

(2011) 05 AHC CK 0266
In the Allahabad High Court
Case No : Writ A. No. 12652 of 2007

Sajjan Singh Yadav

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 322, 353
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 18, 33A, 33C
Constitution of India, 1950 — Article 226

Citation : (2011) 7 ADJ 43 : (2012) 1 AWC 377

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Petitioner, Sajjan Singh Yadav, holding office of Principal, J.V. Inter College, Ali Nagar, Kenjara, District Firozabad has preferred this writ petition under Article 226 of the Constitution of India seeking mandamus commanding Respondents No. 1 and 2 to pay salary on the post of Principal along with entire arrears of salary from the date of his appointment to stop payment of salary to Respondent No. 5 Lalta Prasad Goswami; and also, to recover money paid to him after 23.12.2005. By subsequent amendment, the Petitioner has also sought a writ of certiorari for quashing order dated 30.12.2009 (Annexure 16 to the writ petition) issued by U.P. Secondary Education Service Selection Board, Allahabad (hereinafter referred to as UPESB) recommending Respondent No. 6 for appointment to the post of Principal.

2. Learned Counsel for the Petitioner stated that presently he is confining his prayer/relief in so far as it relates to Respondent No. 6 since Respondent No. 5 has already retired in the meanwhile.

3. Heard Sri Arvind Srivastava, learned Counsel for the Petitioner; learned Standing Counsel for Respondents No. 1, 2, 3, 7 and 8; and Sri Anil Bhushan

learned Counsel appearing for Respondent No. 6. None has put in appearance on behalf of Respondents No. 4 and 5 though names of Sri Arvind Agarwal and Sri R. Tripathi are shown in the cause list as counsel for Respondents besides as mentioned above.

4. The facts in brief stated in the writ petition are as under.

5. J.V. Inter College, Ali Nagar, Kenjara, Firozabad (for short "the college") is recognised by Board of High School and Intermediate and governed by provisions of U.P. Intermediate Education Act, 1921 (hereinafter referred to as "1921 Act"), U.P. High School and Intermediate Colleges (Payment of Salary of Teachers and other Employees) Act, 1971 (hereinafter called as "1971 Act") and U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as "1982 Act").

6. On 30.6.1991 one Ram Narain Sharma holding post of Principal retired on attaining the age of superannuation at the end of Session, causing a substantive vacancy on the post of Principal with effect from 1.7.1981.

7. One Sri Lalta Prasad Goswami, Respondent No. 5 was the senior most permanent Lecturer (Mathematics). He was made officiating Principal by management of the College on 1.7.1981. The District Inspector of Schools (for short "D.I.O.S.") attested signatures of Lalta Prasad Goswami. The management treated officiating appointment of Lalta Prasad Goswami, resulting in a short term vacancy on the post of Lecturer (Mathematics) and appointed Respondent No. 6, Ranveer Singh as Lecturer (Mathematics) on 6th July 1981.

8. Ranveer Singh was not paid salary. His short term ad hoc appointment was not recognized. Therefore, he preferred writ petition No. 29160 of 1991 wherein an interim order was passed on 10.10.1991 pursuant whereunto, payment of salary commenced and continued to him. The interim order termed as under:

The Standing Counsel may file counter affidavit on behalf of Respondents No. 1 and 2 within a month. Issue notice to Respondent No. 3 to be made returnable on 19.XI.1991 List this case on 19.11.1991.

Until further orders, the Petitioner shall be paid his salary for the post of lecturer in Mathematics on which he has been appointed in a short term vacancy.

9. The writ petition of Respondent No. 6 (Ranveer Singh) was disposed of finally vide judgment dated 5.10.2004, operative portion whereof reads as under:

Having heard learned Counsel for the parties and considering the facts and circumstances of the case and keeping in view that the Petitioner continuing to work and is being paid his salary since 1991, even though on the strength of the interim order granted by this court, It is directed that the case of the Petitioner for regularization shall be considered by Respondent No. 5 the Joint Director of Education, Agra Region, Agra under the provisions of U.P. Act No. 5 of 1982 in accordance with law after giving opportunity of hearing to the Petitioner and

other concerned parties, if there be any, expeditiously, preferably within a period of three months from the date of filing of a certified copy of this order before Respondent No. 5.

