

(2015) 11 AHC CK 0067

In the Allahabad High Court

Case No : Writ A Nos. 12926 of 2013 and 40695 of 2009

Ram Yash Yadav and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 11 ADJ 319 : (2016) 1 AWC 938 : (2015) 4 UPLBEC 3397

Hon'ble Judges : M.C. Tripathi, J.

Bench : Single Bench

Advocate : R.M. Vishwakarma and P.N. Saxena, for the Appellant; Indra Raj Singh and N. Upadhyay, for the Respondent

Judgement

M.C. Tripathi, J.—Heard Shri P.N. Saxena, Senior Advocate assisted by Shri R.M. Vishwakarma for the petitioner in Writ A No. 12926 of 2013 and Shri H.C. Pathak, learned Standing Counsel for the State respondents. Shri Indra Raj Singh has appeared for petitioners in the connected Writ A No. 40695 of 2009 and for respondent Nos. 4 and 5 in the leading Writ A No. 12926 of 2013.

2. In Writ A No. 12926 of 2013, Ram Yash Yadav - the petitioner has prayed for quashing the order dated 26.7.2012 passed by the District Inspector of Schools, Jaunpur and has further prayed for direction to the respondents not to pay the salary to respondent No. 5 in pursuance of the impugned order dated 26.7.2012.

3. In Writ A No. 40695 of 2009, Shri Ram Samujh Yadav and Shri Narendra Kumar Singh, the petitioners have prayed for quashing the impugned order dated 28.3.1995 passed by the District Inspector of Schools, Jaunpur-respondent No. 3 and the order dated 12.6.2009 passed by Director of Education (Secondary), Allahabad-respondent No. 1 and have further prayed for mandamus commanding the respondent No. 2 to recover salary paid to Ram Yash Yadav-respondent No. 6 from State exchequer for his alleged appointment within one month.

4. Brief facts giving rise to the writ petitions are that Janta Higher Secondary

School, Jeerakpur Baraipar, Jaunpur (hereinafter referred as the institution) is a recognized and aided High School under the provisions of U.P. Intermediate Education Act, 1921, and U.P. Payment of Salary (Teachers and Other Employees) Act, 1971. One Shri Dev Narayan Singh, permanent Principal of the institution retired on 30.6.1993 and consequently, a short term vacancy on the post of Principal occurred in the institution. Shri Salig Ram Sharma, senior most and qualified teacher of the institution was promoted as ad hoc Principal w.e.f. 1.7.1993. Due to promotion of Shri Salig Ram Sharma, a short term vacancy of L.T. Grade teacher occurred in the institution. In the year 1994-95 the Committee of Management of the institution was superseded and the Finance and Account Officer of Secondary Education of the District was appointed as Authorized Controller. The Authorized Controller was looking after the affairs of the institution. The Authorized Controller of the institution advertised the vacancy of L.T. Grade teacher in the newspaper on 14.1.1995 and invited applications from deserving candidates for being appointed on the said post. In pursuance of the advertisement dated 14.1.1995, Shri Ram Yash Yadav - the petitioner in Writ A No. 12926 of 2013 applied for and appeared before the Selection Committee on 22.2.1995 alongwith other candidates. The Selection Committee recommended the name of the petitioner for being appointed on the post of L.T. Grade Teacher. In pursuance of the recommendation of the Selection Committee, the Authorized Controller issued the appointment letter dated 27.3.1995 and directed the petitioner to join on the post of Assistant Teacher in the institution within 15 days. The petitioner appeared before the Principal of the institution on 28.3.1995 and joined the services on the said post. The Authorized Controller of the institution forwarded the papers to the District Inspector of Schools, Jaunpur for approval of appointment of the petitioner. The District Inspector of Schools accorded approval of the appointment of petitioner on 28.3.1995. The petitioner worked on the said post and has been paid salary till July, 1995. In August, 1995 Km. Prem Lata Mehrotra, District Inspector of Schools, Jaunpur was transferred and another District Inspector of Schools had taken over the charge. On 6.9.1995 the Additional Director, Secondary Education passed an order dated 6.9.1995 for stoppage of payment of salary to all the alleged teachers and employees of educational institutions of District Jaunpur, who had been granted approval by the then District Inspector of Schools Km. Prem Lata Mehrotra, pending enquiry. On 8.9.1995 the then District Inspector of Schools stopped payment of salary to the petitioner. Against the said order several employees of different Colleges of District Jaunpur, who were affected from the order dated 8.9.1995, filed writ petitions in which interim orders were passed directing for payment of salary of the employees and the order dated 8.9.1995 was stayed. The petitioner also filed Writ Petition No. 36767 of 1995 (Ram Yash Yadav vs. State of U.P. and Ors.) and this Court passed an interim order dated 20.12.1995 staying the order dated 8.9.1995 and directed for payment of salary of the petitioner. Thereafter, the petitioner has been continuously paid salary.

