

or antedating the official records. From perusal of the recommendation of the screening committee dated 14.07.2020, it is evident that after considering the work and conduct of the petitioner, the screening committee had recorded that the petitioner is indolent, quarrelsome, disturber of peace, religious bigot, harasser of females and scheduled caste people, malignant and wholly useless employee and, the same has been confirmed by the Commissioner, Lucknow Division, Lucknow.

18. The petitioner's misconduct has been taken note of in detail in the minutes and, need not to be further dwelled upon by this Court. From the pleadings, it is evident that the petitioner had approached this Court for exercising its extraordinary jurisdiction by adopting falsehood, misrepresentation and concealing the material facts and, thus, abusing the process of the Court. He obtained the interim order on the basis of false and misleading averments and concealing material facts. One, who approaches this Court, is expected to come with clean hands inasmuch this Court exercises writ jurisdiction to maintain rule of law. The petitioner has not approached this Court with clean hands and, thus, the writ petition is liable to be dismissed on this ground alone. Further, from looking at the service record of the petitioner, the petitioner has become 'dead wood' in the organization and, is wholly unuseful. The employer is entitled to remove the dead woods from service, if on consideration of the service record, it is found that the work of such an employee has not been upto the mark or he has become 'dead wood' for the organization. This Court does not find from the pleadings that the order has been passed as punishment and, therefore, the sole ground, urged by the petitioner, has no substance.

19. In view of aforesaid, for making false and incorrect averments and misrepresenting this Court, concealing material facts from the Court, the writ petition is **dismissed and a cost of Rs. 25,000/- (Rupees twenty five thousand) is imposed** upon the petitioner to be deposited in the 'Army Battle Casualties Welfare Fund' within a period of four weeks, failing which the District Magistrate concerned shall recover the same, as arrears of land revenue and, deposit in the account of Army Battle Casualties Welfare Fund.

20. Let a copy of this order be forwarded to the District Magistrate concerned for compliance.

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**(2022)02ILR A876**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 17.02.2022**

**BEFORE**

**THE HON'BLE DINESH KUMAR SINGH, J.**

Writ-A No. 4215 of 2019

**C/M Sri Shanker Junior High School & Ors.**  
**...Petitioners**

**Versus**

**State of U.P. & Ors.** **...Respondents**

**Counsel for the Petitioners:**

Pt. S. Chandra, Manoj Kumar Pandey

**Counsel for the Respondents:**

C.S.C., Ajay Kumar, Dwijendra Nath Pandey

**A. Service Law - U.P. Basic Education (Teachers) Service Rules, 1981-challenge to-forged appointment-petitioners did not fulfill the eligibility condition for appointment on the post of Head Master and Asst. Teacher-if the petitioners do not have essential qualification as prescribed under the statute, their appointment is void ab initio and they cannot claim any**

**benefit of any alleged inaction on the part of the Basic Shiksha Adhikari-The void and illegal appointments would not become valid and legal if the Basic Shiksha Adhikari did not take decision within a period of one month as required under Rule 10 of Rules, 1978-In the present case, the selection has not been made free and fair inasmuch as three candidates had received envelopes containing blank papers sent by petitioner no. 1 intimating the date of interview-if the Basic Shiksha Adhikari was not granting approval, petitioner no.1 could have approached the higher authorities or the Court against the alleged inaction of the Basic Shiksha Adhikari, but petitioner no. 1 went ahead to advertise the posts-Hence, no irregularity found in the impugned order.(Para 1 to 47)**

**The writ petition is dismissed. (E-6)**

**List of Cases cited:**

Sanjay Kumar Singh Vs St. of U.P. & ors. (2019)  
5 ADJ 583 LB

(Delivered by Hon'ble Dinesh Kumar  
Singh, J.)

On C.M. Application No.78457 of  
2021

Herd.

This application seeks substitution of  
the legal heirs of Aditya Kumar, petitioner  
no.3

Application is *allowed*.

Necessary amendment to be carried  
out in the memo of parties during the  
course of the day.

***On Memo of Writ Petition***

1. The present writ petition has been  
filed seeking quashing of the order dated  
3.12.2018 passed by the Director of  
Education (Basic), Government of Uttar  
Pradesh as well as the order dated 5.5.2012  
passed by the Basic Shiksha Adhikari,  
Auraiya. Further prayer is for a Writ of  
Mandamus/direction to the opposite parties  
to accord approval to the appointment of  
petitioner nos.2 and 3 and pay their salary  
w.e.f. 24.12.2011 and 2812.2011 along  
with arrears of salary etc.

2. Petitioner no.1 is the committee of  
management of Sri Shanker Junior High  
School, Sirsani, Sahar, District Auraiya and  
petitioner nos.2 and 3 are claiming to have  
been appointed in the said Junior High  
School by the committee of management  
and are working in the said Junior High  
School on the post of Head Master and  
Assistant Teacher (Basic) from the date of  
their appointment.

