

receipt i.e on 22.11.2024. Seemingly, the said report, which is the earliest report, appears to be the most authentic report meeting the guidelines of the FSSA as well as the Customs Department and this court finds no plausible reasons for denying the benefit of the said earliest and/or first report to the importer.

(43) The lackadaisical attitude of the department in not following the established guidelines relating to drawing samples and sending for testing cannot be given concession to in any manner. Apparently, it seems the department indiscriminately drew samples and sent to testing Centre at its own whims and wanted to keep the importer at bay during the pendency of the Appeal filed by them against the advance ruling, relating to classification of 'roasted areca nuts'. The act of the department in relying on a test report, which could not have been carried out in the first place, also seems to be ill-founded. Thus, the seizure of the commodity 'roasted areca nuts' apparently seems to be motivated and driven by malafide and cannot be allowed to be sustained.

(44) For all the above reasons, Writ Tax No. 71 of 2025 deserves to be allowed, in the peculiar facts and circumstances of the present case. This Court while directing for the release of the commodity imported as 'roasted areca nuts' classified under CTH 2008 19 20 on usual compliances of the prevailing rules, hereby quashes the seizure memo dated 10/03/2025. It is made clear that this court has only dealt with the issue relating to classification of the 'roasted areca nuts' imported by the petitioner under CTH 2008 19 20 and has not expressed any opinion on the other avenues of the import or any issue not raised in these Appeal/petitions. Further, it

is directed that since, these 'roasted areca nuts' had been imported some six months ago, the aforesaid direction for release, is subject to the condition that the importer provides for treatment of these roasted areca nuts by 'Gamma Irradiation process', wherein the moulds and insect's in nuts can be sterilized/ treated as per the proposition of treatment laid down by the Bhaba Atomic research Centre, Trombay, Mumbai, to the compete satisfaction of the authority.

(45) As a priori, both, Custom Appeal No. 3 of 2024 and Custom Appeal No. 3 of 2025 fails and Writ Tax No. 71 of 2025 is **allowed** in the above terms.

(46) There shall be no order as to cost.

(2025) 5 ILRA 1550
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.05.2025

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Writ A No. 10380 of 2024

Abdul Wahab ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
 J.P. Singh, Sr. Advocate

Counsel for the Respondents:
 C.S.C., Rakesh Kumar

Intermediate Education Act, 1921 - Back Wages - Principle of "No Work No Pay" - Not applicable where employee is prevented from working due to employer's illegal order - Petitioner's appointment was duly approved on 20.5.1994. Director of Education cancelled the approval on 27.2.1998, which was quashed by

the High Court on 5.10.2023 with a direction that "*necessary consequences will follow*". In contempt proceedings, the authorities stated in compliance affidavit that the petitioner has been treated in service w.e.f. 13.5.1998. However, DIOS denied salary on the plea that petitioner had not actually worked after cancellation of approval. *Held*: Principle of "no work no pay" does not apply where the employer itself restrains the employee from working. Once the cancellation order dated 27.2.1998 was set aside, the original approval revived, and petitioner stood reinstated w.e.f. 13.5.1998. Since the fault lay with the employer in not permitting him to work, the petitioner is entitled to back wages from 13.5.1998 till retirement along with consequential benefits. (Paras 10, 11, 12). (E-5)

(Delivered by Hon'ble Vikram D.
Chauhan, J.)

1. Heard Sri J.P. Singh, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. It is submitted by learned counsel for the petitioner that the petitioner was appointed as a Clerk in the respondent-institution and the approval was granted by the District Inspector of Schools on 28.5.1994. The petitioner joined the institution on 30.5.1994 after issuance of appointment letter. The petitioner was however, not paid salary and thereafter, on 7.6.1994 the District Inspector of Schools passed an order suspending the operation of the order dated 28.5.1994 granting approval to the appointment of the petitioner. Against the aforesaid order dated 7.6.1994, the petitioner filed Writ Petition No.24031 of 1994. In the meantime, an order was passed directing payment of salary to another employee Suhail Alam Numani on 7.6.1997, who was also selected along with the petitioner on the ground that he was selected on the post held by the petitioner. The aforesaid order dated 7.6.1997 was subject

matter of challenge by the petitioner in Writ Petition No.20339 of 1997 wherein an interim order was granted on 23.6.1997 staying the effect and operation of the order dated 29.5.1997 and 9.6.1997. The aforesaid writ petition was allowed by judgment dated 19.9.1997 and the order of the Director of Education dated 29.5.1997 was quashed and a direction was issued for fresh decision and same direction being issued in Writ Petition No.24031 of 1994. The relevant paragraph is extracted hereunder:-

"Considering the facts and circumstances of the case, the petition no.20339 of 1997 is allowed. The impugned order dated 29.5.1997 is hereby quashed and respondent no.1 is directed to decide the matter afresh in accordance with law by a reasoned order.