5. In the year 2005, it has come to the knowledge of the petitioner that the

enquiry, which was initiated in pursuance of the order dated 8.9.1995, has been completed and all the orders passed by the then District Inspector of Schools for payment of salary were found to be genuine. Thereafter the Writ Petition No. 36767 of 1995 filed against the order dated 8.9.1995 got dismissed as infructuous on 24.9.2005. After dismissal of the said writ petition, the Committee of Management of the institution moved an application before the District Inspector of Schools, Jaunpur for stopping the salary of the petitioner. The District Inspector of Schools, without giving any opportunity of hearing to the petitioner, passed an order dated 16.3.2009 in collusion with the President and Manager of the Committee of Management of the institution on the ground that the writ petition filed by the petitioner had been dismissed on 24.9.2005. Against the order dated 16.3.2009 the petitioner moved a representation before the Director of Education (Secondary), U.P. and on 12.6.2009 the Director of Education, after summoning the report from the District Inspector of Schools and after giving opportunity of hearing, disapproved the order dated 16.3.2009 and directed for payment of salary of the petitioner on the ground that the salary of the petitioner was being paid in pursuance of the approval order dated 28.3.1995 passed by the District Inspector of Schools and the appointment of the petitioner was made against sanctioned post.

6. It is alleged that the Manager of the institution always tried to oust the petitioner from the institution because the Manager wanted to appoint the respondent No. 5, who is relative of the Manager namely Gaj Bahadur Singh on the post of LT Grade Teacher on which the petitioner was already appointed. Even the management prepared forged papers regarding appointment of respondent No. 5 but the said appointment has never been approved by the District Inspector of Schools. Thereafter, the respondent No. 5 filed Writ Petition No. 20423 of 2000, which was finally disposed of on 4.5.2000 with direction to decide the representation of respondent No. 5. When the salary of the petitioner has again been released by the Director of Education vide order dated 12.6.2009, then the Committee of Management through Ram Samujh Yadav filed Writ Petition No. 38419 of 2009, which was dismissed on 31.7.2009 with liberty to file a fresh writ petition.

7. After dismissal of the aforesaid writ petition, Ram Samujh Yadav again filed the connected Writ Petition No. 40695 of 2009 challenging the order dated 12.6.2009. At that time, he was not even the President of the Committee of Management of the institution as the management was superseded and the Authorized Controller was managing the affairs of the institution. This Court vide an order dated 10.8.2009 stayed the operation of the order dated 12.6.2009 with following observations:-

"Notice on behalf of respondents No. 1 to 3 has been accepted by the Standing Counsel. Respondent No. 6 is represented by Shri R.N. Vishwakarma, Advocate.

Issue notice to respondent No. 4 and 5 fixing 15.09.2009 for disposal of the writ petition.

Petitioner to take steps within three days by speed post.

All the respondents may file counter affidavit by the next date fixed.

List on the date fixed.

On behalf of the writ petitioner it is contended that respondent No. 6 had earlier filed writ petition before this Court being Civil Misc. Writ Petition No. 36767 of 1995 claiming ad hoc appointment by direct recruitment against a short term vacancy in L.T. Grade in Janta Higher Secondary School, Jaunpur. In the writ petition a counter affidavit was filed on behalf of the State respondents/ educational authorities and in paragraph 4 of the writ petition following statement of facts was made:

- a. that the vacancy could not be filled by the Management.
- b. there was no advertisement of the vacancy in any newspaper having circulation either at State level or at local level, therefore, the permission granted by the Finance & Accounts Officer qua payment of salary to the writ petitioner was illegal.

The said writ petition filed by the writ petitioner was dismissed in default vide order dated 09.09.2002 (Ref. Paragraph 9 to the writ petition). Even thereafter the petitioner continued to draw salary from the State exchequer (under which authority is not known). The writ petitioner was dismissed as infructuous on the statement made by the counsel for the said petitioner on 24.09.2005. After the writ petition was dismissed by this Court an order was passed by the District Inspector of Schools on 16.03.2009 (Annexure 5 to the writ petition), stopping the payment of salary to the writ petitioner. However the Additional Director of Education has intervened in the matter and by means of the order dated 12.06.2009, he after noticing that the writ petition was got dismissed as infructuous by the said petitioner has proceeded to pass an order that he may be paid his salary. It is against this order that the present writ petition has been filed by two writ petitioners, first of whom claims to be the member of the General Body and the Ex-President of the Committee of Management and other is a prospective candidate qua the post of L.T. Grade teacher. Counsel for the respondent No. 6 has raised preliminary objections to the following effect:

1. that the petitioner No. 1 is not a member of the general body of the Society as has been held by the Assistant Registrar, Firms, Societies and Chits.
2. that petitioner No. 2 is only a prospective candidate therefore, he has no locus to maintain the present writ petition.