3. The institution is recognized as  
Junior High School as per the provisions of  
the Uttar Pradesh Basic Education Act and  
it is governed under the provisions of the  
Uttar Pradesh Basic Education Act, 1972  
and the Rules and Regulations framed  
thereunder. It is said that the said Junior  
High School was established in the year  
1982-83 and recognition was granted on  
11.4.1983 for imparting education up to  
Class-VIII. The State Government granted  
grant-in-aid to the said Junior High School  
in the year 1998 and thus, the provisions of  
Uttar Pradesh Junior High School (Payment  
of Salaries of Teachers and Other  
Employees) Act, 1978 (for short "Act,  
1978") were made applicable to the  
teaching and non-teaching staff of the said  
Junior High School. The recruitment and  
conditions of services of Teachers are  
governed under the provisions of U.P.

Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Services of Teachers) Rules, 1978 (for short "Rules, 1978").

4. As per the averments made in the writ petition, the Government had sanctioned one post of Head Master, 8 Assistant Teachers, one clerk and 3 Class-IV posts in the said Junior High School. It is further said that on 30.6.2007, post of Head Master fell vacant in the High School due to retirement of Sri Jagdish Narain Agnihotri from the said post and, thereafter, two posts of Assistant Teachers fell vacant due to retirement of two teachers, namely, Vishnu Dutt Tripathi and Rajendra Prasad Agnihotri on 30.6.2007 and 30.6.2010 respectively. It is also said that management of the school had written various letters and reminders to the Basic Shiksha Adhikari to grant permission and send Observer for making appointment against the aforesaid vacant posts of Head Master and Assistant Teachers. When no action was taken by the Basic Shiksha Adhikari, petitioner no.1 filed Writ-A No.25139 of 2010 before this Court at Allahabad. This Court disposed of the said writ petition vide order dated 6.5.2010, which reads as follow:-

*"Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.*

*Supplementary affidavit filed today is taken on record.*

*Petitioner before this Court claims to be Manager for Shree Shankar Junior High School, Sirsani, District Auraiya. He has made an application for grant by permission to initiate the process of selection on the post of Headmaster by making appropriate advertisement. It is stated that the post of Headmaster is lying*

*vacant since July 2007. Similarly, there are other vacancies on the post of Assistant Teachers also.*

*Prayer so made is opposed by Shri S.K. Mishra, Advocate on the ground that the petitioner has been removed from the office of the Manager of the Institution and therefore he has no right to maintain the petition.*

*This Court is of the opinion that regular selection on the post of Headmaster in accordance with the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Services of Teachers) Rule, 1978 at the earliest in view of Rule 20 which permits temporary appointment for 6 months only. Let the Basic Shiksha Adhikari pass appropriate orders on the application made for permission to advertise. Caveator is at liberty to point out that the permission to hold selections may be granted to the duly constituted and recognised committee of management only.*

*Subject to the aforesaid observation made hereinabove, writ petition is disposed of."*

5. It is further said that the committee of management sent a letter dated 31.5.2010 to the Basic Shiksha Adhikari to give permission for the advertisement for making appointment on the vacant post of Head Master. However, no action was taken by the Basic Shiksha Adhikari on the said request despite the order passed by this Court on 6.5.2010 in the aforesaid writ petition. Thereafter, the committee of management issued advertisement for filling up the vacant posts of Head Master and Assistant Teachers in two newspapers, Swatantra Bharat and Dainik Dinrat on 12.10.2011 and the date for holding interview was fixed on 30.10.2011. The said advertisement has been annexed as

Annexure No.4 to the writ petition, which on translation reads as under :-

*"For filling up three unreserved posts (one post of Head Master and two posts of Assistant Teachers) and one unreserved post of Class-IV in Shiv Shanker Junior High School, Auraiya, the candidates having qualifications as prescribed in the Basic Education Act in the pay scale fixed by the Government, may send their applications along with complete details and certified photocopies in respect of the claim regarding educational qualifications training, experience, age etc. by Registered Post or be given at the school by 27.10.2011 For interview, the candidates should come with original documents on 30.10.2011 at 10.30 AM."*

*The candidates, who had sent their applications before the advertisement are not required to send again applications."*

6. It would be relevant to note here that the advertisement did not give the details of the qualifications, place of interview and the pay scale, which is otherwise required to be specifically stated in the advertisement. The date for holding interview was extended further to 11.11.2011 and request was sent to the Basic Shiksha Adhikari for sending the observer.

7. The Basic Shiksha Adhikari vide letter dated 4.11.2011 demanded information regarding creation of posts in the school and it is said that the Manager of the School personally met the Basic Shiksha Adhikari and gave necessary information as desired by him. It is said that when despite various requests, observer was not sent for participating in the interviews, the committee of management held the interviews for

selecting the candidates for one post of Head Master and two posts of Assistant Teachers and one post of Peon on 11.11.2011. The selection committee found petitioner no.2 most suitable candidate for appointment on the post of Head Master and requisite documents pertaining to selection of Smt. Madhu Tiwari, petitioner no.2 were sent to the Basic Shiksha Adhikari for granting approval on 14.11.2011.

8. It is further submitted that Aditya Kumar, petitioner no.3 and Awadhesh Kumar were selected on two posts of Assistant Teacher and the proceedings of selection committee in respect of them were also sent to the Basic Shiksha Adhikari on 14.11.2011 for approval.

