Section 437A of Cr.P.C. provided he is not wanted in any other case.

33. Copy of this order be sent by the Registrar (Compliance) to the Chief Judicial Magistrate concerned for necessary action.

(2025) 5 ILRA 696
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.05.2025

BEFORE

THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Special Appeal No. 117 of 2025

Dr Manoj Kumar Rawat ...Appellant
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Appellant:
Alka Upadhyay, Manish Tiwari, Naveen Kumar Tripathi, Prabhakar Awasthi, Sr.Advocate

Counsel for the Respondents:
Varun Dev Sharma, Ankit Shukla, Avneesh Tripathi,C.S.C., Gagan Mehta, Parijat Mishra

A. Service Law – UP Education Service Selection Commission Act, 2023 – UP Higher Education Act, 1980 – Section 13(4) – Jurisdiction of Director – Selection list was prepared in furtherance of advertisement issued under old Act of 1980 – How far Director has jurisdiction to intimate the name of a candidate from such list for appointment in vacancy arisen after New Act – Held, the power available to the Director under the previous enactment, particularly, section 13(4) of the Act, 1980 would not be available to be exercised after the new Act of 2023 has come into effect – Once the new Act contains no power with the Director to fill up a substantive vacancy which has come into existence later, to be filled from a candidate selected in an earlier advertisement, the action of the Director would be without jurisdiction. (Para 15 and 17)

Special Appeal dismissed. (E-1)

(Delivered by Hon'ble Ashwani Kumar Mishra, J.)

1. This appeal arises out of an order dated 17.02.2025 passed by learned Single Judge in Writ-A No. 15433 of 2024, whereby, the placement of the appellant pursuant to order of Director dated 15.01.2024 in Meerut College, Meerut, has been set aside.

2. The undisputed facts of the case as are noticed by learned Single Judge are that the Uttar Pradesh Higher Education Services Commission (hereinafter referred to as "Commission") issued Advertisement No. 49 of 2019 inviting applications for appointment to 219 posts of Principal in aided Post-Graduate Colleges in the State of Uttar Pradesh. This advertisement included the post of Principal in Meerut College, Meerut. The appellant participated in the selection proceedings and was ultimately placed in the waiting list. It transpires that one Dr. Sachchidanand Sharma was placed as Principal in Meerut College, Meerut. He joined pursuant to his placement and worked in the college for nearly 1 and 1/2 year, whereafter, he left. The post of principal in Meerut College, Meerut, has, thereafter, fallen vacant.

3. The records reveal that the appellant though was initially placed in the waiting list but he secured appointment on account of vacancies which were found to have

existed in the recruitment exercise and was placed at Bajrang Post-Graduate College, Ballia. The placement order of appellant at Bajrang Post-Graduate College, Ballia, dated 03.08.2022 is on record of this paper book at page 100. It is undisputed that the appellant never joined at Bajrang Post-Graduate College, Ballia and the parties are at issue with regard to reason on account of which he had not joined. The appellant states that he was not issued appointment letter by the Committee of Management. The other version is that the appellant never appeared before the Managing Committee for joining. There are also communications on records to show that the appellant had expressed personal difficulties as being the reason on account of which he made request for his placement in any other college. It is on account of such request made by the appellant that the Director passed the order dated 15.01.2024 placing the appellant at Meerut College, Meerut. It is against this order of the Director dated 15.01.2024 that the writ petition came to be filed by the officiating principal of the college questioning the placement order of the respondent dated 15.01.2024.

4. Learned Single Judge has taken note of the facts of the case and has come to the conclusion that the respondent Dr. Anjali Mittal was given charge of the office of Principal after Dr. Sachchidanand Sharma resigned from the post of principal and that she was entitled to continue being the senior most teacher in the college. Learned Single Judge has also opined that by the time order was passed by the Director allocating Bajrang Post-Graduate College, Ballia, to the appellant, the process of appointment had come to an end and it was not open for the Director to have passed the impugned placement order.