It is further stated that against the order appointing authorized controller in the institution dated 07.10.1998 a writ petition was filed by the Committee of Management being Civil Misc. Writ Petition No. 33940 of 1998 wherein the Hon'ble Single Judge while deciding the writ petition provided that the Committee of Management shall continue to submit the salary bill of the

respondent No. 6 without any default. Such order has to be complied with. The Writ Petition No. 36767 of 1995 was restored in the month of October, 2002 itself. Lastly the respondent No. 6 has withdrawn his earlier writ petition No. 36767 of 1995 after he was paid his salary regularly. It is also contended that the payment of salary was refused to the respondent No. 6 only on the ground that there was a ban on ad hoc appointments and further there was an enquiry pending in respect of all the approvals granted by one Prem Lata, the then District Inspector of Schools.

Counsel for the petitioner submits that after enquiry his appointment was found to be valid and, therefore, he has been continuously being paid his salary.

So far as the preliminary objections are concerned, this Court may record that the same is misconceived inasmuch as order of the Assistant Registrar holding petitioner No. 1 as not a member of the Society is wholly irrelevant for deciding the issue as to whether the petitioner No. 1 is a member of the general body of the Committee of Management or not. It is needless to emphasize that a Division Bench of this Court in the case of Committee of Management, Hindu in ter College, Koshi Kala and others versus Deputy Director of Education, Agra Region, Agra and others reported in 1988 UPLBEC, 1732 has held that Intermediate Education Act and Societies Registration Act are not overlapping. They operate in separate fields. Therefore, the order of the Assistant Registrar is of no consequence qua the claim of the petitioner No. 1. Even otherwise it has not been disputed that he is the ex-president of the Committee of Management for whatever duration it may have been.

So far as the petitioner No. 2 is concerned he is the prospective candidate for the post in question and in case the averments made by the petitioner to the effect that the vacancy had not been advertised is found to be incorrect his right to be considered has to be held to be adversely affected and, therefore, the writ petition at his behest is also maintainable.

So far as the writ petition filed by respondent No. 6 is concerned, the Court will not enter into the issue as to why the writ petition has got dismissed. In the opinion of the Court the only relevant factor is that with the dismissal of the writ petition for whatever reason it may be, the continuance of the writ petitioner because of the interim order which was earlier granted has to come to an end inasmuch as interim order merges into the final orders. This Court may further note that in the counter affidavit filed by the Education Authorities in the Writ Petition No. 36767 of 1995 a specific stand was taken by the District Inspector of Schools in paragraph 4 that absolutely no vacancy was published in any newspaper before offering appointment to respondent No. 6 on ad hoc basis in the recognized and aided Intermediate College. A Full Bench of this Court in the case of Kumari Radha Raizada Vs. Committee of Management, Vidyawati Darbari Girls Inter College and Others, has explained that even in respect of ad hoc vacancies no appointment can be made without the vacancy being advertised in two newspapers and any appointment to the contrary would be hit by Section 16

of the U.P. Secondary Education Services Selection Board Act, 1982 and therefore, null and void.

So far as the order of the Court dated 24.10.1998 passed in the writ petition No. 33940 of 1998 filed by the Committee of Management is concerned, this Court may record that the said interim order was passed at the time when the writ petition filed by respondent No. 6 was pending and an interim order in his favour qua payment of salary was in operation. With the dismissal of the writ petition No. 36767 of 1995 the direction issued under the order dated 24.10.1998 in so far as it pertains to the payment of salary to respondent No. 6 would become inoperative.

In view of the aforesaid petitioner has made out a prima facie case for grant of interim order.

Till the next date of listing operation of the order dated 12.06.2009 shall remain stayed and the respondent No. 6 shall not be paid salary without the leave of the Court.

8. Shri Ram Yash Yadav-the petitioner had earlier filed a Writ Petition No. 9753 of 2011, which was dismissed on 18.2.2011 with following observations:-

"Heard learned counsel for the petitioner and Sri I.R. Singh for the respondent committee of management.

It appears that the petitioner was allegedly appointed against a short term vacancy in L.T. Grade in Janata Madhyamik Vidyalaya, Jeerakpur Baraipar in district Jaunpur which is a duly recognized and aided institution but when his salary was not being paid, he preferred writ petition No. 36767 of 1995 and in pursuance of an interim order, the salary was released.

A counter affidavit was filed on behalf of the State respondent disclosing the illegality in the alleged appointment of the petitioner but the said writ petition was subsequently dismissed in default on 9.9.2002 and after recall, the writ petition was dismissed as infructuous on statement made by the counsel for the petitioner on 24.9.2005, where-after an order dated 16.3.2009 was passed by the District Inspector of School stopping payment of salary to the petitioner but nevertheless, the Director of Education vide order dated 12.6.2009 held that the petitioner is entitled to salary. This was subjected to challenge in writ petition No. 40695 of 2009 where a detailed order was passed and the order of the Director of Education dated 12.6.2009 has been stayed vide order dated 10.8.2009.