9. Basic Shiksha Adhikari did not take any action for approving the appointments of one post of Head Master and two posts of Assistant Teachers in the school and, therefore, the committee of management issued appointment letter dated 21.12.2011 appointed Smt. Madhu Tiwari, petitioner no.2 on the post of Head Master and in pursuance thereof, petitioner no.2 joined the school on 24.12.2011 on the post of Head Master. Aditya Kumar, petitioner no.3 joined the post of Assistant Teacher on 28.12.2011 having been issued appointment letter dated 21.12.2011. However, Awadhesh Kumar, another candidate, who was selected for the post of Assistant Teacher, did not join the school. Therefore, appointment letter was issued to one Muneesh Kumar Shukla, who was at serial no.2 in the merit list on 6.1.2012, who joined the school on 10.1.2012.

10. Information regarding joining of the school by the aforesaid three selected persons was given to the Basic Shiksha

Adhikari. Again request was made for approval of the aforesaid appointments of the Head Master and two Assistant Teachers and for release of their salary from the date of their respective joining. When no action was taken by the Basic Shiksha Adhikari, the committee of management filed Writ-A No.75497 of 2011 before this Court at Allahabad. The said writ petition was disposed of by this Court on 29.2.2012 with following directions :-

*"(i) Respondent No.3 shall nominate a person as contemplated under Rule 9 of Rules 1978 to be the member of Selection Committee forthwith and in any case within one week from the date of production of a certified copy of this order before him.*

*(ii) Regarding his conduct, inaction and inefficiency shown, as discussed above, Secretary (Secondary Education) shall take appropriate disciplinary action and complete proceedings with further information/communication of the ultimate order passed by him, to this Court, within six month from today.*

*(iii) On the laxity shown by S.P. Auraiya, the matter shall be looked and enquired by State Government with completion of proceedings within six months.*

*(iv) The petitioner shall be entitled to cost which I quantify to Rs.10,000/- against respondent No.3 which shall be paid by him to the petitioner within one week failing which on an application submitted by petitioner before Registrar General, he shall issue a requisite certificate to recover the amount of cost as arrears of land revenue from respondent no.3."*

11. It is relevant to note here that the Basic Shiksha Adhikari took a specific stand before the Court in the said writ

petition that in pursuance to the judgement and order dated 6.5.2010 passed by this Court in Writ-A No.25139 of 2010, the Basic Shiksha Adhikari had passed the order dated 13.1.2012, which was dispatched on 16.1.2012, rejecting the petitioners' request with regard to selection of two Assistant Teachers, but had permitted the selection for the post of Head Master by taking fresh steps for advertisement etc. subject to restriction of observance of Teacher's Eligibility Test and other directions and notifications of National Council for Teacher Education. The said order was never challenged by the petitioners. In due deference of the order passed by this Court on 29.2.2012 in Writ - A No.75497 of 2011, the Basic Shiksha Adhikari nominated Sri Jagdish Kumar Srivastava, Khand Shiksha Adhikari, Bhagya Nagar, Auraiya as observer in the selection committee.

12. Thereafter, petitioner no.1 filed another writ petition being Writ-A No.16973 of 2012 before this Court at Allahabad against nomination of the observer and for payment of salary to the alleged selected Head Master and the Assistant Teachers. However, the said writ petition was dismissed by this Court vide order dated 5.4.2012. This Court took note of the fact that the Basic Shiksha Adhikari had only nominated the Khand Shiksha Adhikari, Bhagya Nagar as his nominee to the selection committee to be constituted for appointment on the post of Head Master of the institution and, therefore, no interference was called for at that stage. It was further said that as and when the selection process would get completed and papers forwarded to the Basic Shiksha Adhikari for approval, the Basic Shiksha Adhikari would examine all aspects of the mater for approving or disapproving the

selection. The order dated 5.4.2012 reads as under:-

*"Heard learned counsel for the petitioner, learned counsel for the District Education Officer and learned Standing Counsel for the State-respondents.*

*Under the order impugned, the District Basic Education Officer has only nominated the Khand Shiksha Adhikari, Bhagyanagar as his nominee to the Selection Committee to be constituted for appointment on the post of headmaster of the institution.*

*No interference at this stage of the proceedings is called for. As an when, selection process is completed and papers are forwarded to the District Basic Education Officer for approval, petitioner will have every opportunity to question the said selection on the ground that the selection has not been made by the competent Committee of Management. It is for the District Basic Education Officer to examine all aspect of the mater while approving or disapproving the said selection.*

*The present writ petition is dismissed subject to the observations made above."*

13. In compliance of the order dated 5.4.2012 passed by this Court in the aforesaid writ petition, the Basic Shiksha Adhikari vide order dated 5.5.2012 rejected the financial approval for disbursing the salary to petitioners no.2 and 3. On the basis of the report of the Observer, the Basic Shiksha Adhikari held that the advertisement was not issued as per the provisions of Rules, 1978. The minimum experience for appointment on the post of Head Master was five years and not three years and the age was 30 years and not 25 years. The committee of management had not submitted any experience certificate,

which was taken into consideration in the interview held on 8.4.2012 nor experience of the candidates was mentioned by the committee of management in its report.

