1989. The appellants had no right whatsoever to claim continuity for a further period. It appears that the appellants have been allowed to continue on the strength of the interim order, which" stood discharged with the dismissal of the writ petition, firstly, in default in the year 2003 and thereafter on being decided finally on merits in 2006.

24. In view of the discussions made above, there is no merit in the present Special Appeal.

25. Now, we take up the question that when the writ petition has been dismissed in default on 21st November, 2003, for recall of which, the Restoration Application was filed on 2nd December, 2003, which clearly goes to show that the appellants were having full knowledge soon after dismissal of their writ petition, as after dismissal of the writ petition in default, they moved Restoration Application for recall of the said order on 2nd December, 2003. Further, when the order dated 21st November, 2003, dismissing the writ petition, has been recalled on 16th May, 2006 and on the same day, the writ petition was dismissed on merits, why the appellants continued to work and received the salary; how the

Committee of Management has allowed the appellants to continue in service and paid salary; and how the District Inspector of Schools has approved the Bills submitted by the College for the salary to be paid to the appellants from the State Exchequer. In this regard, affidavits have been filed on behalf of the appellants, Committee of Management and the District Inspector of Schools, Muzaffar Nagar.

26. The appellants, in paragraph 4 of the affidavit dated 11th May, 2015, stated that the notice was accepted by the Counsel for the District Inspector of Schools, that is, the Standing Counsel and notices by Registered Post were also sent to the Committee of Management and, therefore, the respondents cannot say that they were not aware with respect to the orders so passed. It is further stated that the appellants have also given questionnaire with respect to the pendency of the Special Appeal on the payment being stopped, however, after submission of the questionnaire, as stated above, and on submission of the report by the then Principal, the District Inspector of Schools has released the salary of the appellants. Therefore, the questionnaire submitted by the appellants before the then Principal of the College has been forwarded to the District Inspector of Schools and the salary has been released. Copy of the questionnaire dated 4th May, 2009 has been annexed alongwith the affidavit.

27. The Committee of Management of the College, in paragraphs 8 to 22 of its affidavit, dated 15th May, 2015, stated as follows:

Para 8 to 22

"8. That it is stated that the Committee of Management of D.A.V. Inter College, Jansath, Muzaffarnagar through its Manager was a party before this Hon"ble Court in writ petition No. 19747 of 1989.

9. That, however, during the entire proceedings before the Writ Court, no notices were issued to the Committee of Management or to the Manager by this Hon"ble Court.

10. That in view of such fact the Committee of Management or the erstwhile Manager had no knowledge regarding passing of the final order dated 16.5.2006.

11. That it is also submitted that since no notices were issued by Writ Court to the Committee of Management or to the Manager of the Institution, therefore, no appearance was made on behalf of the said persons before this Hon"ble Court at the time of passing of the order dated 16.5.2006.

12. That as far as the Principal of D.A.V. Inter College, Jansath, Muzaffarnagar is concerned, it is submitted that the Principal was never a party in the writ petition on 19747 of 1989 and as such he had no knowledge regarding passing of judgment and order dated 16.5.2006 passed by this Hon"ble Court.

13. That after the judgment and order dated 16.5.2006 was passed by this Hon"ble Court, the petitioners/appellants have filed Special appeal No. 696 of

2006 before this Hon"ble Court.

14. That in the said Special Appeal No. 696 of 2006, an order dated 23.5.2015 has been passed by this Hon"ble Court by which the Principal of D.A.V. Inter College, Jansath, Muzaffarnagar has been directed to be impleaded as respondent No. 4 in the said Special Appeal. Furthermore the Committee of Management through the Manager alongwith Principal have been asked to be present in person before this Hon"ble Court to explain as to why after the dismissal of writ petition No. 19747 of 1989, the petitioners-appellants have been permitted to work and have been paid salary from the State Exchequer.

15. That it is submitted before this Hon"ble Court that the erstwhile Manager of the Institution namely sri Ravindra Nath Gupta expired on 12.10.2014.