(emphasis added).

10. Besides above D.I.O.S. declined to pay salary to Lalita Prasad Goswami by order dated 28.10.1991. He also filed writ petition No. 35999 of 1991. There also an interim order dated 9.12.1991 was passed staying operation of order dated 28.10.1991 with further direction that Lalita Prasad Goswami (Respondent No. 5) will be entitled to salary as officiating Principal on the post in question. The aforesaid interim order also continued.

11. Later on Section 33-C was inserted providing for regularisation of ad hoc appointments. Respondent No. 5, claimed regularization on the basis of his continuous working as Officiating Principal, but the request was rejected by Regional Director of Education, Agra by order dated 7.2.2004. Lalita Prasad Goswami preferred another writ petition 74331 of 2005 challenging the order dated 7.2.2004.

12. There was one more writ petition No. 43303 of 2003 filed by the present Petitioner Sajjan Singh Yadav challenging authority of Lalita Prasad Goswami to continue to work as Principal since he attained age of 60 years on 9.3.2003. This writ petition was disposed of on 7.11.2003 directing Joint Director of Education to get the matter decided by Committee u/s 33C.

13. The present Petitioner also staked his claim before D.I.O.S. to allow him to work as Principal which claim was rejected by D.I.O.S. on 5.11.2005. Hence, challenging said order he filed writ petition No. 71160 of 2005.

14. These two writ petitions No. 71160 of 2005 filed by Sajjan Singh Yadav and writ petition No. 74331 of 2005 filed by Lalita Prasad Goswami came to be heard and decided by Hon'ble Single Judge vide order dated 23.12.2005. Writ petition No. 71160 of 2005 was allowed and writ petition No. 74331 of 205 of Lalita Prasad Goswami was dismissed. The Court observed that continuance of Ranveer Singh is directly dependent on availability of the vacancy on the post of Lecturer held substantively by Lalita Prasad Goswami. The matter was taken up in Special Appeals No. 32 of 2006 and 33 of 2006. Both these appeals were decided vide judgment dated 12.1.2006 (by a Division Bench in which I was also a member).

15. The Division Bench upheld the judgment of Single Judge and dismissed both the appeals. Against the aforesaid appellate judgment dated 12.1.2006, SLP No. 6948 of 2006 was filed but dismissed by Supreme Court vide order dated 28.4.2006 in the following terms:

The Petitioner having not been appointed as a Principal in terms of the provision u/s 18 of the Act, we are of the opinion that the question of his being regularized in the said post does not arise. The SLP is dismissed accordingly.

16. It is evident from above judgments held that appointment of Lalta Prasad Goswami as officiating principal on 1.7.1991 was held illegal and not in accordance with Section 18 of 1982 Act. It also held that regularisation of Lalta Prasad Goswami u/s 33-C of 1982 Act was not permissible.

17. Thereafter what transpires is that the charge of office of Principal on officiating basis was handed over to the present Petitioner on 13.1.2006 by D.I.O.S. Further Lalta Prasad Goswami (Respondent No. 5) submitted an application seeking voluntary retirement which was allowed by D.I.O.S. subsequently but with effect from 13.1.2006.

18. The Joint Director of Education, however, in compliance of order 5.10.2004 passed in writ petition No. 29160 of 1991 of Ranveer Singh (Respondent No. 6) issued a letter dated 13.10.2006 directing D.I.O.S. to appear and produce relevant record pertaining to above matter on 13.11.2006. Present Petitioner by letter dated 13.11.2006 informed Joint Director of Education that Ranveer Singh was appointed in place of Lalta Prasad Goswami where appointment as officiating Principal having been held illegal, it would result in cessation of service of Ranveer Singh from its very inception. Another letter sent by the present Petitioner on 4.12.2006 to the Joint Director of Education with the same facts. He also requested the management and D.I.O.S. to pay him salary on the post of Principal on officiating basis.