14. It was further said by the Basic Shiksha Adhikari that for appointment on the post of Assistant Teacher, only nine applications were received till the last date of applications, however, in the interview held on 8.4.2012, it was said that 19 applications were received. It was held by the Basic Shiksha Adhikari that if on the last date of submission of application forms, only nine applications were received, then how on the date of interview, there could be 19 application forms and, therefore, the whole selection was bogues and suspicious one. Three candidates, namely, Vaibhav Pandey, Arti Pandey and Savita Kumari had made available the letters for interview received by them, in which only the blank paper was kept inside the envelop. It was further said that under Right to Education Act, 2009, National Council for Teacher Education had made compulsory for Teachers to be appointed for Class-I to VIII, vide notification dated 23.8.2010 that a candidate must possess minimum qualification plus Teachers Eligibility Test conducted by the State Government. Two Teachers appointed did not possess the Teachers Eligibility Test and, therefore, finding that the selection and appointment of the Head Master, two Assistant Teachers and one Peon was against the Rules, 1978, the Basic Shiksha Adhikari declined the financial approval for the said appointments.

15. It is also said that the committee of management received a letter dated 30.4.2013 sent by the Basic Shiksha Adhikari on 3.5.2013 to note that the Basic Shiksha Adhikari had appointed Kaushal

Kishore Trivedi, opposite party no.5 on the post of Head Master, Saurabh Kumar Pandey and Km. Beena, opposite parties no.6 and 7 as Assistant Teachers and gave approval. The allegation is that the said appointment was made in the office of the Basic Shiksha Adhikari with the collusion of Sri Jagdish Kumar Srivastava, Khand Shiksha Adhikari. The committee of management, however, did not issue appointment letters to the aforesaid alleged selection of opposite parties no.5, 6 and 7 by the Basic Shiksha Adhikari. Further, the Basic Shiksha Adhikari forcibly gave joining to opposite party no.5 on the post of Head Master and opposite parties no.6 and 7 on the posts of Assistant Teacher respectively.

16. It is also said that one Mohan Lal Dubey, resident of Village Darashah, Post Sahar, District Auraiya sent a complaint regarding the alleged selection made by the Basic Shiksha Adhikari of opposite parties no.5, 6 and 7 in the school to the Regional Assistant Director of Education (Basic), Kanpur Region, Kanpur. The Regional Assistant Director of Education (Basic) vide letter dated 8.8.2013 directed the Basic Shiksha Adhikari to produce the entire record pertaining to the aforesaid alleged selection held on 21.4.2013 by him.

17. When despite several complaints regarding alleged forged appointments made by the Basic Shiksha Adhikari of opposite parties no.5, 6 and 7, did not yield any result, petitioner no.1 filed a detailed complaint before the Secretary of Education (Basic), Uttar Pradesh, Lucknow with copy to the Director of Education (Basic), opposite party no.2.

18. When no action was taken on the complaint regarding alleged illegal

appointments of opposite parties no.5, 6 and 7, petitioner no.1 filed Writ Petition No.6877 (SS) of 2018 before this Court. This Court disposed of the said writ petition vide order dated 13.3.2018 with direction to the Director of Education (Basic) as well as Secretary of Education (Basic), U.P., Lucknow to look into the issue and pass appropriate order strictly in accordance with law by providing an opportunity of hearing to the aggrieved persons expeditiously, say, within a period of four months. Petitioner no.1 was given liberty to provide copy of other documents and also list of aggrieved persons to the competent authority so that disposal of the representation dated 8.1.2018 of petitioner no.1 would be made strictly in accordance with law by following the principles of natural justice to all the parties concerned. In compliance of the order dated 13.3.2018 passed by this Court in the aforesaid writ petition, the Director of Education (Basic) decided the representation of the petitioner no.1 vide detailed impugned order dated 3.12.2018.

19. The Director of Education (Basic) held that vide letter dated 5.5.2012 issued by the Basic Shiksha Adhikari, Auraiya, the committee of management of the school was given permission for issuing new advertisement for filing up the said posts. In pursuance thereof, interviews were held on 21.4.2013 and Sri Jagdish Kumar Srivastva, Khand Shiksha Adhikari was present as observer in the proceedings for selection held on 21.4.2013 and he made signature on the selection proceedings. Manager and members of the committee of management and the candidates earlier selected by the committee of management had made complaints about the said selection and it was said that the selection proceedings were sham and a mere

formality and the papers were prepared in the office of the Basic Shiksha Adhikari. Considering the said complaint, the Basic Shiksha Adhikari, Auraiya was directed to make available the original documents/minutes of proceedings of selection held in pursuance to the interview held on 21.4.2013.

20. From perusal of the original papers in respect of the alleged selection, it transpired that in the proceedings, which were made available in respect of the proposal etc. by the Manager, Shiv Prakash Dubey on 13.4.2012 in the office of the Basic Shiksha Adhikari, Auraiya, the signatures in the said papers were completely different from the signatures on the papers earlier sent regarding selection in the office of the Basic Shiksha Adhikari. The Manager, Shiv Prakash Dubey had filed an affidavit and said that the selections made subsequently were completely forged and forged signatures were made on the selection proceedings. Sri Rakesh Bihari Shukla, another member of the selection committee, in his affidavit had specifically said that his signatures were forged in the proceedings of selection held by the Basic Shiksha Adhikari. There were quite difference in the selection proceedings of 2011 and 2012 and it was said that, prima facie, the proceedings of selection sent on 13.4.2012 appeared to be forged.