16. That in pursuance to the death of erstwhile Manager, Sri Navin Kumar Gupta has taken over charge of Manager of the institution in pursuance to the resolution of the committee of management dated 15.10.2014.

17. That subsequently the signature of the Manager has been attested by the District Inspector of schools, Murzaffarnagar and in pursuance thereto sri Navin Kumar Gupta has taken over charge as Manager of the institution.

18. That it is stated that the erstwhile Principal of the institution retired from service on 30.6.2011 and in his place Sri Indrajit Kumar (deponent) has been appointed as the officiating Principal by the committee of management on 30.6.2011 itself.

19. That it is submitted that the committee of management alongwith Manager and the Principal of the institution are not guilty of payment of salary to the petitioners-appellants inasmuch as the Manager of the Institution was never issued any notice by this Hon"ble Court in writ petition No. 19747 of 1989. Similarly since the Principal of the institution was never made a party in the said writ petition, therefore, he also had no knowledge regarding the dismissal of the writ petition on 16.5.2006.

20. That it is submitted that even after dismissal of the said writ petition, the petitioners-appellants did not inform the committee of management of the Manager or the Principal of the institution regarding dismissal of writ petition and, therefore, the petitioners-appellants are guilty of playing fraud upon the Manager and the Principal of the Institution.

21. That is also submitted that the Office of District Inspector of Schools, Muzaffarnagar did not inform the Manager or Principal of the institution regarding dismissal of the writ petition on 16.5.2006 and as such they are not guilty of payment of salary to the petitioners-appellants.

22. That in view of such facts it is stated that no recovery is liable to be made from the Manager or the Principal of the institution as they had no knowledge regarding dismissal of the writ petition on 16.5.2006."

28. The Committee of Management, in its affidavit, dated 5th May, 2015, stated as under:

Paras 11, 12, 13, 14, 15, 16, 18, 11.

That it is relevant to state here" that regarding the payment in aided secondary schools for teaching and non-teaching staff, for payment, the entire responsibility is on the Manager and Principal of the College. The procedure of payment is as hereinafter mentioned :

12. That it is relevant to submit here that the appellants have joined on purely temporary basis with the fixed pay of Rs. 450/-. The petitioner has never been given selection grade or promotional grade as was being given after qualifying service of 10 years and then after 12 years. Since appellants were not eligible for the same being working only purely temporary basis on leave vacancy the appellants are given only scale and increments as and when pay commission revised the scale. The appellants too have not been given any sort of payment or pension of any kind after the retirement in 2012 and 2013 respectively.

13. That the details of Managers, Principal and DIOS after 16.5.2006 is as hereinafter mentioned.

14. That on 16.5.2006 till 14.10.2014 late Shri Ravindra Nath Gupta was the Manager of the College in question and after the death of Ravindra Nath Gupta on 20.10.2014 Shri Naveen Kumar Gupta is the Manager till date.

15. That from 16.5.2006 to 30.6.2011 Shri Nahar Singh and from 1.7.2011 Shri Indrajeet Kumar is the Principal of the College in question till date.

16. That the Writ Petition No. 19747 of 1989 was dismissed on 16.5.2006 and it is relevant to state here that from 16.5.2006 till 30.11.2009 Shri Kamta Ram Pal was working as the District Inspector of schools Muzaffarnagar. It is further submitted that in the office of answering respondent there are no documents found regarding information of dismissal of the writ petition order dated 16.5.2006 and the office of answering respondent vide office letter dated 19.4.2015 enquired from the College in question and appellants regarding the "order" dated 16.5.2006 and evidence regarding the same but till date the respondents/deponent has not received any information either from the Principal/ Manager or from appellants.

18. That it is also relevant to state here that regarding the Writ Petition No. 19747 of 1989, one letter of Chief Standing Counsel dated 20.5.2006 was received in the office of answering respondent on 10.6.2006 which was received by "Seat Assistant" on 12.6.2006 Shri Jai Gopal the seal Assistant.

