

(2025) 02 AHC CK 1083
In the Allahabad High Court
Case No : Writ Petition A No. 15433 Of 2024

Yudhveer Singh

APPELLANT

Vs

State Of Up And 5 Others

RESPONDENT

Date of Decision : 17-02-2025

Acts Referred:

Code of Criminal Procedure Act, 1973 — Section 482
Indian Penal Code, 1860 — Section 147, 307, 323, 367, 504
Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 — Section
2(2)(v), 3(1)(r), 3(1)(s), 3(2)5A, 3(2)(v)

Citation : (2025) 02 AHC CK 1083

Hon'ble Judges : Vikas Budhwar, J

Bench : Single Bench

Advocate : Harish Kumar Tripathi, Rakesh Kumar, Vikash Krishna Murti

Final Decision : Dismissed

Judgement

Prakash Padia, J

1. The present writ petition has been filed by the petitioner with the following reliefs:

"(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned letter/order dated 15.1.2024 (Annexure-1) passed by the respondent No.2):

(ii) to issue a writ, order or direction in the nature of mandamus commanding the respondents not to interfere in the working of the petitioner as Officiating Principal of the Meerut College Meerut till the regular appointment is made by the Commission;"

(iii) to issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(iv) to award costs of this petition to the petitioner.

(v) to issue an appropriate writ, order or direction quashing the impugned joining letter dated 3.10.2024 passed by the Secretary, Meerut College, Meerut."

2. The facts as stated in the writ petition are that Uttar Pradesh Higher Education Services Commission (hereinafter referred to as 'Commission') issued Advertisement No. 49 of 2019, inviting applications for appointment of 219 posts of Principal in aided Post-Graduate Colleges in State of Uttar Pradesh, including the post of Principal in Meerut College, Meerut. The Commission completed selection process and issued list of 219 selected candidates along with waiting list of 73 candidates. The said list was published on 5.10.2021.

3. One Dr. Sachidanand Sharma was selected by the Commission for appointment at Meerut College, Meerut and on the basis of the recommendation of the Commission, Dr. Sachidanand Sharma was given appointment as Principal of the institution by appointment letter dated 23.10.2021.

4. Dr. Sachidanand Sharma joined the institution and thereafter he submitted his resignation on 28.5.2023. His resignation was accepted by the Committee of Management by its resolution dated 8.6.2023 and accordingly by letter dated 9.6.2023, Dr. Sachidanand Sharma was relieved from the post of Principal of the institution.

5. After relieving Dr. Sachidanand Sharma, one Dr. Anjali Mittal, who was the senior most teacher in the institution, was appointed as Officiating Principal of the institution. Dr. Anjali Mittal on attaining the age of superannuation has also retired on 30.6.2024 and the post of Principal again fall vacant in the institution.

6. After resignation of Dr. Sachidanand Sharma, Director of Higher Education, U.P. Prayagraj issued an order dated 15.1.2024, appointed Dr. Manoj Kumar Rawat, respondent no. 6, who was placed at sl. No. 59 in the waiting list, published on 5.10.2021, as Principal of the institution.

7. Dr. Anjali Mittal, who was working as Officiating Principal of the institution moved representation dated 29.1.2024 before the respondent no. 3, namely, Committee of Management of the institution, objecting the order of Director and praying with the Committee of Management for not issuing any letter of appointment in favour of the respondent no. 6.

8. It is further stated in the writ petition that the petitioner being senior most teacher in the institution in question, has been appointed as Officiating Principal of the institution by an order dated 14.6.2024.

9. It is further stated in the writ petition that the respondent no. 6 was earlier appointed as Principal of Bajrang P.G. College, Dadar Ashram, Ballia by order dated 3.8.2022. The said order of appointment of respondent no. 6 has been annexed as annexure-9 to the writ petition.