21. It was said that approval for selection and appointment made on the basis of forged proceedings sent vide the letter dated 13.4.2012 of Kaushal Kishore Tripathi on the posts of Head Master and Saurabh Kumar Pandey and Km. Beena on the post of Assistant Teacher were result of the forged documents, for which concerned Prabudh Kumar, Dealing Clerk, Sri Jagdish

Kumar Srivastava, the then Khand Shiksha Adhikari and the observer and the Basic Shiksha Adhikari were found completely guilty.

22. So far as the selection and appointment of petitioner nos.2 and 3 made by the committee of management in pursuance to the proceedings held without permission by advertising the same on 12.10.2011 in Swatantra Bharat newspaper, it was said that the said selection proceedings were not in accordance with the provisions of the Act and the Rules and it was held so by this Court in judgment and order dated 29.2.2012 passed in Writ-A No.75497 of 2011 and, therefore, the same was declared illegal. The Director found that for giving financial approval to the appointments of petitioner no.2 on the post of Head Master and petitioner no.3 and Maneesh Kumar on the post of Assistant Teacher was not possible under law.

23. In view thereof, the Director was of the view that appointment of Kaushal Kishore Tripathi on the post of Head Master and Saurabh Kumar Pandey and Km. Beena on the posts of Assistant Teacher and for their payment of salary was not possible and for making selection and appointment on the basis of forged papers, he held Prabudh Kumar, Dealing Clerk, Jagdish Kumar Srivastava, then then Khand Shiksha Adhikari and observer and Manoj Kumar Gupta, Basic Shiksha Adhikari found guilty and directed for placing them under suspension and institution of disciplinary proceedings against them.

24. Sri Pt. S. Chandra, learned counsel for the petitioners submits that petitioners no.2 and 3 were appointed following due process of law as envisaged



in Rules, 1978 and their appointments were deemed to have been approved on 5.1.2012. He further submits that petitioners no.2 and 3 are continuously discharging their duties w.e.f. 24.12.2011 and 28.12.2011 receptively. He also submits that petitioners no.2 and 3 were fully eligible and qualified for the posts of Head Master and Assistant Teacher. It is further submitted that the impugned orders are wholly illegal and unsustainable. It is also submitted that vide notification dated 5.12.2012, Rules of 1978 were amended, whereby the requiremenet of qualifying the Teachers Eligibility Test has been made compulsory for the appointment of Assistant Teacher (Basic). The said notification had come into force w.e.f. 1.7.2012. It is further submitted that all relevant documents pertaining to the selection of petitioners no.2 and 3 were sent by petitioner no.1 to the Basic Shiksha Adhikari on 14.11.2011. As per Rule 10(5)(iii) of Rules, 1978, if the Basic Shiksha Adhikari does not take decision to approve the appointments, the same would be deemed to have been approved after 30 days. This Court vide judgement and order dated 5.4.2012 gave direction to the Basic Shiksha Adhikari to take decision for approval, but nothing was done by the Basic Shiksha Adhikari and instead he adopted forged and fabricated selection process in his office for making selection and appointment of opposite parties no.5, 6 and 7. It is, therefore, submitted that writ petition may be allowed and the opposite parties be directed to grant financial approval to the appointments of petitioners no.2 and 3 from the date of their joining in the institution.

25. In support of his submission, learned counsel for the petitioners has placed reliance on the judgment rendered in

the case of *Sanjay Kumar Singh vs. State of U.P. and others*, 2019 (5) ADJ 583 (LB).

26. On the other hand, Sri Ashutosh Shukla, learned Standing Counsel and Sri Ajay Kumar, learned counsel for opposite parties no.3 and 4 have supported the impugned orders and has submitted that this Court in its judgment and order dated 29.2.2012 passed in Writ-A No.75497 of 2011 did not find the claim of the petitioners for financial approval as valid and, therefore, directed for nomination of a person as contemplated under Rule 9 of Rules, 1978 to be the member of the selection committee. Once this Court itself did not find selection held valid and directed Basic Shiksha Adhikari for nominating a person in the selection to be held afresh after issuing fresh advertisement, the financial approval can not be granted in pursuance to the earlier selection, which was not in accordance with law. It is further submitted that this Court in subsequent order dated 5.4.2012 passed in Writ-A No.16973 of 2012 did not find any ground to interfere with the nomination of Khand Shiksha Adhikari, Bhagyanagar, Auraiya as nominee in the selection committee to be constituted for appointment on the posts of Head Master and Assistant Teacher and, it was said that the Basic Shiksha Adhikari would examine the selection process for giving approval or disapproval after selection. It is further submitted that once this Court has directed that their selection is invalid, there is no question of granting approval to the earlier selection inasmuch the same was cancelled vide order dated 5.5.2012 by the Basic Shiksha Adhikari, which was never challenged before this Court by the petitioners except in the present writ petition.

27. It is further submitted that Director had considered the order dated 5.5.2012 passed by the Basic Shiksha Adhikari in his order dated 3.12.2018 impugned in this writ petition. The Director has found that the order dated 5.5.2012 was in accordance with law. The said order dated 5.5.2012 was passed by the Basic Shiksha Adhikari in compliance of the order dated 29.2.2012 passed in Writ-A No.75497 of 2011. The selection and appointment of the teaching and non-teaching staff of the school is required to be made strictly in accordance with the provisions of Rules, 1978 as well as, as per the relevant extant Government Orders. It is also submitted that in the letter dated 24.4.2011 allegedly written by petitioner no.1 seeking permission for advertisement and demand of observer, there were cuttings and erasing in the sanctioned posts, as such the same was being got verified, but before the said exercise could get completed, petitioner no.1 illegally selected and appointed petitioners no.2 and 3 and submitted their papers for financial approval.

