

*It is only when the answer to all these three questions is in the affirmative that the Validation Act can be held to be effective and the consequences flowing from the adverse pronouncement of the Court held to have been neutralised. Decisions of this Court in Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality [(1969) 2 SCC 283] , Hari Singh v. Military Estate Officer [(1972) 2 SCC 239] , Madan Mohan Pathak v. Union of India [(1978) 2 SCC 50 : 1978 SCC (L&S) 103] , Indian Aluminium Co. v. State of Kerala [(1996) 7 SCC 637] , Meerut Development Authority v. Satbir Singh [(1996) 11 SCC 462] and ITW Signode India Ltd. v. CCE [(2004) 3 SCC 48] fall in that category."*

69. Another aspect which is worth noticing is that in Clause 7 of the Government Order, a further prescription has been made for determination of junior most teacher. It stipulates that seniority would be determined on the basis of length of service in a particular district and where it is same, would be determined on the basis of date of birth.

70. The same appears to be in stark contrast to determination of seniority of teachers under Rule 22 of the Service Rules of 1981, whereby seniority is required to be determined according to the order in which the names appear in the select list prepared in terms of Rule 17 or 17 (A) or 18 as the case may be.

71. So far as the aspect of cut off date challenged in the aforesaid government order and circular is concerned, this Court is not adverting to the same since this aspect has already been considered in the Division Bench Judgment of *Neerja* (supra).

72. In view of aforesaid discussion, it is evident that the impugned Clauses of the

Government Order dated 26.06.2024 and the Circular dated 28.06.2024 are manifestly arbitrary and, therefore, the Clauses 3, 7, 8 and 9 of the aforesaid Government Order and Circular are hereby quashed by issuance of writ in the nature of certiorari. Accordingly, above writ petitions succeed and are **allowed**. Parties to bear their own costs.

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**(2024) 11 ILRA 24**

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: LUCKNOW 06.11.2024**

**BEFORE**

**THE HON'BLE ALOK MATHUR, J.**

Writ A No. 9755 of 2024

**Ravikant Shukla** ...Petitioner  
**Versus**  
**State of U.P. & Ors.** ...Respondents

**Counsel for the Petitioner:**

Anuj Kudesia, Surya Prakash Singh

**Counsel for the Respondents:**

C.S.C.

**A. Civil Law - Departmental Disciplinary Proceedings - Suspension - Judicial Review of suspension order - Constitution of India, 1950 - Article 226 - Order of suspension can be interfered where it is shown that the said order has been passed without jurisdiction or no inquiry is contemplated or the charges levelled against the delinquent government servant are vague and bald and even proved will not entail a major penalty. Merely because the government servant feels that the allegations are false will not be a ground in itself for this Court to assume the jurisdiction and to embark on an inquiry to determine the veracity of the allegations levelled against the government servant. In the instant case, the Court found that the allegations were**

**serious, which required inquiry, and the petitioner would have sufficient opportunity to place all the material before the Inquiry Officer in his defence and also would have a chance of personal hearing before the prescribed authority. (Para 12, 14)**

**A. Civil Law - Initiation of the inquiry proceedings on the basis of an unverified complaint without supporting affidavit - Government Order dated 9th May, 1997 - G.O. dated 09.05.1997 provides that a complaint which is not supported by an affidavit would be unactionable. Held : An affidavit is required along with the complaint where the allegations levelled against the government servant were in the personal opinion and knowledge of the person making the said allegation. However if the allegations levelled against the delinquent government servant are otherwise verifiable from the government records or from the records then there would not be any need for obtaining an affidavit in support of the allegations. If the allegations are preceded by a preliminary inquiry then the complaint itself loses its relevance as the decision making authority proceeds further on the basis of preliminary inquiry report. (Para 16, 17, 18)**

**Dismissed.** (E-5)

**List of Cases cited:**

1. Deepak Yadav Vs St. of U.P. & ors (Writ A No. 4054 of 2022)

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri Anuj Kudesia, learned counsel for petitioner as well as learned Standing Counsel for respondents.

2. By means of present writ petition, the petitioner has challenged the order dated 21.09.2024 passed by District Development Officer, Sitapur whereby the

petitioner has been placed under suspension.

3. It has been submitted by learned counsel for petitioner that petitioner was appointed on the post of Village Development Officer and assigned his duties in Block - Kasmanda, District Sitapur on 10.10.2018 thereafter he has been transferred to Block - Mehmoodabad, District - Sitapur and he joined his duties on 05.07.2023.