19. The Petitioner was not paid salary on the post of Principal instead it was paid to Ranveer Singh. The Petitioner having come to know that Ranveer Singh is still being paid salary of officiating Principal, made representations on 8.1.2007 and 11.1.2007 stating that aforesaid amount has illegally been paid, it is a loss to public revenue and should be recovered from the respective persons. In the meantime, Ranveer Singh approached Commission to treat him senior most Lecturer in the college for selection and appointment on the post of Lecturer. The Commission considered it, selected and recommended his appointment on the post of Principal vide order dated 30.12.2009. Whether Commission was apprised of the facts about the manner of appointment of Ranveer Singh and the litigations undergone by Lalta Prasad Goswami is not known. It is, however, said that he never applied in pursuance of advertisement No. 1 of 2008 for the post of Principal. He was considered as the senior most Lecturer in the college. It is this order which has been challenged by means of amendment application which was allowed.

20. During pendency of this matter, Lalta Prasad Goswami has already retired.

21. Sri Anil Bhushan, learned Counsel appearing for Respondent No. 6 informed and contended that even the present Petitioner has retired on 30.6.2009 after attaining the age of superannuation which has render this petition infructuous. He has also pointed out that pursuant to the directions issued by this Court vide judgment dated 5.10.2004 in writ petition No. 29160 of 1991, Respondent No. 6 (Ranveer Singh) was regularised as Lecturer by Regional Committee vide order

dated 4.6.2007. A copy of the said order has been placed on record as annexure CA-2 to the counter affidavit filed on behalf of Respondents 1, 2, 3, 7 and 8 through Chief Standing Counsel. The counter affidavit also says that Petitioner was convicted in a criminal case for three months' imprisonment and fine of Rs. 1000/- against which appeal is pending and the Petitioner is not entitled for promotion to the post of Principal.

22. It is, however, not disputed that Petitioner was allowed to officiate as Principal in the college after retirement of Lalta Prasad Goswami till 30.6.2009. In compliance of this Court's order dated 14.3.2007 whereby this Court directed D.I.O.S. to file his personal affidavit qua averments made in the writ petition, D.I.O.S. (Ravindra Singh) himself made an enquiry and submitted report on 1.5.2007, copy whereof is filed as CA-1 to the counter affidavit of Respondents No. 1 to 4, 7 and 8 holding that the Petitioner was not entitled for payment of salary due to pendency of criminal case in which he was convicted but the appeal is pending and that Respondent No. 6 is entitled for payment of salary since his regularisation is based on his working on the said post. It also mentions that Regional Committee vide order dated 4.6.2007 has regularised services of Respondent No. 6 as Lecturer (Mathematics) observing that he was appointed on ad hoc basis in a short term vacancy on 10.7.1991 due to the vacancy occurred on officiating promotion of Lalta Prasad Goswami, the then Lecturer (Mathematics) as officiating Principal on 1.7.1991. Later on a substantive vacancy occurred due to retirement of Lalta Prasad Goswami with effect from 30.1.2006 and the Respondent No. 6 was regularized and that is legal and valid.

23. After amendment in the petition, supplementary affidavit to the amended writ petition has been filed wherein also facts already stated in the writ petition and supplementary affidavit have been reiterated stating that name of Respondent No. 6 was recommended for the post of Principal of the college in the capacity of senior most Lecturer.

24. Respondent No. 6 has filed counter affidavit wherein basic facts are not disputed. However, it says that there were serious charges against Petitioner hence he was placed under suspension on 27.2.2007. Even prior thereto, F.I.R. was lodged against Petitioner by Lalta Prasad Goswami under Sections 322 and 353 IPC. The Criminal Case No. 2330 of 2004 was decided vide judgment dated 19.4.2004 sentencing Petitioner to one month's imprisonment. In the criminal case Respondent No. 6 was a witness. He admits that he was appointed by management as Lecturer (Mathematics) on a short term vacancy occurred due to promotion of Lalta Prasad on the post of officiating Principal yet his salary was not paid. Hence he had no option but to file writ petition No. 29160 of 1991 wherein interim order was passed on 10.10.1991 directing payment of salary to him on the post of Lecturer, pursuant where to he continued to get salary and the aforesaid writ petition was finally disposed of on 5.10.2004 directing Regional Committee to consider him for regularisation. In the meantime, Lalta Prasad Goswami was denied regularised by authorities concerned, hence he filed writ