29. Sri Dinesh Singh, the District Inspector of Schools, Muzaffar Nagar, while giving his explanation in paragraphs 3 to 7 of the affidavit, dated 7th May, 2015, stated as follows:

Para 3, 4, 5, 6, 7

"3. That a brief of the matter in question as well as details of finance and account officer as well as District Inspector of Schools who are working from 16.5.2006 to 30.6.2013 under the sign and signatures of District Inspector of Schools dated 21.4.2015 are being annexed herewith for kind perusal of this Hon"ble Court.

4. That when the matter was enquired into as to why after the dismissal of the writ petition, the petitioners had continued working and was getting salary and allowances till their superannuation.

5. That it was found that the Assistant Sahayak Court Case, Register, has duly received a letter dated 20.5.2006 on 12.6.2006 but no any action was initiated by the Pradhan Sahayak Shri Jai Gopal. In absence of the same the problem in question arises as to how the petitioner continued and got the salary for the period from dismissal of the writ petition till their superannuation, hence show-cause notice was issued to Pradhan Sahayak, Jai Gopal of District Inspector of schools Office, Muzaffarnagar wherein the Pradhan Sahayak Shri Jai Gopal has to show-cause in three days vide letter dated 25.4.2015 but no reply is given by shri Jai Gopal till 30.4.2015. The District Inspector of Schools after shown cause has written a letter to Additional Director of Education (Basic), Directorate of Uttar Pradesh, Allahabad to initiate necessary action against the delinquent employee on 30.4.2015. The District Inspector of Schools also forwarded a copy of the charge-sheet to Additional Director (Basic), U.P. Allahabad on 2.5.2015.

6. That the District Inspector of Schools, Muzaffarnagar also apprised the Principal Secretary, Shiksha Anubhag-13, Government of U.P. Lucknow regarding the dismissal of Writ Petition No. 19747 of 1989 and directed payment to the petitioner, Ram Veer Singh and Raj Singh Verma and also stated in detail regarding the regular payment made to the petitioners inspite of the dismissal of the writ petition and the Principal Secretary may initiate proceedings against the employees and officers responsible for the irregularity and unauthorisely left the petitioner continued till their superannuation and getting the financial benefit as well.

7. That the deponent is filing the present affidavit to show that the matter has been referred to the State Government/Competent Authority for taking action against the officers and employees who are responsible for the irregularities."

30. On the facts as are evident from the record and materials, we are of the view that the present case is a glaring case of illegal appointment of the appellants by the Committee of Management in connivance with the officials/officers of the office of the District Inspector of Schools on which approval has been accorded by the then District Inspector of Schools mechanically without application of mind. Present case is also a glaring case of misrepresentation, manipulation and fraud on the part of the appellants with the active collusion of the Committee of Management and the Office of the District Inspector of Schools for the reasons stated below :

"(a) When the writ petition was dismissed in default on 21st November, 2003 and

the appellants came to know about dismissal of the writ petition immediately thereafter, they ceased to having any right to continue in service and receive the salary, unless the order dismissing the writ petition in default is recalled. From the record, it appears that the appellants have not given any information either to the Committee of Management or to the office of the District Inspector of Schools about the dismissal of the writ petition on 21st November, 2003 and continued to hold the post and receive the salary.

(b) The writ petition, filed by the appellants, had initially been dismissed in default vide order dated 21st November, 2003 in default and thereafter on 16th May, 2006, after hearing learned counsel for the parties, the writ petition has been dismissed on merits as well. About the dismissal of the writ petition, firstly, in default on 21st November, 2003 and thereafter on merit on 16th May, 2006, the appellants were fully aware and even they proceeded to take recourse to avail further legal remedy against the said order dismissing the writ by filing the present Special Appeal on 1st July, 2006 and even on the Special Appeal filed by the appellants, no interim order has been granted. The appellants ought to have represented before the Committee of Management and ought to have informed the Management about the factum of dismissal of the writ petition and should have waited for the orders/direction of the Committee of Management and should not have continued in service and also would not have received the salary also, but instead of doing so, the appellants not only concealed the factum of dismissal of the writ petition, but also continued in service and claimed salary by misrepresentation. Clearly, it is a case of misrepresentation, fraud and manipulation on the part of the appellants.