4. While discharging his duties, certain complaints were made on the basis of which a three Member Committee was constituted which submitted its report on 23.08.2024. □ Relying on the reports of three Member Committee by means of impugned order, the petitioner has been placed under suspension in contemplation of the departmental proceedings.

5. A perusal of the impugned order would indicate that the first charge relates to work conducted under Mahatma Gandhi National Rural Employment Guarantee Scheme in construction of Shahid Bhagat Singh Amrit Sarovar at village Panchayat Rajparapur, Block Mehmoodabad, District Sitapur where the allegation is that in fact the work which was shown to have been completed in the records, was never undertaken, and the work being done under the supervision of the petitioner he directly responsible for the same. The second charge relates to the payment pertaining to an amount of Rs. 1459558.00/- the bills of which were uploaded for payment while in fact the bills were never verified by the petitioner in his capacity as Village Development Officer, Mehmoodabad and accordingly the petitioner has been charged for attempting to make payments for which the bills were never verified by him.

6. It has been submitted by learned counsel for petitioner that a bare perusal of the order of suspension and perusal of the charges it has been stated that they are false and vague and with regard to the expenditure vouchers of Rs. 1459658.00/- it was stated that the said bills were uploaded by the Gram Rojgar Sewak without getting the same approved from the petitioner and when the petitioner informed about this fact to the authorities response was sought from The Gram Rojgar Sewak, who in his reply dated 23.09.2024 has admitted that due to his fault the expenditure has been uploaded without verification, and therefore submitted that no further enquiry deserves to be proceeded with when the Gram Rojgar Sewak has admitted his fault.

7. It has further been submitted that the work was duly undertaken and completed which according to three Member Committee was never undertaken and the said allegation itself is false and accordingly there is no reason to proceed against the petitioner in the present case inquiry proceedings and further there was no occasion for the respondents to place the petitioner under suspension. It has been further submitted that inquiry proceedings have been initiated on the basis of a complaint which was never supported by an affidavit and according to the Government Order dated 9th May, 1997 no such inquiry could have been initiated and therefore the entire proceedings are illegal and arbitrary and deserves to be quashed.

8. Learned Standing Counsel on the other hand has opposed the writ petition. Based on written instructions, he has submitted that number of bills and vouchers were duly approved by the petitioner. It was further stated that the

allegations against the petitioner are serious in nature and may entail a major penalty and consequently there is no infirmity in the order of suspension and prayed for dismissal of the writ petition.

9. I have heard learned counsel for parties and perused the record.

10. A perusal of the narration of allegations against the petitioner which have been mentioned in impugned order of suspension would indicate that certain complaints have been received against the petitioner on the basis of which a Three Member Committee was constituted where it was found that for the construction of Shahid Bhagat Singh Amrit Sarovar various works which are ought to have been undertaken and completed were never initiated and accordingly the petitioner who was the person responsible for the said work and was responsible for the material lapses which have surfaced as per the Three Member Inquiry Committee report.

11. With regard to the verification of bills which were uploaded is a disputed question of fact as the petitioner submits that he has never verified the said bills which were uploaded by the Gram Rojgar Sewak while the State claims to have sufficient materials indicating that the petitioner had in fact verified the said bills and after uploading of the said bills, the natural consequence would be the payment of the said bills, but this fact came to the knowledge of the authorities through a complaint stating that efforts were being made to have the bills paid despite the fact that no work was done nor was the bills verified.

12. Be that as it may, this court would not go into the disputed question of fact in

a writ petition under Article 226 of Constitution of India challenging the order of suspension. The order of suspension can be interfered with in a very limited grounds where it is shown that the said order has been passed without jurisdiction or no inquiry is contemplated or the charges levelled against the delinquent government servant are vague and bald and even proved will not entail a major penalty. Merely because the government servant feels that the allegations are false will not be a ground in itself for this Court to assume the jurisdiction and to embark on an inquiry to determine the veracity of the allegations levelled against the government servant.

13. It is the duty of the prescribed disciplinary authority to give a charge-sheet to the government servant who in turn would give a reply and after following due procedure prescribed and following the principle of natural justice, a finding must be recorded with regard to the guilt of the government servant and also whether the charges are proved or not. This Court would not prejudge the issue merely because the order of suspension is challenged before this Court assailing the allegations levelled against him. Even otherwise, the order of suspension does not contain the compendium of charges and merely because there is a reference to the nature of allegation cannot be sufficient for this Court to embark upon testing the veracity of the allegations levelled against the delinquent government servant. All these matters are to be dealt with by the Inquiry Officer during the inquiry proceedings.