However, it will be open to the parties to submit a fresh representation along with a certified copy of this order and a true copy of the writ petition before respondent no.1. On such representation being made, respondent no.1 shall dispose of the same by a reasoned order within two months from the date of submission of the representation. The writ petition no.24031 of 1994 stands disposed of in view of the direction given. The parties shall bear their own costs."

3. In pursuance to the aforesaid judgment dated 19.9.1997, on 27.2.1998 the Director of Education passed an order holding the petitioner's appointment to be not in accordance with law and the claim of Suhail Alam Numani was also rejected. The petitioner thereafter, has filed Writ Petition No.9925 of 1998 challenging the order dated 27.2.1998. The aforesaid writ petition was allowed by judgment dated 5.10.2023. The operative portion of the aforesaid judgment is extracted hereunder:-

"13. Having heard the learned counsel for the parties, I find that the statutory requirement of publication of advertisement in widely circulated newspaper is in respect of appointments of Heads and teachers of an educational institution, as per Regulation 10 of Chapter 2 of the Regulations, whereas the Court does not find any such provision under Chapter 3 which is meant for filling up of post of non teaching staff.

14. Even otherwise, if the constitutional mandate enshrined under Articles 14 and 16 of the Constitution of India is looked into, the Court finds that there were two paper publications at least one of which was a widely circulated newspaper published from Varanasi, whereas the institution is located at Azamgarh and there was local publication also from another newspaper published from Azamgarh.

15. In view of the above, the selection and appointment of the petitioner on this score could not be dislodged and there being no other infirmity recorded in the order impugned, the order impugned cannot sustain.

16. The writ petition succeeds and is allowed. The order impugned dated 27.02.1998 passed by the Director of Education (Secondary), U.P. in relation to the petitioner is quashed.

17. Necessary consequences shall follow."

4. However, the aforesaid judgment dated 5.10.2023 was not complied with by the respondents as such Contempt Application (Civil) No.1033 of 2024 was filed. Notices were issued to the respondents on 15.5.2024. The respondents have filed an affidavit of compliance annexing therewith the copy of the order dated 13.5.2024 treating the petitioner in

service w.e.f. 13.5.1998. The relevant paragraph 6 of the compliance affidavit is extracted hereunder:-

"That since the deponent vide order dated 13.05.2024 has accepted the claim of the applicant and applicant is treated in service from 13.05.1998, hence the further proceeding shall be initiated in the matter regarding the payment of arrears of salary and other benefit and in completing the said exercise some more time shall take place."

5. Learned counsel for the petitioner submits that the contempt application thereafter was disposed of by order dated 15.5.2024. The order dated 15.5.2024 is extracted hereunder:

"A compliance affidavit has been filed on behalf of District Inspector of Schools today which is taken on record.

Sri Pawan Kumar, learned Standing Counsel states that officer concerned has passed an order on 13.05.2024 by which the applicant has been treated in service from 27.02.1998. Copy of which has been brought on record as annexure-1 to compliance affidavit.

In view of said fact, as the order of writ Court has been complied with, the contempt application is rendered infructuous and stands dismissed.

It is needless to say that once the opposite party passed the order on 13.05.2024 treating the applicant in service from 27.02.1998, necessary consequences will follow."

6. The order dated 15.5.2024 specifically records that the petitioner has been treated in service from 27.2.1998 and necessary consequences will follow. Thereafter, the petitioner preferred claim

for back wages from 27.2.1998 till retirement. The aforesaid claim of the petitioner has been rejected by the impugned order dated 22.6.2024 on the principle of 'no work no pay'.