The District Inspector of Schools vide impugned order dated 6.1.2011 has asked the management and the Principal of the institution to calculate the amount of salary paid to the petitioner after dismissal of writ petition to enable recovery.

Neither any order of recovery has been passed nor it discloses that the recovery is being made against the petitioner. Further, considering the entire history of the case, exercise does not appear to be without any basis.

For the reasons above, this is not a fit case for interference at this stage. Rejected."

9. Thereafter the respondent No. 5 approached the then Incharge District Inspector of Schools, Jaunpur for payment of salary in the month of July, 2012. By the impugned order dated 26.7.2012, the Incharge District Inspector of Schools directed for payment of salary to respondent No. 5.

10. Shri P.N. Saxena, Senior Advocate, appearing for the petitioner in Writ A No. 12926 of 2013 submitted that the petitioner was appointed by the Authorized Controller of the institution after following all the required formalities and his services have already been approved by the District Inspector of Schools vide order dated 28.3.1995. The petitioner was continuously working on the post of L.T. Grade Teacher in the institution but Shri Gaj Bahadur Singh, Manager of the Committee of Management of the institution managed the papers regarding appointment of respondent No. 5 but till July, 2012 he has not succeeded for payment of salary. The District Inspector of Schools passed the impugned order dated 26.7.2012 without giving any opportunity of hearing to the petitioner and released the salary of respondent No. 5 on the same post on which the petitioner was appointed. The respondent No. 5 has been shown to be appointed under Removal of Difficulties Order while at the time of alleged appointment of respondent No. 5 dated 30.8.1999, the Removal of Difficulties Order has been revoked and at that time the Committee of Management did not have any authority to make the appointment on the post of L.T. Grade Teacher.

11. It has been submitted by learned counsel for the petitioner that since the years 1993 to 1999 the Authorized Controller was appointed to look after the management of the institution and in the year 1999 the Committee of Management of the institution had been constituted and one Shri Gaj Bahadur Singh had been recognized as Manager and Shri Ram Samujh Yadav as President of the Committee of Management of the institution. Shri Gaj Bahadur Singh, after becoming Manager of the institution, allegedly appointed the respondent No. 5, who was the son of real brother of Manager Gaj Bahadur Singh and respondent No. 5 prepared forged and fabricated papers in collusion with the Manager regarding his appointment on the post of L.T. Grade Teacher in the institution, which was fallen vacant due to ad hoc promotion of Shri Salig Ram Sharma in the year 1993 and on that post, the petitioner was already appointed and was working continuously after approval granted by the District Inspector of Schools, Jaunpur. The Manager of the institution sent letter dated 9.9.1999 to the District Inspector of Schools requesting to approve the appointment of respondent No. 5 but no action was taken by the District Inspector of Schools. Thereafter, the then Manager issued the alleged appointment letter dated 30.8.1999 in favour of respondent No. 5 directing him to join on the post of LT Grade Teacher in the institution within seven days. After manufacturing the papers the respondent No. 5 filed Writ Petition No. 20423 of 2000, which was disposed of on 4.5.2000 directing the District Inspector of Schools to pass an

appropriate order according to law on the question of giving approval to the appointment of respondent No. 5. The District Inspector of Schools did not comply with the order dated 4.5.2000. Thereafter the respondent No. 5 approached to the Secretary, Government of U.P. and obtained an order dated 17.3.2005 directing to the District Inspector of Schools to take action for payment of salary of respondent No. 5 in pursuance of the order of this Court dated 4.5.2000. When the question of approval of appointment of respondent No. 5 has not been decided, then the respondent No. 5 approached to the Additional Director of Education, U.P. Allahabad, who had passed an order dated 6.7.2007 directing the District Inspector of Schools, Jaunpur to take action in pursuance of the order dated 4.5.2000.

12. Shri P.N. Saxena further submitted that even the appointment of respondent No. 5 is illegal but the Incharged District Inspector of Schools, namely Shri Ramesh Chandra Yadav in collusion with respondent No. 5 on the basis of extraneous consideration, passed the order dated 26.7.2012 and illegally released the salary of respondent No. 5 from the State exchequer in pursuance of the order dated 26.7.2012. The aforesaid incharge District Inspector of Schools passed several orders for payment of salary, which has not been paid since long back, as such, several complaints were moved before the Director of Education and other higher educational authorities. In pursuance of the said complaint, the Additional Director of Education (Secondary) U.P., Allahabad passed the order dated 23.8.2012 and directed the newly appointed District Inspector of Schools, Jaunpur for stopping the salary of employees, which is being paid in pursuance of the orders passed by the Incharge District Inspector of Schools, Jaunpur. The Additional Director of Education, vide his order dated 23.8.2012, clearly directed for scrutinizing the orders passed by the Incharge District Inspector of Schools, Jaunpur but the present District Inspector of Schools without making any enquiry, illegally started paying the salary of respondent No. 5 on the basis of impugned order dated 26.7.2012.