petition which was decided on 23.12.2005. In the aforesaid writ petition Respondent No. 6 also filed impleadment application but the same was not allowed though his counsel was heard. It is also said that Hon'ble Single Judge observed that in case Lalta Prasad takes voluntary retirement without any further interest, then claim of Respondent No. 6 be considered. In these circumstances, Lalta Prasad gave an application dated 13.1.2006 seeking voluntary retirement as such the Petitioner was given charge of officiating Principal of the institution. Voluntary retirement of Lalta Prasad Goswami was accepted by D.I.O.S. on 1.6.2006 with effect from 13.1.2006 and thus Respondent No. 6 became entitled for regularisation u/s 33-C of 1982 Act. The present Petitioner did not permit Respondent No. 6 to sign attendance register against which he approached D.I.O.S. who directed Petitioner to allow Respondent No. 6 to work and sign register otherwise he shall be responsible, pursuant where to a separate attendance register was prepared and signed by Respondent No. 6 and other employees, countersigned by D.I.O.S.

25. Supplementary counter affidavit sworn on 14.11.2010 has also been filed by Respondent No. 6 stating that post of Principal was advertised by Commission vide advertisement No. 1 of 2008, pursuant where to name of Respondent No. 6 was recommended by management treating him the senior most Lecturer. The Petitioner was placed under suspension. Respondent No. 6 has been selected for the post of Principal of the college. Therefore, Petitioner has no right to challenge the above selection of Respondent No. 6.

26. Rejoinder affidavit and supplementary rejoinder affidavit have been filed by the Petitioner which, if necessary, may be referred to as and when occasion arises.

27. Sri Arvind Srivastava, learned Counsel for Petitioner contended that Petitioner was entitled to officiate as Principal in any case from 9.9.2005, the date on which Respondent No. 5 attained age of 60 years and therefore he is entitled for payment of salary from the said date. He further contended that Respondent No. 6 was appointed in a short term vacancy occurred due to appointment of Respondent No. 5 as officiating Principal; the said appointment having been found illegal in law it would result as if no short term vacancy at all occurred on the post of Lecturer (Mathematics). It automatically resulted in nullifying ad hoc appointment of Respondent No. 6 on the post of Lecturer (Mathematics) as if he was never appointed. Hence the question of considering him for the post of Principal or to allow him to continue after decision of this Court in two writ petitions which judgment became final after dismissal of appeal at Apex Court would not arise. This was wholly illegal and collusive exercise between official Respondents as well as Respondents No. 5 and 6. He submits that Respondents have played fraud or misrepresentation by ignoring judicial orders and consequence thereof. Anything done by Respondents which is in the teeth of judgment of this Court would have no consequence. The appointment of Respondent No. 6 on the post of Principal by Commission is a nullity and has to

be quashed.

28. On the contrary, Sri Anil Bhushan, learned Counsel appearing for Respondent No. 6 submitted that as a matter of fact Respondent No. 6 has continued to work as Lecturer (Mathematics), having been regularised by Regional Committee and moreover since Petitioner and Respondent No. 5 both have retired on attaining age of superannuation, nothing survives further. Therefore this Court may not pass any order against Respondent No. 6 and writ petition deserves to be dismissed.

29. The above checkered history of various litigation and facts as have taken place from time to time demonstrate a wholly illegal consensus amongst various Respondent in not only doing something illegal from its very inception but also to continue and maintain the same in one or other way so as to confer an absolutely undue and illegal advantage upon certain persons, who were not eligible and entitled for the same. It has also resulted in payment of huge money from public exchequer to those who admittedly were appointed illegally and could not have been paid such amount. This nexus is apparent on the part of Management and individuals as also the educational authorities.