7. It is submitted by learned counsel for the petitioner that the petitioner was not permitted to work by the respondents by passing order suspending the approval of the petitioner by order dated 7.6.1994 and thereafter, by cancelling the approval of the petitioner by order dated 27.2.1998. The aforesaid order dated 27.2.1998 was set aside by order dated 5.10.2023 as a consequence thereof the petitioner's approval dated 20.5.1994 stood revived. The respondents were themselves to blame for not permitting the petitioner to work on the post in question despite the approval dated 25.5.1994 which stood withdrawn by order dated 27.2.1998. The order dated 27.2.1998 was set aside by this Court by order dated 5.10.2023 as such the petitioner is entitled to the arrears of salary in view of the judgment of Hon'ble Supreme Court in the case of **Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Limited and others, 2016 (6) SCC 663** to submit that if there is a fault on the part of the employer in not taking service and the employee has been denied to join the duties on account of any order passed by the employer, then the petitioner would be entitled for back wages and the principle of 'no work no pay' would not be applicable in the facts and circumstances.

8. Learned Standing Counsel has opposed the prayer made in the writ petition and submits that the impugned order has been rightly passed. The petitioner has not been working in the institution from 27.2.1998 till date of his retirement and as such the principle of 'no

work no pay' would be applicable and the petitioner would not be entitled for arrears of salary. In this respect, paragraphs 12, 14 and 15 of the counter affidavit filed by learned Standing Counsel is extracted hereunder:-

*"12. That in compliance with order 14.03.2024 passed by Hon'ble Contempt Court in Contempt Application (Civil) No.1033 of 2024, the District Inspector of Schools, Azamgarh had decided the matter vide order dated 22.06.2024 whereby claim of the petitioner for payment of salary was rejected that he had worked in the institution as Assistant Clerk only for the period from 1st July, 1994 to 29th December, 1994 i.e. for less than six months and thereafter he had neither appeared in the institution nor performed any work. Copy of order dated 22.06.2024 passed by the District Inspector of Schools, Azamgarh is being annexed herewith and is marked as **Annexure No.CA-4** to this counter affidavit.*

14. That the date of birth of the petitioner is 03.02.1964 and he had already attained the age of superannuation on 28th February, 2024 and since he had worked and paid salary from the State exchequer from May, 1994 to November, 1994 (i.e. only for 06 months), therefore, in view of Para-4(1) of the Govt. Order dated 07.05.2017, he is not entitled for pension or any pensionary benefits because in para-4(1) of the Govt. Order dated 07.05.2017 issued by the Shiksha(8) Anubhag, Government of U.P., Lucknow it has been made clear that under Article 474 of the Civil Services Regulations, only those teachers/non-teaching staffs who had completed 10 years of qualifying service, are entitled for pension and other pensionary benefits. Copy of Govt. Order dated 07.05.2017 issued by Shiksha(8)

Anubhag, Government of U.P., Lucknow is being annexed herewith and is marked as Annexure No.CA-5 to this counter affidavit.

15. That aggrieved by the order dated 22.06.2024 passed by the District Inspector of Schools, Azamgarh the petitioner had filed instant writ petition which is devoid of any merits and is liable to be dismissed especially in view of the facts that the petitioner had worked in the institution from 1st July, 1994 to 29th December, 1994 (i.e. for only 6 months) and thereafter he had not worked in the institution, therefore, he is not entitled to claim salary on the principle of "No Work No Pay" and since he had not completed 10 years of qualifying service, he is not entitled for pension and other pensionary benefits."

9. Further submission of learned Standing Counsel is to the effect that in the previous round of litigation in Writ Petition No.24031 of 1994, which was decided on 19.9.1997 a direction was issued to decide the representation of the petitioner. Although, the writ petition was allowed however, no necessary consequence of reinstatement was granted by this Court, as a result of the same, the petitioner was not reinstated and the matter was again examined by the Director of Education in compliance of order of this Court and, therefore, there is no question of payment of arrears of salary.