10. It is argued by the learned counsel for the petitioner that once a candidate in the waiting list has been offered an appointment, his right is exhausted and he

cannot be given further appointment. The petitioner in his rejoinder affidavit has also annexed the letter dated 17.8.2023 issued by the Director of Higher Education to the Special Secretary, Higher Education, Anubhag-2, U.P. Lucknow, by which the request of Dr. Manoj Kumar Rawat, respondent no. 6 for change of his appointment from Bajrang P.G. College, Dadar Ashram, Ballia to Meerut College, Meerut was rejected. The petitioner has also brings on record the order dated 13.12.2023 also, which contains the list of candidates, by which the request of respondent no. 6 for change of placement/appointment from Bajrang P.G. College, Dadar Ashram, Ballia has been rejected on the ground that there is no provision in Uttar Pradesh Higher Education Services Commission Act, 1980 for change of place of appointment.

11. During pendency of the present writ petition, the Committee of Management has issued an order of appointment of respondent no. 6 on 3.10.2024 with rider that said order of appointment is subject to outcome of present writ petition.

12. A counter affidavit has been filed by the respondent no. 6. In the counter affidavit, it is not denied that on the basis of the recommendation made by the Commission, the petitioner was allotted the institution, namely, Bajrang P.G. College, Dadar Ashram, Ballia. It is stated in the counter affidavit that in pursuance of the recommendation and directions issued under the Act of 1980, letter of appointment was not issued by the Appointing Authority of the aforesaid College. It is further stated that one Dr. Jitendra Kumar has also challenged the recommendation of respondent no. 6 dated 15.1.2024, by filing Writ-A No. 1350 of 2024, but subsequently, the said writ petition was dismissed as withdrawn by order dated 16.5.2024, as Dr. Jitendra Kumar was appointed as Principal in Agrasen P.G. College, Sikandrabad. It is further stated that Dr. Anjali Mittal has also filed Writ-A No. 3989 of 2024, challenging the recommendation dated 15.1.2024, the said writ petition is still pending.

13. The case of the respondent no. 6 is that the list of selected candidate along with wait list is valid till next select list is published by the Commission. The respondent no. 6 has further relied upon section 13(4) of the Act of 1980 and has stated that in view of Section 13(4) of the Act of 1980, wherein vacancy occurs, due to death, resignation or otherwise during the period of validity of the list referred to in sub-section (2) and such vacancy has not been notified to the Commission under Sub-Section (3) of section 12, the Director may intimate to the management the name of a candidate from such list for appointment in such vacancy. The vacancy in Meerut College, Meerut has occurred due to resignation of Dr. Sachidanand Sharma, as such, the appointment of the petitioner in Meerut College, Meerut is in accordance with sub- section (4) of section 13 of the Act of 1980. The respondent no. 6 has further relied upon a judgment reported in 2001(2) UPLBEC 1435; M.C. Yadav Vs. Director of Education (Higher Education), Allahabad and others.

14. On behalf of respondent no. 4/Secretary, U.P. Higher Education Services Commission, Prayagraj, written submission has been filed. The respondent no. 4

has relied upon section 13(4) of Act of 1980 and has stated that the petitioner being the Officiating Principal, has no right to challenge the selection of regular candidate. It is further stated that the recommendation of respondent no. 6 is in accordance with law and for the proposition that the writ petition on behest of Officiating Principal challenge the appointment of regularly selected candidate is not maintainable. He has relied upon a judgment reported in AIR 1984 All. 350; Krishna Kant Jaiswal Vs. Banaras Hindu University & others and has further relied upon in certain paragraphs of a case, reported in 1997(1) ESC 649; Km. Ragni Srivastava Vs. State of U.P. & others.

15. Neither the respondent no. 6 nor the respondent no. 4. have not denied the fact that the Director of Higher Education by order dated 13.12.2023 and Joint Director of Education by order dated 17.8.2023 has clearly stated that change of placement of selected candidate is not permissible under the provision contained in Act of 1980 and the request of respondent no. 6 was rejected.