30. It would be appropriate to recapitulate the facts borne out from the record in a chronological manner so as to explain what actually has happened. Upto 30.6.1991, the post of Principal of College was occupied by Sri Ram Narain Sharma who retired on attaining the age of superannuation and vacated the post at the end of session. The substantive vacancy on the post of Principal occurred on 1.7.1991. u/s 18 of 1982 Act, the vacancy of Principal could have been filled in by the Management on ad hoc/officiating basis if the vacancy has remained unfilled for two months after requisition having been sent to Commission. The Management, however, made officiating appointment of Sri Lalta Prasad Goswami on 1.7.1991 itself which was in utter violation of Section 18 of 1982 Act. Sri Lalta Prasad Goswami was senior most Lecturer (Mathematics). Treating his officiating appointment on the post of Principal on 1.7.1991 valid, the Committee of Management proceeded further to appoint Sri Ranveer Singh Yadav (Respondent No. 6), as Lecturer (Mathematics) on ad hoc basis, the vacancy being short term in the understanding of Committee of Management. Both the persons were not paid salary. The former on the post of officiating Principal the later on the post of ad hoc Lecturer (Mathematics). Respondent No. 6 sought payment of salary in Writ Petition No. 29160 of 1991 wherein an interim order was passed on 10.10.1991 directing Respondents to pay salary to Ranveer Singh (Respondent No. 6). Respondent No. 5 was declined payment of salary by District Inspector of Schools vide order dated 28.10.1991 which was challenged in writ petition No. 35999 of 1991 wherein interim order was passed on 9.12.1991 staying operation of the said order with further direction to pay salary to Lalta Prasad Goswami as officiating Principal. Both the writ petitions continued to remain pending for more than a decade resulting in continuance of both the said persons on their respective posts as also they continued to get salary.

31. On 20.4.1998 Section 33-C was inserted in 1982 Act providing for regularization of certain ad hoc appointees. Writ Petition No. 29160 of 1991 of Ranveer Singh was disposed of on 5.10.2004 by this Court without going into correctness of his appointment, observing that his claim for regularization shall be considered by Joint Director of Education under 1982 Act and in accordance with law. Obviously, this Court did not adjudicate either on the validity of appointment of Sri Ranveer Singh (Respondent No. 6) nor had held that he was entitled for salary or regularization, but left the matter to be considered by Joint Director of Education in accordance with the provisions of 1982 Act and law.

32. Writ Petition No. 35999 of 1991 of Lalta Prasad Goswami was disposed of vide order dated 7.11.2003 with direction to Joint Director of Education to consider claim for regularization through the committee constituted u/s 33-C of 1982 Act. Here also no adjudication on the validity of appointment of Lalta Prasad Goswami made by the Court. Since the Petitioner Sajjan Singh Yadav had objected the claim of Lalta Prasad Goswami, this Court directed Joint Director of Education to look into his objection also. This order also shows that this Court did not adjudicate upon the correctness of officiating appointment of Lalta Prasad Goswami as officiating Principal or his entitlement of salary on the said post. The order passed by this Court read as under:

By means of relief No. (ii)(a), added by the amendment application, the Petitioner seeks a writ, order or direction in the nature of mandamus directing the regularization committee to regularize the service of the Petitioner on the post of Principal u/s 33-C (a)(ii) of the U.P. Secondary Education Services Selection Board Act, 1982.

Heard Sri Anil Bhushan, the learned Counsel for the Petitioner and the learned Standing Counsel appearing for the Respondent No. 1 and Sri R.S. Misra who appears for the Respondent No. 2.

The learned Counsel for the Petitioner submitted that the Petitioner has been acting as Principal since 1st July 1991 and is also getting salary on the post of the Principal and, therefore, is entitled for being regularized under the provisions of Section 33-C(a)(ii) of the U.P. Secondary Education Services Selection Board Act, 1982. Sri R.S. Misra, the learned Counsel for the Respondent No. 2 has however, submitted that the Petitioner has never been appointed as ad hoc Principal and is only continuing as acting Principal and, therefore, is not entitled to regularisation.

Without going into the question as to whether the Petitioner is officiating Principal or ad hoc Principal and taking into consideration the entire facts and circumstances of the case, the writ petition is disposed of with the direction to the Joint Director of Education to place the matter regarding regularisation of the Petitioner before the statutory committee constituted u/s 33-C of the U.P. Secondary Education Services Selection Board Act, 1982 for considering the question of regularisation of the Petitioner on the post of the Principal, J.V. Inter

College, Ali Nagar, Kainjara, Firozabad, within a month from the date a certified copy of this order is filed before him. The Committee will also go into the question as to whether the Petitioner was appointed as officiating Principal or acting Principal before considering the question of regularisation and shall give an opportunity of hearing to the Petitioner and also to the Committee of Management.

The writ petition is disposed of.