(c) In Paragraph 18 of the affidavit filed by the District Inspector of Schools, it is admitted that one letter of the Chief Standing Counsel, dated 20th May, 2006 was received in the office of the answering respondent on 10th June, 2006, which was received by "Seat Assistant" on 12.6.2006 Shri Jai Gopal. Since the writ petition was dismissed on 16th May, 2006, said letter would not have contained other information than the information about the dismissal of the writ petition. It is a matter of deep enquiry that whether the said letter has been placed by the said Clerk/Assistant before the then District Inspector of Schools or not and if placed, what order has been passed by the District Inspector of Schools and if order has been passed, what steps have been taken. The fact remains that the information relating to the dismissal of the writ petition has been received in the office of the District Inspector of Schools. After receipt of the said letter, there was no occasion to sanction salary of the appellants and the payment of the salary from the State Exchequer. All these serious lapses need to be seriously investigated into and the guilty persons deserve to be severely punished and the loss caused to the State Exchequer be recovered.

(d) So far as the role of the then Principal of the College and the Committee of Management is concerned, apparently, it appears that although the Committee of Management was impleaded as a party respondent in the writ petition, but the

notice has not been issued. The notice might not have been issued, but when the salary of the appellants has been stopped in the year 1989 itself, the appellants have been allowed to continue in service and paid salary on the basis of the interim order. The interim order must have been placed before the Committee of Management on the basis of which the appellants would have been allowed to continue and the salary would have been paid. Therefore, now the Committee of Management and the Principal of the College cannot say that they were not aware about the filing of the writ petition."

31. We are of the view that they were fully aware about the filing of the writ petition. If they were aware about the filing of the writ petition and the interim order passed thereon, necessary steps would have been taken on their part to enquire about the the latest status of the writ petition or the Special Appeal as they were parties to the case, though notice has been issued subsequently, still being the necessary parties, it was the duty of the Committee of Management to take necessary steps to ascertain the status/stage of the case, take steps to properly represent its case before the Court and to take necessary steps after the writ petition being dismissed in 2003 and continue to keep a watch on the further developments which may take place in the writ petition, but nothing has been done and they failed to even carry out their primary function of protecting their interest to prevent the payment of salary from the State Exchequer. Therefore, we are of the view that in view of the serious lapse on the part of the Committee of Management resulting in loss to the State Exchequer, the Committee of Management cannot be absolved of its responsibility. But to what extent, the Committee of Management was involved in the manipulation and fraud, firstly, in permitting the appellants to continue in service and thereafter making the payment of salary to them is a matter to be deeply and thoroughly investigated.

32. On the facts and circumstances, we are of the view that the appellants are liable to refund the entire amount received by them towards salary from the date of dismissal of the writ petition on 21st November, 2003 upto the date of their superannuation alongwith the simple interest @ 10% per annum as they have misrepresented by concealing the facts and committed fraud.

33. Accordingly, we direct the appellants to refund the entire amount, received by them towards salary and towards post retirement benefits, on a demand being raised, after making the necessary calculations by the District Inspector of Schools, Muzaffar Nagar, alongwith the interest, as indicated above, within a period of three months failing which the same shall be recovered as arrears of land revenue.

34. The appointments of the appellants were ab initio illegal and dehors the rules, as stated above; the approval to the appointments was illegally and mechanically accorded by the then District Inspector of Schools, which resulted in illegal payment of salary to the appellants during all this period from the State Exchequer. Therefore, we are of the view that the salary paid to the appellants

from the date of appointment till 21st November, 2003, when the writ petition was dismissed, is liable to be recovered from the Committee of Management and the then District Inspector of Schools severally and jointly and if the same is not recoverable, the same shall be recovered as arrears of land revenue.