16. Heard Shri Ashok Khare, learned Senior Counsel assisted by Shri Vinayak Mithal and Shri Ankit Shukla, learned counsel for the petitioner, Shri M.C. Chaturvedi, learned Additional Advocate General assisted by the learned Standing Counsel appearing on behalf of Respondent Nos. 1 & 2, Shri Parijat Mishra, learned counsel appearing on behalf of Respondent No. 3 as well as Shri Gagan Mehta, learned counsel appearing on behalf of Respondent No.4, Shri Avneesh Tripathi, learned counsel appearing on behalf of Respondent No. 5 and Shri Prabhakar Awasthi, learned counsel appearing on behalf of Respondent No.6.

17. With the consent of parties, the present writ petition is being decided at the admission stage.

18. Learned counsel for the petitioner has argued that Dr. Sachidanand Sharma was appointed as permanent Principal on the basis of the recommendation made by the Commission in the institution. Dr. Sachidanand Sharma resigned from the said post, as such, the post of Principal of the institution fallen vacant and accordingly, Dr. Anjali Mittal, who was senior most teacher in the institution was appointed as Officiating Principal of the institution. She has retired on attaining the age of superannuation and accordingly, the petitioner was given charge of Officiating Principal on 14.6.2024. After resignation of Dr. Sachidanand Sharma, the Director of Education (Higher) passed an order dated 15.1.2024, directing the Secretary/Manager of the Committee of Management to appoint respondent no. 6, who was in wait list of the selected candidate, at sl. no. 59 as Principal in the institution in question.

19. It is not disputed that prior to issuance of the letter dated 15.1.2024 by the Director of Higher Education, U.P. Prayagraj. the respondent no. 6 had been appointed as Principal of Bajrang P.G. College, Dadar Ashram, Ballia and a letter dated 3.8.2022 was issued by the Director of Higher Education to the Committee of Management of the said institution to issue letter of appointment to the respondent no. 6.

20. It is also not disputed that on behalf of the Director of Higher Education and Joint Director of Education an order dated 17.8.2023 has communicated to the Special Secretary. Higher Education, Anubhag-2, Lucknow that Manoj Kumar Rawat, respondent no. 6, who was in wait list of the selected candidate of Advertisement No. 49 of 2019 had been allotted Bajrang P.G. College, Dadar Ashram, Ballia and accordingly placement had been completed on 3.8.2022. It is further intimated by the Director that there is no provision in the Act or Government Order for change of allotment of the College. Further the Director of Higher Education by letter dated 13.12.2023 has intimated that there is no provision in the Act of 1980 for change of place of allotment/college. Thus, the Director of Higher Education has already rejected the prayer of respondent no. 6 for change of allotment of College. These two orders have not been denied, either by the counsel for the respondent nos. 1 & 2 nor by the respondent no. 6. Moreover, the respondent no. 6 in his counter affidavit has not stated anything about the said orders, which infact rejects the claim/request of the respondent no. 6 for change of the College. These two orders have not been challenged before any authority or Court of Law.

21. Based on the aforesaid two orders, learned counsel for the petitioner has argued that once the Director of Higher Education has rejected the claim of the respondent no. 6, there is no occasion for review of the said order and passed the impugned order, without any reference and even without recalling or cancelling the aforesaid orders, as such, the respondent Director of Higher Education has no authority to pass the order dated 14.1.2024 and review its earlier order.

22. This Court in case of Km. Ragni Srivastava (supra) has held that where sub-section (4) of Section 13 applies to any vacancy, nomination is to be made by the Director of Education from amongst the candidates whose names have not already been intimated to the management of any college and not from amongst those whose names have already been intimated to the management of any college having due regard to the preference indicated by him. Relevant paragraph of the aforesaid judgment is reproduced below:

7. We are further of the view that where sub-section (4) of Section 13 applies to any vacancy, nomination is to be made by the Director of Education from amongst the candidates whose names have (not already been intimated to the management of any college and not from amongst those whose names have already been intimated to the management of any college having due regard to the preference indicated by them. The reason is that the appointment process comes to a close after the selection process contemplated in the Act has been gone through and appointment letter has been issued by the concerned college pursuant to the recommendation of the Director of Education or where after the intimation has been sent by the Director under Section 13(3) the candidate frustrates the issue of appointment letter by saying that it is not possible for him to join the college. Any other view would cause the whole scheme unworkable

throwing the cause of higher education is dis-array. If a candidate who having been selected and appointed is to be allowed not to join the post to which he was appointed in accordance with the provisions of the Act to permit his to wait for a vacancy in the college of his choice to arise, that would amount to total disregard to the interest of the college and the students and the cause of higher education to serve only personal interest of an individual. Therefore, the appointment of Sri Ashutosh Dwivedi to the Allahabad Degree College is not in terms of Section 13(4) of the Act and is, consequently, void under Section 12(1) of the Act. His allegation that by joining the leave vacancy initially there, he ran the risk of losing employment does not have the efficacy of converting his void appointment into a valid one.

23. This Court in case of Jagdish Singh Vs. State of U.P. & others, reported in 2012 (3) ADJ 1, has also reiterated the said principle that when the selected candidate is placed in a College, he has no right to change his placement. Relevant paragraph of the aforesaid judgment is reproduced below:

20. In Chaman Singh v. State of U.P. (Supra) the Court in the judgment to which one of us was a member held:

"On the aforesaid facts, we do not find substance in the contention of learned counsel for the petitioner, that the Digamber Jain P.G. College is not a College defined under the Act, and does not have a sanctioned post of Principal in the pay scale of Rs. 16,400-22,400/- for which the petitioner was selected. After the petitioner was selected, placed and issued appointment letter by Digamber Jain P.G.. College Bulandshahr, he did not have any right to claim placement in any other college, including Gocher Mahavidyalaya, Rampur Maniharan, District Saharanpur, where he was earlier teaching. The unwillingness of Shri Babu Lal Kushwaha to work as Principal of Gocher Mahavidyalaya, Rampur Maniharan, District Saharanpur, subsequently and thereafter placement of Dr. Chandra Shekhar-respondent No. 4 as its Principal, does not give petitioner a right to change his placement. He does not have any right to claim adjustment or fresh placement after he was placed as Frincipal, Digamber Jain P.G. College Bulandshahr, and was issued appointment letter. Dr. Babu Lal Kushwaha and Dr. Chandra Shekhar Singh, both selected and placed in their respective Colleges, had mutually agreed on interchange, for which the Director of Education (Higher Education) U.P., had no objection, vide para-29 of the counter-affidavit of Dr. Harsh Vardhan, Joint Director in the Directorate of Higher Education, U.P."

24. The decision cited by the learned counsel for the respondent in the case of M.C. Yadav (supra) is not applicable in the present case, as the said case relate to the period of validity of the select list and interpretation of sub-section (4) of section-13 of Act of 1980.

25. So far as locus of petitioner to challenge the appointment of respondent no. 6 is concerned, the petitioner being appointed as Officiating Principal, has locus to challenge, the appointment of respondent no. 6, as held by the Apex Court in

case of Kamlesh Kumar Sharma Vs. Yogesh Kumar Gupta and others, reported in AIR 1998 SC 1021.

26. In the present case, the Director of Education (Higher) having passed an order for appointment of respondent no. 6 in Bajrang P.G. College, Dadar Ashram, Ballia, the appointment process come to an end and the Director is seized with the power to make recommendation or appointment of such candidate to any other College, as has been held in case of Km. Ragni Srivastava (supra). Moreover as the Director himself has rejected the claim of respondent no. 6 for his transfer from Bajrang P.G. College, Dadar Ashram, Ballia to Meerut College, Meerut by orders dated 17.8.2023 & 13.12.2023, the subsequent order dated 15.1.2024, directing the management to appoint respondent no. 6 as Principal is wholly without jurisdiction and cannot be sustained and hereby quashed.

27. Since the appointment of the petitioner by the respondent no. 3, vide order dated 3.10.2024 was subject to outcome of present writ petition, the said appointment order based on illegal order dated 15.1.2024 is also quashed.

28. The writ petition is allowed. No order as to costs.