33. Sri Lalta Prasad Goswami attained age of 60 years on 9.3.2003. The present Petitioner, Sanjjan Singy Yadav, filed writ petition No. 43302 of 2003 challenging continuance of Sri Lalta Prasad Goswami as officiating Principal after 9.3.2003 having attained age of 60 years. This writ petition was disposed of on 7.11.2003 directing Joint Director of Education to get the matter decided by Regional Committee u/s 33-A of 1982 Act. The claim was rejected by Joint Director of Education by order dated 7.2.2004 holding that Lalta Prasad Goswami is not entitled for regularization since his alleged officiating promotion on the post of Principal was illegal and not in accordance with Section 18 of 1982 Act. Sri Goswami challenging the aforesaid order dated 7.2.2004 filed writ petition No. 74331 of 2005.

34. Petitioner, Sajjan Singh Yadav also claimed his right to officiate as Principal of College which claim was rejected by D.I.O.S. by order dated 5.11.2005 which was challenged in writ petition No. 71160 of 2005. These two writ petitions namely 71160 of 2005 and 74331 of 2005 were decided by Hon''ble Single Judge vide judgment dated 23.12.2005 wherein for the first time question of validity of officiating appointment of Lalta Prasad Goswami as officiating Principal was considered and decided. The Hon''ble Single Judge observed that -It is thus, clear that the said appointment was clearly in contravention of Section 18 of U.P. Act No. 5 of 1982. ... The Management was not empowered to appoint Sri Goswami before the expiry of sixty days of the occurrence of vacancy. The conclusion drawn by Joint Director of Education in the order dated 7.2.2004 on that score, therefore, does not suffer from any infirmity and is clearly in consonance with the law laid down in Anilesh Pratap Singh's case which in my opinion is clearly binding and squarely applies to the facts and situation of this case.

35. The validity of appointment of Ranveer Singh Yadav (Respondent No. 6 in the present writ petition) was not in issue in the aforesaid writ petition, as was observed by Hon''ble Single Judge:

The question of continuance of Ranvir Singh Yadav is not at all in issue. However from the facts directed narrated herein above, his continuance or otherwise is directly dependent on the availability of the post of Lalta Prasad Goswami. In case Sri Lalta Prasad Goswami retires from the same without any further contest then the claim of Ranvir Singh Yadav might become an arguable case but not otherwise.

36. The aforesaid observations make it clear that this Court did not put a seal on

the validity of appointment of Sri Ranveer Singh Yadav even if vacancy on the post of Lecturer (Mathematics) became substantive on retirement of Sri Lalta Prasad Goswami or otherwise but only expresses that it may become an arguable case. This decision was confirmed by Division Bench vide judgment dated 12.1.2006 dismissing two Special Appeals against the above judgments. The Division Bench besides holding that the appointment of Lalta Prasad Goswami was illegal and void being in violation of Section 18 of 1982 Act, further observed that neither he was entitled to be considered for regularization u/s 33-C of 1982 Act nor his mere continuance on the basis of interim order passed by this Court would confer any right upon him for any purpose. The Apex Court dismissing appeal on merits observed that the question of regularization would not arise since Petitioner, i.e., Lalta Prasad Goswami was not appointed as a Principal in terms of Section 18 of the Act. This order made finding final and binding upon all the persons concerned including the educational authorities.

37. In the case in hand, the correctness of appointment of Respondent No. 6 on the post of Lecturer (Mathematics) and his right to continue as also his entitlement to claim regularization u/s 33-C of 1982 Act as a result of aforesaid pronouncement is directly in issue in the present writ petition. Admittedly, Respondent No. 6 was appointed as officiating ad hoc Lecturer (Mathematics) in a vacancy supposed to have occurred due to promotion on officiating basis of Sri Lalta Prasad Goswami on the post of Principal. Once it is held that the said officiating promotion of Lalta Prasad Goswami was illegal, in law it means as if no ad hoc/officiating promotion was ever made meaning thereby no vacancy, short term or substantive whatever, occurred on the post of Lecturer (Mathematics) at any point of time i.e. 1.7.1991 and till 30.6.2003.

38. Moreover, appointment of Respondent No. 6 also having been made within one week from the date of occurrence of vacancy, assuming that a vacancy on the post of Lecturer (Mathematics) occurred due to officiating promotion of Lalta Prasad Goswami on 1.7.1991, it was also not in accordance with the requirement of Section 18 of 1982 Act read with U.P. Secondary Education Services Commission (Removal of Difficulties)(Second) Order, 1981 (hereinafter referred to as -Second Order"), which admittedly would apply in such a case. The procedure laid down therein was not followed and could not have been followed within a week. In fact there is not even a whisper in the entire counter affidavit filed by Respondent No. 6 to show that before his ad hoc appointment, the procedure laid down in Second Removal of Difficulties Order was complied with.