28. It is also submitted that as per Rule 4(2)(iii) of Rules, 1978, in which fifth amendment was made in the year 2008, minimum five years experience was required for the post of Head Master in place of three years teaching experience. The minimum age of the Head Master has been provided as 30 years in place of 25 years, but in the alleged interview proceedings dated 8.4.2012, no documents regarding experience had been enclosed.

29. It is further submitted that till the last date of receipt of applications, only nine application forms were received, however, in the interview, it was said that 19 application forms were received. The

Director has found substance in the allegations that three candidates, namely, Vaibhav Pandey, Arti Pandey and Savita Kumari vide letter dated 29.3.2012 informed that they had received the registered envelop dated 24.3.2012 sent by the institution having blank papers. It is further submitted that under the Right to Education Act, 2009, National Counsel for Teacher Education had issued notification dated 23.8.2010 for having the minimum eligibility criteria for the Teachers of Class-I to VIII to qualify the Teachers Eligibility Test conducted by the State Government. It is further submitted that petitioner no.1 had selected and appointed ineligible persons on the post of Head Master and Assistant Teacher and Class-IV employee and, therefore, financial approval has not been granted.

30. Once the Director has held that appointments of Kaushal Kishore Tripathi on the post of Head Master and Saurabh Kumar Pandey and Km. Beena on the post of Assistant Teachers were on the basis of forged documents in the institution and the selection of these candidates was made in collusion and conspiracy with the Basic Shiksha Adhikari, Dealing Clerk and Khand Shiksha Adhikari, the Basic Shiksha Adhikari had cancelled the selection of such persons and disciplinary proceedings have been initiated against the guilty officials. Therefore, submission is that petitioners no.2 and 3 are not eligible to be appointed and before the sanctioned strength could be verified, in a hurried manner, the advertisement was issued. The advertisement is also illegal inasmuch as it did not contain the details of the post, qualification, eligibility criteria, experience, pay scale and the place of interview etc. It is submitted that correct decision has been taken for not granting the

financial approval and this Court may not grant any indulgence in this writ petition.

31. I have considered the submissions advanced on behalf of the learned counsel for the petitioners as well as by the learned counsel for the opposite parties and perused the record.

32. It is not in dispute that the Junior High School in question is governed under the provisions of Act, 1972 and the Rules framed thereunder as well as the provisions of Uttar Pradesh Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978 and the provisions of Rules, 1978. The State Government has framed Rules in pursuance to the powers vested under Section 19 of the Act, 1972, which are called "Uttar Pradesh Basic Education (Teachers) Service Rules, 1981".

33. Rule 4 of the Rules, 1978 provides the minimum qualification for the post of Assistant Teacher and Head Master of a recognized School, which reads as under :-

**"4. Minimum qualification.** - (1) *The minimum qualifications for the post of Assistant Teacher of a recognised school shall be a Graduation Degree from a University recognised by U.G.C., and a teachers training course recognized by the State Government or U.G.C. or the Board as follows :-*

1. *Basic Teaching Certificate.*
2. *A regular B.Ed. degree from a duly recognized institution.*
3. *Certificate of Teaching.*
4. *Junior Teaching Certificate.*
5. *Hindustani Teaching Certificate.*

(2) *The minimum qualifications for the appointment to the post of head master of a recognized school shall be as follows -*

(a) *A degree from a recognized University or an equivalent examination recognized as such.*

(b) *A teacher's training course recognized by the State Government or U.G.C. or Board as follows :-*

1. *Basic Teaching Certificate.*
2. *A regular B.Ed. degree from a duly recognized Institution.*
3. *Certificate of Teaching;*
4. *Junior Teaching Certificate.*
5. *Hindustani Teaching Certificate.*

(c) *Five years teaching experience in a recognized school]."*

34. It is also important to note here that how the advertisement has to be published. Rule 7 of Rules, 1978 provides the procedure for issuing advertisement, which reads as under :-

**"7. Advertisement of vacancy.** - [(1) *No vacancy shall be filled, except after its advertisement in at least two newspapers one of whom must have adequate circulation all over the State and the other in a locality the school is situated.]*

(2) *In every advertisement and intimation under clause (1), the Management shall give particulars as to the name of the post, the minimum qualifications and age-limit, if any, prescribed for such post and the last date for receipt of applications in pursuance of such advertisement."*

35. From perusal of Rule 7 of Rules, 1978, it is evident that Rule 7(2) provides that the advertisement for the post shall give particulars as to the name of the post, the minimum qualifications and age-limit, if any, prescribed for such post and the last date for receipt of applications in pursuance of such advertisement. The advertisement as noted above, does not satisfy the

conditions of Rule 7 of Rules, 1978. If the advertisement is defective, it is sufficient to cancel the selection and for not giving approval to the appointment made in pursuance to such a defective advertisement.

36. The defect in advertisement would be fatal in selection proceedings. The law is well settled that a defective advertisement may preclude the eligible candidates from applying for selection. A valid advertisement ensure the recruitment process as it enable the eligible candidates to participate in the selection. In case such eligible candidates are prevented from participating in the selection due to the defect in the advertisement, the selection proceedings would stand vitiated.