13. It is submitted by learned counsel for the petitioner that the respondent No. 5 is claiming payment of salary on the basis of alleged appointment dated 30.8.1999 issued by the Manager of the institution and the said appointment has not been approved by any of the authority till date. Even then the District Inspector of Schools, ignoring the order of Additional Director of Education, is illegally paying the salary of respondent No. 5.

14. Shri P.N. Saxena, Senior Advocate also submitted that the connected Writ Petition No. 40695 of 2009 has been filed by Ram Samujh Yadav as petitioner No. 1 claiming to be member of general body and ex-president of the institution and the petitioner No. 2 as prospective candidate seeking quashing of the approval of the appointment of the petitioner dated 28.3.1995 and the order dated 12.6.2009 passed by the Director of Education. Ram Samujh Yadav is not a member of general body and he is the ex-president of the Committee of Management and since the petitioner No. 2 is the prospective candidate for the

post to which the petitioner was appointed in the year 1995. The Writ petition No. 40695 of 2009 is not maintainable firstly on the ground that the petitioners have no locus to challenge the appointment of the petitioner. The aforesaid writ petition has been filed relying solely upon counter affidavit filed by District Inspector of Schools in Writ Petition No. 36767 of 1995. The validity of the selection and appointment of the petitioner has been disputed by the District Inspector of Schools only in the counter affidavit but admittedly during the long period of more than 14 years, no enquiry was made regarding the validity of appointment inspite of specific observation made by this Court in its order dated 20.12.1995 in Writ Petition No. 36767 of 1995 and because of the interim order dated 10.8.2009 passed in the connected Writ A No. 40695 of 2009 the petitioner has not been paid salary for last six years. He has relied upon judgments of this Court in Special Appeal Defective No. 1172 of 2009 (Km. Vijeta Tripathi vs. State of U.P. & Ors.) decided on 9.11.2009; Special Appeal No. 846 of 2010 (Tarkeshwar Singh vs. Kailash Chaudhary and Ors.) decided on 19.7.2010; Vimal Kumar Sharma Vs. State of Uttar Pradesh and Others and Desh Deepak Srivastava Vs. State of Uttar Pradesh and Others .

15. Shri H.C. Pathak, learned Standing Counsel appearing for the State respondents submitted that by Government Order dated 30.8.1991, a ban was imposed on appointments including ad hoc appointment being made on the post of Assistant Teacher. On 14.7.1992, Section 18 of U.P. Secondary Education Service Selection Board Act was amended and the power to make ad hoc appointment was taken away from the management of the institution. A new provision was made for making ad hoc appointment by the District Level Selection Committee. There was no power vested with the Management/ Authorized Controller to appoint any candidate on the post of Assistant Teacher L.T. Grade. The then District Inspector of Schools granted her approval without considering the provisions of law. The District Inspector of Schools committed an error in granting the approval to the appointment of the petitioner. An enquiry was directed by the Additional Director of Education (Secondary), U.P. Allahabad by his order dated 6.9.1995 in all matters relating to approval granted by the then District Inspector of Schools in respect of ad hoc appointments made during her tenure. The payment of salary was stopped immediately on 8.9.1995 by the District Inspector of Schools. However, in Writ Petition No. 36787 of 1995 filed by the petitioner, the order dated 8.9.1995 was stayed on 20.12.1995 and in pursuance of the order of this Court, the payment of salary to the petitioner was re-started. The petitioner himself made a statement before this Court that his writ petition has become infructuous and on his statement, the writ petition was dismissed as infructuous and the interim order granted in favour of the petitioner was vacated. After vacation of the interim order, the order dated 8.9.1995 passed by the District Inspector of Schools stood revived and the salary of the petitioner was again stopped. The management of the institution has no power or jurisdiction to make appointment on the post of Assistant Teacher and the appointment can only be made on the recommendation of Service Selection

Board. The then District Inspector of Schools passed an illegal order dated 6.7.2012 for payment of salary and as soon as the matter came into the knowledge of Higher authorities of Education Department, the Additional Director of Education (Secondary), U.P. Allahabad by his order dated 23.7.2012 directed the District Inspector of Schools, Jaunpur to stop the payment of such teachers, who were illegally approved by the earlier District Inspector of Schools, Jaunpur.