14. This Court has satisfied itself about the nature of allegations and finds that the allegations are serious which require inquiry, and the petitioner would

have sufficient opportunity to place all the material before the Inquiry Officer in his defence and also he would have a chance of personal hearing before the prescribed authority.

15. Accordingly, this Court is of the considered view that merely because the order of suspension has been challenged this Court would not arrogate to itself the power and jurisdiction vested in the disciplinary authority.

16. With regard to the contention that the inquiry proceedings have been initiated on the basis of a unverified complaint without supporting an affidavit and therefore the enquiry itself is illegal and arbitrary. Though in the Government Order dated 9th May, 1997, it has been provided that a complaint which not supported by an affidavit would be unactionable, this Court had duly consider the aforesaid government order in the case of **Deepak Yadav Vs. State of U.P. and others (Writ A No. 4054 of 2022)** and it was observed that if the allegations levelled against the delinquent government servant are otherwise verifiable from the government records or from the records then there would not be any need for obtaining an affidavit in support of the allegations and proceeded to observe that an affidavit would certainly be required along with the complaint where the allegations levelled against the government servant were in the personal opinion and knowledge of the person making the said allegation.

17. The Government Order cannot be read as to prevent an inquiry in a case where on the face of it a government servant may be culpable for misappropriation and other related allegations which can be verified from

public records without resorting to the personal knowledge of the person making such a complaint. In the present case, a perusal of the allegations levelled in the impugned order of suspension it has abundantly clear that matters pertaining to completion of government work and verifying bills for payment are in domain of public documents and these charges can be verified from public records and merely because a complaint is not supported by an affidavit would not aid the petitioner in preventing the inquiry proceedings against him.

18. This Court is also of the considered view that in case the allegations are preceded by a preliminary inquiry then the complaint itself loses its relevance as the decision making authority proceeds further on the basis of preliminary inquiry report. In case, in the preliminary inquiry report, the allegations are found to be correct, recommendation is made for a regular disciplinary proceeding against a person whose name has surfaced to be involved in the preliminary inquiry. In such a situation, it cannot be said that the inquiry would be conducted on the basis of an anonymous complaint which is not supported by an affidavit. Therefore, the status of complaint is merely an information on the basis of which a preliminary inquiry is conducted and further proceedings are conducted based on the recommendations of the preliminary inquiry report. Accordingly, this Court does not agree with the arguments raised by learned counsel of the petitioner that the inquiry proceedings should be set aside merely on account of the fact that the complaint in the present case is not supported by an affidavit.

19. In light of the above, this Court does not find any merit in the contentions and the grounds raised by the petitioner.

The writ petition being devoid of merits is **dismissed.**

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(2024) 11 ILRA 28

**ORIGINAL JURISDICTION  
CIVIL SIDE**

**DATED: LUCKNOW 19.11.2024**

**BEFORE**

**THE HON'BLE ALOK MATHUR, J.**

Writ A No. 9965 of 2024

**Ram Tirath Pno. 802031471 ...Petitioner  
Versus  
State of U.P. & Ors. ...Respondents**

**Counsel for the Petitioner:**  
Akhilesh Kumar Pandey

**Counsel for the Respondents:**  
C.S.C.

**A. Civil Law – Service Law – Disciplinary Proceedings and Criminal Proceedings – Acquittal in Criminal Proceedings – Effect - Disciplinary proceedings and criminal proceedings are distinct and separate and they do not bar each other. In case an employee is punished in departmental proceedings, it would have no bearing upon the criminal trial even if the allegations are the same and, vis-à-vis, in case an employee is acquitted in the criminal case, it would not have any bearing on the disciplinary proceedings. Each proceeding proceeds on the evidence and material adduced before the respective authorities. Mere acquittal in the criminal case will not diminish, reduce, or extinguish the punishment granted in a disciplinary proceeding. (Para 10)**

**B. Complaint was made by the petitioner's wife alleging that he had married again during the lifetime of his first wife. On her complaint, disciplinary proceedings were initiated against wherein the charge of bigamy was found proved and, by means of order dated 18.01.2010, the petitioner**