37. When the statute provides for issuing advertisement in a particular manner and the advertisement has not been issued in compliance of the said statutory prescription, the selection made in pursuance to the said defective advertisement would get vitiated.

38. From perusal of the advertisement, it would be evident that the advertisement was not issued for making selection from the most eligible candidates, but an information was published for holding the interview. Such advertisement is wholly defective and cannot be considered to be issued in accordance with requirement of Rule 7 of Rules, 1978. It is also relevant to note here that requirement is that the advertisement should be issued in two newspapers having wide circulation. Newspaper, Dainik Dinrat, wherein the advertisement was also issued along with advertisement in Swatantra Bharat virtually has no circulation. Thus, the

advertisement was highly defective on this ground also inasmuch the advertisement was not issued in two newspapers having wide circulation.

39. U.P. Basic Education (Teachers) Service Rules, 1981 provides the essential qualification for appointment of the Head Master of a Junior High School. Minimum age for appointment on the post of Assistant Teacher and the Head Master is provided under Rule 8 of the Rules, 1978, which reads as under:-

*"8. Age limit. - The minimum age shall on the first day of July of the academic year following next after the year in which the advertisement of the vacancy is made under Rule 7 be :*

*(1) In relation to the post of an Assistant Teacher 21 years.*

*(2) In relation to the post of Head Master 30 years.]"*

40. It is also important to note here that after coming into force the Right to Education Act, 2009, National Council for Teacher Education had issued notification dated 23.8.2010 for providing the minimum eligibility criteria for the Teachers of Class-I to VIII as well as requirement of quantifying the Teacher's Eligibility Test conducted by the State Government. It can not be disputed that the eligibility as prescribed by the notification dated 23.8.2010 for appointment of Teachers was made applicable to all the Primary and Junior High Schools since the date of issuance of the notification even though the Rules were amended in 2012 to incorporate the said qualification. Thus, the appointment of Assistant Teachers made after 23.8.2010 has to satisfy the qualifications as prescribed in the said notification. The constitution of the

selection committee and procedure for selection are provided in Rules 9 and 10 of Rules, 1978, which read as under:-

**"9. Selection Committee.** -For appointment of Headmaster and Assistant Teacher in institutions other than minority institutions and in the minority institutions, tire Management shall constitute a Selection Committee as follows :]

A - Institutions other than Minority Institutions :

(i) For the post of headmaster :

(1) Manager;

(2) a nominee of the District Basic Education Officer;

(3) a nominee of the Management;

(ii) For the post of Assistant Teacher;

(1) Manager;

(2) Headmaster of the recognised school in which appointment is to be made;

(3) a nominee of the District Basic Education Officer;

B - Minority Institutions :

(i) For the post of Headmaster;

(1) Manager;

(2) two nominees of Management;

(ii) For the post of Assistant Teacher;

(1) Manager;

(2) Headmaster of the recognised school in which the appointment is to be made;

[(3) A specialist in the subject nominee by the District Basic Education Officer.]

**10. Procedure for selection.** -(1) The Selection Committee shall, after interviewing such candidates as appear before it on a date to be fixed by it in this behalf, of which due intimation shall be given to all the candidates, prepare a list containing as far as possible the names, in order of preference, of three candidates found to be suitable for appointment.

(2) The list prepared under clause (1) shall also contain particulars regarding the date of birth, academic qualifications and

teaching experience of the candidates and shall be signed by all the members of the Selection Committee.

(3) The Selection Committee shall, as soon as possible, forward such list, together with the minutes of the proceedings of the Committee to the management.

(4) The Manager shall within one week from the date of receipt of the papers under clause (3) send a copy of the list to the District Basic Education Officer.

(5) (i) If the District Basic Education Officer is satisfied that -

(a) the candidates recommended by the Selection Committee possess the minimum qualifications prescribed for the post;

(b) the procedure laid down in these rules for the selection of Headmaster or Assistant Teacher, as the case may be, has been followed he shall accord approval to the recommendations made by the Selection Committee and shall communicate his decision to the Management within two weeks from the date of receipt of the papers under clause (4).

(ii) If the District Basic Education Officer is not satisfied as aforesaid, he shall return the papers to the Management with the direction that the matter shall be reconsidered by the Selection Committee.

(iii) If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of the papers under clause (4), he shall be deemed to have accorded approval to the recommendations made by the Selection Committee."

41. The next issue which needs to be considered, is that whether petitioner no.1 was justified in going ahead with the selection process when the Basic Shiksha Adhikkari was verifying the creation of

posts and requirement of posts in the institution inasmuch as in the letter dated 24.4.2011, whereby the permission was sought for filling up one post of Head Master, two posts of Assistant Teachers and one Class-IV post, there were cuttings and over writings and for verifying the facts as mentioned in the letter dated 24.4.2011 written by the committee of management, the Basic Shiksha Adhikari vide letter dated 26.5.2011 to the Divisional Assistant Director of Education (Basic), IVth Region, Allahabad to verify the correct facts. However, before the facts could get verified, a defected advertisement was issued and a request was made for nominating a nominee in the selection committee.