16. In paragraph 14 of the counter affidavit of Shri Bhashkar Mishra, District Inspector of Schools, Jaunpur filed in Writ A No. 12926 of 2013, it is stated that with the connivance of Manager of the institution and Shri Rananjai Singh-respondent No. 5, the alleged appointment of respondent No. 5 was made in the institution, which was illegal and unauthorized. No payment of salary has been made to the respondent No. 5. In paras 16 and 17 it is stated that as soon as the matter came into knowledge of higher authorities of the Education Department, the Additional Director of Education (Secondary), U.P. Allahabad immediately directed for stopping the payment of salary to the respondent No. 5 and directed for holding an enquiry. Though in connivance with the Manager and the respondent No. 5, the order for payment of salary was obtained by them in favour of respondent No. 5 but immediately the payment of salary was stopped by the Additional Director of Education (Secondary) U.P. Allahabad and no payment of salary is being paid to the respondent No. 5.

17. Shri Indra Raj Singh, learned counsel appearing for the petitioners in Writ A No. 40695 of 2009 and respondent Nos. 4 and 5 in Writ A No. 12926 of 2013 submitted that Shri Ram Samujh Yadav-petitioner No. 1 is the life member of general body and ex-President, Committee of Management of the institution. Shri Narendra Kumar Singh-petitioner No. 2 being M.A. B.Ed. is duly eligible and qualified for selection and appointment on the post of L.T. Grade Teacher in the institution and his right to consider for selection and appointment on the post of L.T. Grade Teacher has been seriously prejudiced. Shri Ram Yash Yadav-the petitioner in Writ A No. 12926 of 2013 based his claim on the basis of alleged ad hoc appointment dated 27.3.1995 and joining dated 28.3.1995 whereas on the said dates, there existed neither prior nor deemed approval of District Inspector of Schools, Jaunpur for the appointment of petitioner, which was mandatory as per Para-3 of the U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981. In Kumari Radha Raizada Vs. Committee of Management, Vidyawati Darbari Girls Inter College and Others, a Full Bench of this Court has laid down that the ad-hoc appointments of short term teacher against the short term vacancy have to be made strictly under the procedures provided in the U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981 as well as law laid down by Hon"ble Full Bench and deviation against that the alleged ad hoc appointment to be void and did not entitle to claim salary from State exchequer. Therefore, the alleged appointment and joining of the petitioner is void ab-initio and does not confer any right to claim the post of Assistant Teacher. The alleged appointment of petitioner was not followed by intimation of vacancy, advertisements, recommendation of

Selection Committee based upon quality point marks and prior approval or deemed approval as provided under the aforesaid Order, 1981 and this Court, after considering the facts of the present case, as well as the law on the subject, has passed a detail order dated 10.8.2009 passed in Civil Misc. Writ Petition No. 40695 of 2009. The Hon"ble Court had considered the matter relating to the appointment of the petitioner and process of initiation of recovery against him in Writ A No. 9753 of 2011 filed by the petitioner and had held that considering the entire history of the case, exercise of recovery does not appear to be without any basis and declined to interfere with the said process. The petitioner is no more in service of the institution. The appointment of respondent No. 5 on the post of Assistant Teacher was made in accordance with law by following proper procedures and the students of the institution had been suffering for want of five Assistant Teachers against the existing vacancies. The respondent No. 5 has been teaching in the institution, therefore, he is legally entitled to continue and payment of salary. He has relied upon judgments of this Court in San jay Singh vs. State of U.P. and others (2013) 1 UPLBEC 758; Writ A No. 25699 of 2014 (Lal Pratap Singh and another vs. District Inspector of Schools, Jaunpur and 2 others) decided on 6.8.2015 and Writ A No. 33559 of 2010 (Arbind Kumar Dubey vs. State of U.P. & Ors.) decided on 7.10.2015 in support of his submission.

18. Shri Indra Raj Singh has further submitted that the preliminary objection against the locus of petitioners to maintain the writ petition was decided as preliminary issue, and the same was rejected by learned Single Judge vide order dated 10.8.2009 passed in the connected Writ A No. 40695 of 2009, which has become final between the parties. On the locus of petitioners, he has relied upon the judgment in Prem Singh and Others Vs. Haryana State Electricity Board and Others, and the judgment passed in Writ A No. 57952 of 2007 decided on 16.9.2014.

