

**(1994) 09 AHC CK 0011**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No. 31491 of 1944

Smt. Gayatri Devi and Others

APPELLANT

Vs

Hari Lal Pasi and Others

RESPONDENT

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**Date of Decision :** 27-09-1994

**Acts Referred:**

Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 14, 15, 16, 17  
Uttar Pradesh Intermediate Education Act, 1921 — Section 16F(1)

**Citation :** (1994) 3 AWC 1648

**Hon'ble Judges :** Sudhir Narain, J

**Bench :** Single Bench

**Advocate :** V.S. Dwivedi, for the Appellant; K.S. Shukla, for the Respondent

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## **Judgement**

Sudhir Narain, J.—The Petitioners have challenged the order dated 15th September, 1994 passed by District Basic Education Officer, Lalitpur canceling the appointment of 82 candidates who had applied for the post of Assistant Teacher in basic school maintained by U.P. Basic Education Board.

2. I have heard learned Counsel for the Petitioner and Sri K.S. Shukla for the Respondent.

3. Admittedly there were 82 vacant posts of Assistant Teachers which were to be filled in various primary schools maintained by U.P. Basic Education Board. The appointment was to be made in accordance with the provisions of U.P. Basic Education (Teachers) Service Rules, 1981. The procedure for inviting applications, making selection and preparation of list and issuing of appointment letters was given in this Rule. Rule 14 of 1981 Rules provides for determination of vacancies and preparation of list. Rule 15 provides for notification of vacancies and preparation of list of eligible candidates for certain posts of Assistant Masters/Mistresses of Senior Basic Schools. Rule 16 provides for constitution of Selection Committee and Rule 17 provides the manner in which the Selection Committee is to consider the candidates for selection and preparation of list of selected candidates.

4. The Petitioners were given appointment letter on 19th August, 1994, a copy of which has been annexed as Anneure-3 to the writ petition. This appointment order has been cancelled by the District Basic Shiksha Adhikari by order dated 15th September, 1994. The order indicates that back dated appointments were made. Various complaints were received and on the basis of the complaints enquiry was conducted and it was found that procedure prescribed In Rules of 1981 were not followed.

5. Learned Counsel for the Petitioners submitted that Petitioners had been given appointment letters and they have joined the institution at the place of their postings. In case there was any illegality in the appointment order or certain procedure was not followed, the Petitioners should have been given opportunity of hearing Learned Counsel for the Respondent contended that as the procedure for making appointment was not followed the appointment order was itself void-ab-initio.

6. In Shridhar Vs. Nagar Palika, Jaunpur and Others, , where the appointment of the candidate was cancelled by the Commissioner on the ground that the appointment was in violation of the Government order dated 10-4-1950, it was held that such person should be given opportunity of hearing before appointment order is cancelled. The order of appointment conferred a vested right in the candidate to hold the post till it is legally set aside.

7. In Committee of Management, Maharajganj later College, Maharajganj Higher Secondary School, Azamgarh v. Deputy Director of Education 7th Region Gorakhpur 1987 UP LB BC 350, a Division Bench of this Court took the view that once a right is either created or recognised by means of an order, the said order cannot be withdrawn without giving opportunity of hearing to the person concerned.

8. Admittedly the Petitioners were given appointment letters dated 19-8-1994. They claim that after receiving the appointment letters they joined the schools where they were posted. In such circumstance they were entitled to opportunity of hearing before the appointment orders passed in their favour were cancelled by the impugned order dated 15-9-1994.

9. The Petitioners, however, cannot claim any right to continue in service on the basis of appointment letter dated 19th August, 1994 if it is found that their appointment was made in violation of any of the provisions of U.P. Basic Education (Teachers; Service Rules, 1981 and such appointment shall be void. The candidates who were entitled to be selected are illegally ignored if procedure in making the appointment as prescribed under the law is not followed. In case the appointment has been obtained fraudulently, by collusion or by concealment of facts, the order of appointment cannot be given effect to. In Arya Kanya Pathshala v. Smt. Manorma Devi Agmhotri 1971 ALJ 983, it was held that where a person is appointed as Principal of an institution without prior approval of Regional Deputy Director Education in violation of provisions of Section 16-F (1)

of Intermediate Education Act, 1921. Such appointment, in the eye of law, is no appointment at all.

10. Considering the facts and circumstances of the present case it would be appropriate that the Petitioners be directed to make their separate representations before the District Basic Education Officer, Lalitpur along with certified copy of this order and a true copy of the writ petition. On such representation being made the same shall be decided by the District Basic Education Officer, Lalitpur within one month from the date of making representation by a reasoned order after giving opportunity of bearing to the Petitioners. It is made clear that if the procedure as prescribed under Rule of 1981 has not been followed in making appointments or it was obtained by concealment of facts or by practicing fraud or collusion, the appointment order Issued In favour of the Petitioners shall not confer any right on them. In case the representation is made within two weeks from today as indicated above and the Petitioners have already joined the posts in pursuance of the appointment letter dated 19-8-1994, the operation of the impugned order dated 13-9-1994 shall not be given effect to till the representation is decided.

11. The writ petition is accordingly disposed of finally.