35. Further, we direct the Principal Secretary, Secondary Education, Government of Uttar Pradesh to initiate the enquiry proceeding in the matter against all the persons involved and conclude the same as early as possible, not later than six months, and on the basis of the outcome of the enquiry report, necessary action shall be taken against all the authorities, officials and other concerned persons.

36. In such state of affairs, as noticed above, it would be appropriate that the continuance of the interim orders should be monitored periodically, that is, to say on six monthly basis. Thus, the Principal Secretary, Secondary Education, Government of U.P., is directed to issue necessary directions in this regard to all the District Inspector of Schools and the Committees of Management to ask the litigating parties to certify and produce necessary documents to show that the interim order is still continuing by filing an affidavit periodically alongwith the latest certified copy of the interim order passed.

37. Before we close the matter, the Court would like to take judicial notice to the prevailing state of affairs of Education system in the State of U.P. It has come to notice of the Court and also is the common knowledge that large scale manipulations, mal-practices and financial irregularities are going on in the Education Department right from the stage of granting aid to the institution, in appointment of teachers and staff in the Government aided institutions; and in the payment of salary. We are informed that the fund/budget, meant for the education, released from the State Exchequer is being misappropriated with the collusion of the Management and the officials/officers of the Education department and the agents who manage the things. To remove this menace of corruption in our Education system, some concrete and drastic steps are immediately required to be taken at the Highest level. We are, therefore, of the view that a high powered committee be constituted to sort out the problems and suggest ways and means to evolve a corruption free and clean system for proper utilisation of the fund, meant for education, keeping in view welfare and benefit of our future generation and to upgrade our education system.

38. Article 21A of the Constitution of India provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

39. Article 41 of the Constitution of India provides that the State shall make effective provision of securing education to the citizens of the country.

40. Article 45 provides that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

41. Right to education is a fundamental right. Every citizen of the country is

entitled for education and the State is under obligation to make effective provision for securing the right to education. Education is the parameter to gauge the development of any country. Now the progress and the development of any country is being adjudged by its rate of education. The education is the foundation of any country, it contributes in development, patriotism and in nation building. In the absence of proper education facilities to the citizens, the said goals cannot be achieved. More the people are educated, more the nation will develop and go ahead in every field. Education should be free from caste, creed, prejudice, discrimination, group, favouritism and nepotism or any ill will. The education is being imparted in various institution right from primary schools, junior schools, colleges, universities. The institutions, imparting education, are called temple of education. If the institutions are like temple, then it is the duty of every citizen of the country to keep the education system pure and pious free from all evils.

42. Since ancient times, the teachers (Gurus) are highly respected in our society and the profession of a teacher is seen with respect from the heart. The place of the teacher has been given equal to God. The teachers are the architect of our society. They are the tools in whose hands the future of the society, that is, of the students right from the school going children upto the students studying in the Colleges or in other institutions hangs. The conduct of a teacher must be such which may set an example to the students and to the society.

43. The pivot role of imparting education is of teacher. The education flows from the teacher. The teacher makes a student perfect, gives not only education to the student but also gives values and culture. Therefore, unless the education is holy and pious, the education which is like a river cannot be pure and cannot contribute in taking the nation forward. If the teachers deliver good and high quality education to the students, it may proved to be capital of any nation. A teacher should be knowledgeable, qualified, with high values; impeccable character and overall exemplary conduct. Therefore, it is foremost important and necessary that due care and caution should be taken, firstly, fixing qualification, and thereafter in making selection and appointment. There cannot any compromise or relaxation in the qualification or any adjustment in the selection process of the teacher right from primary upto in higher studies.