19. I have carefully considered the submissions advanced by the learned counsel for the parties and perused the records.

20. It is apparent from the record that a short term vacancy occurred on the retirement of Shri Dev Narayan Singh, Principal of the institution on 30.6.1993 and Shri Salig Ram Sharma, senior most teacher of the institution was promoted as ad hoc Principal w.e.f. 1.7.1993. On account of promotion of Shri Salig Ram Sharma, a short term vacancy of L.T. Grade teacher occurred in the institution. In the year 1994-95 the Committee of Management of the institution was superseded and the Authorized Controller was managing the affairs of the institution. The Authorized Controller of the institution advertised the vacancy of L.T. Grade teacher in the newspaper on 14.1.1995 inviting applications from the deserving candidates for being appointed on the said post. In pursuance of the advertisement dated 14.1.1995, Shri Ram Yash Yadav-the petitioner in Writ A No. 12926 of 2013 appeared before the Selection Committee on 22.2.1995 alongwith other candidates and the Selection Committee recommended the name of the petitioner for being appointed on the post of LT Grade Teacher. In pursuance of

the recommendation of the Selection Committee, the Authorized Controller issued the appointment letter dated 27.3.1995 and directed him to join on the post of Assistant Teacher in the institution within 15 days. The petitioner joined the services on the said post on 28.3.1995. The Authorized Controller forwarded the papers relating to his appointment to the District Inspector of Schools, Jaunpur for approval. The District Inspector of Schools accorded approval of the appointment of petitioner on 28.3.1995. The petitioner started working on the said post and had been paid salary till July, 1995.

21. In August, 1995 Km. Prem Lata Mehrotra, District Inspector of Schools, Jaunpur was transferred and another District Inspector of Schools had taken over the charge and passed the general order dated 8.9.1995 for stopping the salary of all the teachers and employees, whose approval of the appointment has been accorded by the then District Inspector of Schools, Jaunpur. Against the order dated 8.9.1995 the employees of different Colleges filed several writ petitions in which interim orders were passed staying the order dated 8.9.1995. The petitioner also filed Writ Petition No. 36767 of 1995 (Ram Yash Yadav vs. State of U.P. and Ors.) in which an interim order was passed on 20.12.1995 staying the order dated 8.9.1995. The petitioner has been continuously paid salary. The enquiry, which was initiated in pursuance of the order dated 8.9.1995, had been completed and all the orders passed by the then District Inspector of Schools for payment of salary were found to be genuine. Thereafter the Writ Petition No. 36767 of 1995 filed against the order dated 8.9.1995 was dismissed as infructuous on 24.9.2005.

22. In the year 1999 the Committee of Management of the institution had been constituted and one Shri Gaj Bahadur Singh had been recognized as Manager and Shri Ram Samujh Yadav as President of the Committee of Management of the institution. The Committee of Management of the institution moved an application before the District Inspector of Schools for stopping the salary of the petitioner. The District Inspector of Schools passed an order dated 16.3.2009 in collusion with the President and Manager of the Committee of Management of the institution on the ground that the writ petition filed by the petitioner has been dismissed on 24.9.2005. Against the order dated 16.3.2009 the petitioner moved a representation before the Director of Education (Secondary), U.P. and on 12.6.2009 the Director of Education disapproved the order dated 16.3.2009 and directed for payment of salary of the petitioner on the ground that the salary of the petitioner was being paid in pursuance of the approval order dated 28.3.1995 passed by the District Inspector of Schools and the appointment of the petitioner was made against sanctioned post.

23. It is surprised to the Court that even though on the basis of the interim order dated 20.12.1995 passed in Writ Petition No. 36767 of 1995 the petitioner continued to discharge his duties and had been paid salary but no effort had been made either by the alleged President or Manager of the Committee of Management of the institution to vacate the interim order and the said interim

order continued for a substantial long time at least for a decade and only when the writ petition was dismissed as infructuous on 24.9.2005, the alleged claim had been set out and the District Inspector of Schools passed an order dated 16.3.2009 in collusion with the President and Manager of the Committee of Management on the ground that once the writ petition was dismissed as infructuous on 24.9.2005, the claim of the petitioner could not sustain. The serious allegation has also been made that Rananjai Singh-respondent No. 5 is alleged to be relative of the Manager, namely Gaj Bahadur Singh and the alleged claim has been set out with the connivance of the Manager of the institution so that Shri Rananjai Singh-respondent No. 5 could be inducted in the institution. The fact also leads to a conclusion that if the interim order dated 20.12.1995 passed in Writ Petition No. 36767 of 1995 continued for substantial period of time and the salary had been paid to the petitioner from the State exchequer but no sincere or serious effort had been made by respondent No. 5 to justify his claim for the said post.

24. The record also clearly indicates that proper advertisement was made and in pursuance of the said advertisement, finally the Selection Committee had found that the petitioner was suitable for the post and the same was duly approved by the then District Inspector of Schools. Even though an enquiry had been initiated against the then District Inspector of Schools but finally she had also been exonerated from all the charges and a categorical decision had been taken through the enquiry that whatever approval had been granted by the then District Inspector of Schools was in accordance with law and as such, there was no infirmity or illegality in the said approval. It is also apparent from the record that at no point of time the respondent No. 5 has ever been paid salary and on account of the pendency of the Writ A No. 40695 of 2009 the petitioner has not been paid salary.