10. In the present case, it is to be seen that the petitioner's appointment was duly approved by order dated 20.5.1994. Subsequently, the same was put in abeyance by order dated 17.6.1994. Thereafter, the aforesaid order of approval was cancelled by Director of Education on 27.2.1998. The order dated 27.2.1998 was set aside by this

Court by judgment dated 5.10.2023 in Writ Petition No.9925 of 1998 with a specific direction that necessary consequences will follow. The respondents in their compliance affidavit filed in the contempt proceedings have specifically stated that the applicant has been treated in service w.e.f. 13.5.1998. This fact has not been disputed by learned Standing Counsel. However, the only objection raised by learned Standing Counsel is to the effect that the petitioner has not worked in the institution during the period of cancellation of approval of the petitioner by the Director of Education. However, it is not in dispute that the order dated 27.2.1998 cancelling the approval of the petitioner has been set aside by order dated 5.10.2023 in which it has been specifically stated that necessary consequences will follow in respect of service of the petitioner. Therefore, the petitioner was reinstated w.e.f. 13.5.1998. The question with regard to the principle of 'no work no pay' would not be applicable where the employer passes an order restraining the employee from working without justification. By passing of the order dated 5.10.2023, the order dated 27.2.1998 passed by the Director of Education was set aside (the order dated 27.2.1998 pertains to the cancellation of approval of the petitioner). The aforesaid order once being set aside, the original order of approval stood revived and, therefore, the petitioner as per the admitted case of the respondents, was reinstated w.e.f. 13.5.1998. Once the petitioner has been reinstated w.e.f. 13.5.1998 and the employer is at fault in not permitting the petitioner to work, as a consequence of judgment dated 5.10.2023 which has attained finality, therefore, the aforesaid principle of 'no work no pay' would not be applicable.

11. It is further to be seen that definitely in the earlier round of litigation the matter was remanded back to the

respondent authorities. However, the respondent authorities again passed the order dated 27.2.1998 which has been set aside by this Court by order dated 5.10.2023 with a finding that necessary consequences will follow. The respondent authorities have treated the petitioner in service w.e.f. 13.5.1998 as a consequence of judgment of this Court dated 5.10.2023. Once the respondent authorities have themselves accepted the petitioner in service from 13.5.1998, then the petitioner would be entitled to back wages as the reason for not permitting the petitioner to work arising out of an order dated 27.2.1998 has been set aside by this Court by order dated 5.10.2023.

12. Accordingly, the impugned order dated 22.6.2024 passed by respondent nos.4/5 is set aside. The writ petition is allowed and the respondents are directed to pay the back wages of the petitioner from 13.5.1998 till the date of retirement within a period of three months and since the petitioner has already retired from service the pensionary benefits shall also be granted to the petitioner in accordance with law.

(2025) 5 ILRA 1555
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.05.2025

BEFORE

THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.

Writ A No. 5494 of 2025

Sanghpriya Gautam **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Counsel for the Petitioner:

Satyendra Chandra Tripathi, Shiv Poojan Yadav

Counsel for the Respondents:

Archana Singh, C.S.C.

Service Law – Assistant Teacher Appointment – Equivalence of D.Ed. and D.El.Ed.

– Petitioner completed two-year Diploma in Education (D.Ed.) from M.P. Board (2014) and qualified TET (2015) – Appointment order issued in 2024 but school not allotted; later appointment cancelled on ground that D.Ed. not equivalent to Diploma in Elementary Education (D.El.Ed.) as required under NCTE Regulations – Challenge thereto.

Held: NCTE notification (23.08.2010) prescribes "Diploma in Elementary Education (by whatever name known)" as minimum qualification. However, syllabus comparison reveals substantial differences: D.El.Ed. focuses on child psychology, elementary education pedagogy, and inclusive education, while D.Ed. is more general, oriented towards upper primary. Therefore, D.Ed. cannot be treated as equivalent to D.El.Ed. Appointment rightly cancelled. No interference warranted.

Writ Petition dismissed.

List of Cases cited:

1. Harsh Kumar & Anr. Vs St. of U.P. & ors., 2014 0 Supreme (All) 276 (affirmed by SC)
2. Km. Pallavi Vs St. of U.P. & ors., (2018) 6 ADJ 329
3. Anju Kumari & ors. Vs St. of U.P. & ors., Writ A No.41992 of 2016, decided on 18.01.2018
4. Smt. Mala Yadav & ors. Vs St. of U.P. & ors., Neutral Citation No. 2024:AHC:26366
5. U.P. Basic Shiksha Parishad Vs St. of U.P. & ors. (Division Bench judgment)

(Delivered by Hon'ble Saurabh Shyam Shamschery, J.)