44. Now a days, it is often seen that the teachers of the primary Government aided schools, which is the nursery of our education system, who are under the administrative supervision of the local village Gram Pradhans and administrative authorities are being entrusted with the works other than teaching and in the garb of other works, the primary teachers remain engaged elsewhere, which requires to be checked and be stopped and only in the event of unavoidable circumstances, primary teachers may not be deployed elsewhere. Likewise the teachers should be kept away from the groupism and local politics in general so that the purity of the education system may be maintained.

45. It is the common knowledge that in the institutions although the

infrastructure required is missing, despite that Government aid is being provided to such institution by the educational authorities on some other considerations. Although the actual number of the students and teachers are much less, but the grant-in-aid is being provided on artificial inflated numbers, which causes great loss to the State Exchequer. Such things are becoming cancerous for our education system. Every day we come across the news about leakage of question papers, mass copying and use of unfair means in the exams. Not only this, facility of mass copying or use of unfair means are being provided by the Institutions on contractual basis. The centres of examinations are being auctioned. Now running of an educational institution has become the business and persons having educational institution are making huge money. Now imparting education is not a charitable and social service for the benefit of the country or for benefit of the society, but it has taken the shape of organised business. If this is state of affairs of our education system, how we can expect that our younger generation will be able to take ahead our nation or the country will develop. How the students who pass examination by using unfair means, can be expected to contribute any thing for the development of the nation. When their foundation itself is based on weak base, how one can expect good performance from them. Such students are worthless and in future will be a burden to the society. If such present situation is permitted to continue, our whole generation will not be able to deliver any thing to the country, rather they will be worthless for the society. The situation is still not beyond control. It can be cured, but it requires pious and honest intent on the part of the Government and the authorities.

46. It may be mentioned here that these educational institutions are getting various benefits and exemptions, namely, house tax, water tax, income tax, etc. Time has come to review the situation and to withdraw the various exemptions provided to the private institutions, which are being as a commercial business activities.

47. In view of the above, we direct as follows:

"1. In taking the institution on grant-in-aid, the norms fixed thereof be strictly followed. Before taking any institution on grant-in-aid list, the authorities concerned must make extensive inspection of the Building, ground, strength of the students, number of teachers and the facility of laboratory etc. and prepare a detailed report in this regard, which shall be subject to verification by the higher authorities.

2. The names of the students, studying in each Class, with the details of the parentage, alongwith the names of the teachers be reflected on a notice board of the College/so that inflated or false numbers of the students and teachers may not be given only for the purposes of taking grant-in-aid from the Government. Periodical, monthly, inspection of the institution be made to physically verify the number of the students and the Teachers.

3. The qualification of the teachers to be appointed be so fixed so that they may be able to teach the students as per the need of the education to be required in the present scenario and the students may be able to compete as per the requirement of the present day. The selection of the teachers be strictly made on the basis of the written examination to be taken, on OMR sheet and as far as possible the interview may be avoided. The character, conduct as well as the background of the teachers be got verified/investigated by the competent and independent authority.

4. In the appointment of the teachers at all levels, including, primary schools in the villages, the role of the Gram Pradhans or any other persons, affiliated or associated with any other organisation and political parties, be strictly excluded and be kept away from any type of interference in the selection process.

5. It may also be ensured that the teachers of any level, that is, primary teachers, teachers of junior high schools or College teachers may not be deployed in any other work, except teaching work, at the most, their services may be utilised for decennial population census, disaster relief duties or duties relating to elections to local authority or to State Legislature or Parliament.

6. The appointment of the teachers be made strictly in accordance with the procedure prescribed, subject to the aforesaid directions/observations.

7. As observed above, in case if any employee or teacher of the educational institution is being allowed to continue on the basis of the interim order of the Court, the validity/continuance of the same be got verified periodically, preferably, on six monthly basis and expeditious steps be taken by the authorities concerned either to get the case itself decided or to get the interim order vacated."

With the aforesaid observations and directions, the writ petition stands dismissed with the cost of Rs. 25,000/- (Rupees Twenty five thousand only) to be paid by each of the appellant.