39. The said procedure is prescribed in Clause 2 which reads as under:

2. Procedure for filling up short-term vacancies.-(1) If short-term vacancy in the post of a teacher caused by grant of leave to him or on account of his suspension duly approved by the District Inspector of Schools or otherwise, shall be filled by the Management of the Institution by promotion of the permanent senior-most teacher of the institution, in the next lower grade. The Management shall immediately inform the District Inspector of Schools of such promotion along

with the particulars of the teacher so promoted.

(2) Where any vacancy referred to in Clause (1) cannot be filled by promotion, due to non-availability of a teacher in the next lower grade in the institution, possessing the prescribed minimum qualifications, it shall be filled by direct recruitment in the manner laid down in Clause (3).

(3) (i) The management shall intimate the vacancies to the District Inspector of Schools and shall also immediately notify the same on the notice board of the institution, requiring the candidates to apply to the Manager of the Institution along with the particulars given in Appendix -B" to this Order. The selection shall be made on the basis of quality point marks specified in the Appendix to the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, issued with Notification No. Ma-1993/XV-7(79)-1981, dated July 31, 1981, hereinafter to be referred to as the First Removal of Difficulties Order, 1981. The compilation of quality point marks shall be done under the personal supervision of the Head of Institution.

(ii) The names and particulars of the candidate selected and also of other candidates and the quality point marks allotted to them shall be forwarded by the Manager to the District Inspector of Schools for his prior approval.

(iii) The District Inspector of Schools shall communicate his decision within seven days of the date of receipt of particulars by him failing which the Inspector will be deemed to have given his approval.

(iv) On receipt of the approval of the District Inspector of Schools or, as the case may be, on his failure, to communicate his decision within seven days of the receipt of papers by him from the Manager, the Management shall appoint the selected candidate and an order of appointment shall be issued under the signature of the Manager.

Explanation-For the purpose of this Paragraph-

(i) the expression "-senior-most teacher" means the teacher having longest continuous service in the institution in the Lecturer's grade or the Trained graduate (L.T.) grade or Trained undergraduate (C.T.) grade or J.T.C. or B.T.C. grade as the case may be;

(ii) in relation to institution imparting instructions to women, the expression ? District Inspector of Schools? shall mean the Regional Inspectress of Girls? Schools;

(iii) short-term vacancy which is not substantive and is of a limited duration.

40. The declaration of law in the matter of procedure of appointment on ad hoc basis in the case of Lalta Prasad Goswami by all four corners apply to the ad hoc appointment of Respondent No. 6 also. It is now well settled that the procedure prescribed in Section 18 of 1982 Act read with Removal of Difficulties Orders issued thereunder is mandatory and if anything has not been done strictly in

accordance thereto, it is void ab initio and would not confer any right upon the incumbent concerned either to hold the post or to continue in service or to claim salary from State exchequer as held by the Apex Court in Prabhat Kumar Sharma and others Vs. State of U.P. and others, relevant observation whereof is as under:

Any appointment made in transgression thereof is illegal appointment and is void and confers no right on the appointees.

41. Again in para 11 in Prabhat Kumar Sharma (supra) the Court held as under:

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 aided institution.

42. This decision has been followed and reiterated recently by the Apex Court in Shesh Mani Shukla v. District Inspector of Schools Deoria and Ors. J.T. 2009 (10) SC 309 wherein the Apex Court has held as under:

It is true that the Appellant has worked for a long time. His appointment, however, being in contravention of the statutory provision was illegal, and, thus, void ab initio. If his appointment has not been granted approval by the statutory authority, no exception can be taken only because the Appellant had worked for a long time. The same by itself, in our opinion, cannot form the basis for obtaining a writ of or in the nature of mandamus; as it is well known that for the said purpose, the writ Petitioner must establish a legal right in himself and a corresponding legal duty in the State.