42. After coming into force the Right to Education Act, 2009, the Government issued Government Order No.1828/15.11-2011 on 7.9.2011, whereby for appointment of the teachers for Class-I to VIII, Teacher's Eligibility Test was made an essential qualification as per the notification dated 23.8.2010 issued by the National Council for Teacher Education. Basic Shiksha Adhikari vide letter dated 4.11.2011 in pursuance to the letter written by the Assistant Director of Education (Basic), Allahabad Division, Allahabad dated 30.9.2011 requested following information from petitioner no.1:-

- (i) The proposal for creation of posts;
- (ii) Papers of registration of sale deed in respect of the land of the school;

and directed petitioner no.1 to submit the above information as desired by the Assistant Director of Education (Basic), Allahabad Division, Allahabad within a period of one week.

43. Purpose of giving permission before making advertisement, is to verify

the strength of the students, requirement of teachers and employees in the institution. Therefore, when the inquiry was still on at the level of the Assistant Director of Education (Basic), Allahabad Division, Allahabad, petitioner no.1 could not have gone ahead with the selection proceedings in pursuance to the advertisement and thus, the selection and appointment of petitioners no.2 and 3 is also vitiated on this ground.

44. In the writ petition, it has been nowhere stated that petitioner no.2 had five years experience as required under Rule 4(2)(3) of Rules, 1978 and she had minimum age of 30 years and petitioner no.3 had qualification of having passed Teacher's Eligibility Test examination as prescribed in the notification dated 23.8.2010 issued by the National Council for Teacher Education and the State Government Order No.1828/15.11-2011 on 7.9.2011.

45. The specific stand of the opposite parties is that petitioners no.2 and 3 did not fulfill the eligibility condition for appointment on the post of Head Master and Assistant Teacher. If petitioners no.2 and 3 do not have the essential qualification as prescribed under the statute, their appointment on the post of Head Master and Assistant Teacher is void ab initio and they cannot claim any benefit of any alleged inaction on the part of the Basic Shiksha Adhikari. The void and illegal appointments would not become valid and legal if the Basic Shiksha Adhikari did not take decision within a period of one month as required under Rule 10 of Rules, 1978.

46. The judgment cited by the learned counsel for the petitioners in the case *Sanjay Kumar Singh* (supra) would be applicable, if the advertisement was issued

in accordance with Rule 7 of the Rules, 1978 and the candidates do possess the requisite essential qualification and the selection is made free and fair. In the present case, the selection has not been made free and fair inasmuch as three candidates had received envelopes containing blank papers sent by petitioner no.1 intimating the date for interview. If the Basic Shiksha Adhikari was not granting approval, petitioner no.1 could have approached the higher authorities or the Court against the alleged inaction of the Basic Shiksha Adhikari, but petitioner no.1 went ahead to advertise the posts. Therefore, I do not find any ground to interfere with the impugned orders.

47. In view thereof, the writ petition fails, which is hereby *dismissed*.

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(2022)02ILR A890

**APPELLATE JURISDICTION  
CIVIL SIDE**

**DATED: LUCKNOW 14.02.2022**

**BEFORE**

**THE HON'BLE MRS. SANGEETA CHANDRA, J.  
THE HON'BLE MOHD. FAIZ ALAM KHAN, J.**

Special Appeal No. 38 of 2022

**Shivam Das Chandani & Ors. ...Appellants  
Versus  
Prabhu N Singh & Ors. ...Respondents**

**Counsel for the Appellants:**  
Virendra Kumar Dubey

**Counsel for the Respondents:**  
Ratnesh Chandra

**A. Service Law - Maintainability of special appeal-no appeal is maintainable under Chapter VIII Rule 5 of this Rules of the Court against any order passed in proceedings under Contempt of Courts Act as it is**

**a self contained Code and it also provides for a remedy of appeal under section 19 though only against specific type of orders or decisions-In the present case also since the Hon'ble single Judge has refused to entertain contempt petition, the appeal is not maintainable under Chapter VIII Rule 5 of the Rules to such proceedings where an order dismissing an application for contempt is challenged would not be attracted except when the contempt court decides to pass orders issuing directions in exercise of powers beyond the Contempt of Courts Act, which order would be referable to the powers vested in the High Court under Article 226 of the Constitution of India rather than Contempt of Courts Act.(Para 1 to 23)**

**The writ petition is dismissed. (E-6)**

**List of Cases cited:**

1. Pune Municipal Corp. & anr. Vs Harakchand Misirimal Solanki & ors. (2014) 3 SCC 183
2. St. of Har. & ors. Vs G.D. Goenka Tourism Corp. Ltd. & anr. (2018) 3 SCC 585
3. Indore Development Authority Vs Shailendra (Dead) thru LRs & ors. (2018) 3 SCC 412
4. Midnapore Peoples' Coop. Bank Ltd. & ors. Vs Chunilal Nanda & ors. (2006) 5 SCC 399
5. Roop Singh Vs Vinay Kumar Jauhari & ors. (2020) 142 ALR 144
6. Hub Lal Yadav Vs Mahendra & ors., Spl. Appeal No. 23 of 2017
7. Sheet Gupta Vs St. of U.P. & ors. (2020) AIR All 46 FB
8. Smt. Shubhawati Devi Vs R.K. Singh & anr.(2004) 3 AWC 2414