25. The connected Writ Petition No. 40695 of 2009 was filed by Ram Samujh Yadav, petitioner No. 1 claiming to be member of general body and ex-president of the institution and petitioner No. 2 as prospective candidate seeking quashing of the approval of the appointment of the petitioner dated 28.3.1995 and the order dated 12.6.2009. It is undisputed that Ram Samujh Yadav is the Ex-President of the Committee of Management and once Ram Samujh Yadav was not the Manager of the institution, the writ petition at his behest challenging the appointment of the petitioner in any view of matter would not have been maintainable. The petitioner No. 2 was not a candidate for appointment on the post on which Shri Ram Yash Yadav-the petitioner in Writ A No. 12926 of 2013 was appointed and the grievance raised by him about the illegal appointment of Ram Yash Yadav does not give him a personal cause so as to file a Writ Petition.

26. In *Desh Deepak Srivastava Vs. State of Uttar Pradesh and Others* a Division Bench of this Court held in paras 9 to 17 as follows:-

"9. Basic question which arises for consideration is in respect of the locus standi of the petitioner respondent Nos. 5 and 6 to maintain the writ petition in capacity

as manager of the committee of management of the institution and the elected committee of management respectively. Undoubtedly, this court restrained respondent No. 5 to function as manager of the institution by means of interim order dated 22.7.2003 passed in WP No. 31710 of 2003 and subsequently the writ petition was allowed and his recognition as manager of the institution was quashed.

10. Locus standi for probative relief under Article 226 of the Constitution of India are subject to certain well settled principle. The petitioner should ordinarily be one who has a personal or individual right in the subject matter of dispute and can demonstrate a legal wrong or legal injury. The only exception to the said principle is in the case of the writ of habeas corpus or a writ of quo-warranto or in writ petition filed in public interest. In writ petitions in the nature of habeas corpus, quo-warranto and public interest litigation the question of locus standi loses its significance. The Apex Court in *Vinoy Kumar Vs. State of U.P. and Others*, has held as under:

"Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or quo warranto or filed in public interest. It is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries are caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organization which can take care of such cases."

11. Again the Hon"ble Apex court in the case of *Ghulam Qadir Vs. Special Tribunal and Others*, held that:

"There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed

by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi."

12. The Apex Court in the case of *Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Others*, has held that:

"It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same".

13. The petitioner-respondent Ajay Singh approached this Court claiming himself to be manager of the institution. He, despite full knowledge concealed the fact that challenge was made to the order dated 29.5.2003 passed by Regional Level Committee recognizing the election set up by him and also order dated 20.6.2003 passed by the DIOS attesting his signatures as manager of the Institution in Writ Petition No. 30170 of 2003 wherein an interim order staying the effect and operation of the said two orders was passed on 22.7.2003, thus he could not have filed writ petition representing himself as manager of the institution on 11.8.2014 much after said order dated 22.7.2003 was passed.

14. Apart from the fact that petitioner-respondent No. 5 invoked the extraordinary jurisdiction of this court by misrepresenting and concealing material fact which dis-entitle him from grant of any relief, even otherwise he has no locus in the matter to challenge the selection process of the appellant for he cannot be said to be a person aggrieved. The person aggrieved does include the person who suffers from psychological or on an imaginary injury. A person aggrieved must, therefore, necessarily be one whose right or interest has been adversely effected or jeopardized. Petitioner-respondent No. 5 by any stretch of imagination does not stand test and thus writ petition at his behest cannot be

held to be maintainable.

15. Even the petition cannot be treated as a public interest litigation. The courts have consistently held that such a course of action is not permissible so far as service matters are concerned. The Supreme Court in *Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc.*, held that "there is no doubt that a total stranger to the service concerned cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated." In *Thammanna Vs. K. Veera Reddy and Others*, it was held by Hon"ble Apex Court that although the meaning of the expression "person aggrieved" may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something.

16. The aforesaid factual situation of the matter was not taken into account by the learned single Judge while allowing the writ petition. Apart from above, in so far as merit of the case is concerned not only the petitioner is to be non-suited on account of filing writ petition by concealing material facts and misrepresenting himself as manager of the institution, but also since we have come to the conclusion that the writ petition itself is not maintainable at the behest of the petitioner, we do not find its expedient to enter into the merits of the matter.

17. As a result, the impugned order passed by the learned Single Judge dated 9.12.2005 is not liable to be sustained and is hereby set aside. Special Appeal stands allowed. However, in the circumstances of the case there shall be no order as to costs."

27. In the result, the Writ A No. 12926 of 2013 is allowed and the impugned the order dated 26.7.2012 passed by the District Inspector of Schools, Jaunpur is set aside and the Writ A No. 40695 of 2009 is dismissed.