43. Hence the ad appointment of Respondent No. 6 also was/is non est and void since its inception. That being so, it is evident that he could not have been regularized u/s 33-C in view of law laid down by this Court in Lalta Prasad Goswami's case as confirmed by Apex Court vide order dated 28.4.2006.

44. In the circumstances, it is evident that neither Respondent No. 5 and 6 were entitled for payment of salary on the post of Principal and Lecturer (Mathematics) respectively nor could have continued on the said posts nor could have been regularized u/s 33-C of 1982 Act.

45. The logical corollary of above finding is that the appointment of Respondent No. 6 ad hoc as well as regular being void ab initio on the post of Lecturer (Mathematics), the question of his consideration for appointment to the post of Principal treating him as senior most teacher also could not have arisen. The Commission has not considered Respondent No. 6 as an open market candidate. The Respondent No. 6 has been considered in his capacity as senior most Lecturer in the College. That being so the consideration of Respondent No. 6 for the post of Principal is also illegal. The impugned order dated 30.12.2009 therefore insofar as it has selected and recommended Respondent No. 6 for appointment on the post of Principal is clearly illegal and deserves to be set aside.

46. Since during the course of argument, learned Counsel for Petitioner has confined his case for claiming relief against Respondent No. 6 only for the reason that Respondent No. 5 has already retired, this Court is not considering the question whether payment of salary made to Respondent No. 5, after the decision of this Court became final, is liable to be recovered or not. However, I have no hesitation in holding that despite the fact that Respondent No. 6 neither could have been allowed to continue on the post of Lecturer (Mathematics) nor his name could have been recommended to be considered for the post of Principal treating him senior most lecturer in the College in the judgment in *Lalta Prasad Goswami (supra)*, yet the Respondents-educational authorities as also the management permitted Respondent No. 6 to continue to work and get the above advantage. This act of educational authorities and the management is wholly illegally and speaks of collusion and undue favour and the amount of salary paid to Respondent No. 6 deserves to be recovered not only from Respondent No. 6 but the committee of management as also Joint Director of Education must be held equally responsible. Therefore, all of them should be directed to bear the responsibility of refunding the entire salary in proportionate equal amount. Since the Petitioner has not sought any specific relief in this regard, I am not passing any order but leave it open to State Government to take appropriate steps for recovering the said amount in accordance with law from the responsible persons for the period Respondent No. 6 has been allowed illegally to continue as Lecturer (Mathematics) in the College and thereafter to function as Principal.

47. The submission of Sri Anil Bhushan that since now the Respondent No. 6 has retired, therefore, this Court may not pass any order to his prejudice is difficult to subscribe inasmuch once a patent illegality and defiance of statutory provisions in the hands of official Respondents as also the private individuals is brought to the notice of this court, it becomes its binding duty to pass appropriate order making thing straight. This is necessary not only for keeping the rule of law supreme and maintaining its authority but also to prevent others from indulging such activities under misconception that with the passage of time, they may retain the benefit even if on legal aspects they fail in a Court of law. Everyone should be well aware that one has to pay for his sins one day. The time will not condone illegal acts and render the guilty immune from any adverse consequence. One has to restore back public revenue siphoned off illegally. I, therefore, reject this submission.

48. Lastly the question would be whether the Petitioner is entitled for payment of salary on the post of Principal or not. Petitioner's counsel, having waived his claim against Respondent No. 5 during the course of argument in the present case, cannot be permitted to claim salary for the period it has actually been paid to Respondent No. 5 on the post of Principal. However for the period, the Petitioner, if has officiated as Principal, his claim for payment of salary may be considered provided it is found that he was appointed to officiate as Principal of the College in accordance with the procedure prescribed in law. Since nothing has come on record to show the manner in which Petitioner was made officiating

Principal of the College and whether such officiating promotion was strictly in accordance with law following the procedure prescribed in the statute, I do not find any occasion to issue a mandamus in this regard. Suffice is to mention that Petitioner is given liberty only to this extent to rake up his claim before District Inspector of Schools, Firozabad who shall consider the same and if it finds that the Petitioner was validly promoted and allowed to officiate as Principal of College for certain period, his claim may be considered for payment of salary for the said period.

49. With the above observations/directions, the writ petition is allowed. The order dated 30.12.2009 (Annexure 16 to the writ petition), insofar as it relates to Respondent No. 6, is hereby quashed.