5. When the matter was heard on the last occasion, an issue was raised as to whether there was any default on the part of the appellant in joining at Bajrang Post-Graduate College, Ballia or was it due to default of the Managing Committee in not issuing him appointment that he could not join. In order to resolve the controversy, we directed the concerned Director to examine the records and file his personal affidavit. An affidavit has been filed by the Director stating as under in paragraph nos. 6 and 7:

"6. That as per the information provided by the Principal Shri Bajrang Post Graduate College Dadar Ashram, Sikandarpur Ballia vide letter no. S.B.P.G. / 1487/2025 dated 13.03.2025, the Principal has informed that the college submitted the file to the Authorized Controller/District Magistrate Ballia on 13/08/2022 for further action. The District Magistrate Ballia, referring the point 4(b) mentioned in the office letter no. Degree Arth-1 (Aayog) / 332-340/2022-23 dated 03/08/2022, verbally directed that unless the selected candidate personally submits his application (for issuing the appointment letter) in the said regard and does not establish contact, further action cannot be taken because the candidate previously selected for the post of Principal, Dr. Ajay Kumar Singh, did not take charge even after being given two opportunities to issue the appointment letter and assume charge and his candidature was cancelled. In view of this fact, let the candidate submit his application first. After this, he directed the DIOS for comments. Since the selected candidate did not submit any application form to the college nor did he establishes contact with the District Magistrate/Authorized Controller/College, hence the appointment letter was not issued

by the Authorized Controller/District Magistrate.

7. That the recommendation letter, application form and certification letter of the selected Principal, Dr. Manoj Kumar Rawat were sent to the college by e-mail of Directorate of Higher Education on 03/08/2022, but the appointment letter was not issued to the selected candidate Dr. Manoj Kumar Rawat by the authorized controller/manager as per the rules, whereas he should have issued the appointment letter within 21 days of the order as per the rules."

6. It is in the context of the facts noticed above that we are called upon to adjudicate the legality of the transfer order passed by the Director placing the appellant at Meerut College, Meerut as also the judgment of learned Single Judge in interfering with such order.

7. We have also heard Sri Prabhakar Awasthi for the appellant and Sri Ashok Khare, learned Senior Counsel, assisted by Sri Kartikeya Saran for the respondent-writ petitioner, Sri Gagan Mehta, learned counsel appearing for the Commission and learned counsel for the State.

8. Sri Ashok Khare submits that the Director was denuded of any jurisdiction on 15.01.2024 to pass the order of placement in favour of the present appellant, inasmuch as the U.P. Higher Education Act, 1980 was repealed and that the power erstwhile available to the Director under section 13(4) was not available to him.

9. We have heard learned counsel for the parties on this aspect of the matter which is taken up first for determination.

10. It is undisputed that the Advertisement No. 49 of 2019 was issued pursuant to which selection proceedings were conducted by the U.P. Higher Education Service Commission was under the Higher Education Act, 1980. Section 13 of the Act would be relevant in order to appreciate the contours of the jurisdiction of Director in placing candidates in the institution concerned. Section 13 is reproduced herein below:

"*13. (1) The Commission shall, as soon as possible, after the notification of vacancies to it under sub-section (3) of section 12, hold interview (with or without written examination) of the candidates and send to the Director a list recommending such number of names of candidates found most suitable in each subject as may be, so for as practicable, twenty-five per cent more than the number of vacancies in that subject such names shall be arranged in order of merit shown in the interview, or in the examination and interview if an examination is held.*

(2) ***The list sent by the Commission shall be valid till the receipt of a new list from the Commission***.

(3) ***The Director shall having due regard in the prescribed manner, to the order of preference if any indicated by the candidates under the second proviso to subsection (4) of section 12, intimate to the management the name of a candidate from the list referred to in sub-section (1), for being appointed in the vacancy intimated under sub-section (2) of section 12***.

(4) ***Where a 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.

(5) Notwithstanding anything in the preceding provisions, where to abolition of any post of teacher in any college, services of the person substantively appointed to such post is terminated, the State Government may make suitable order for his appointment in suitable vacancy, whether notified under subsection (3) of section 12 or not, in any other college, and thereupon the Director shall intimate to the management accordingly.

(6) The Director shall send a copy of the intimation made under sub-section (3) or sub-section (4) or sub-section (5) to the candidate concerned."

11. Sub-section (2) of Section 13 provides that the selection list sent by the Commission shall be valid till receipt of a new list from the Commission. Sub-section (4) provides that where a 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.

12. The order of Director dated 15.01.2024 is apparently referable to section 13(4) of the Act. The question for our consideration, therefore, is as to whether the power available with the Director under section 13(4) would continue to be available with the officer even after the repeal of the Act of 1980. The State legislature while repealing Act of 1980 has enacted the U.P. Education Service Selection Commission Act, 2023 (hereinafter referred to as "Act 2023"). The Scheme under the new Act is somewhat similar in the matter of preparation of select list as well as recommending the names of selected candidates for their respective placement in the institution concerned. Section 11 of the Act of 2023 is relevant for our purposes and is reproduced hereinunder:

"Section 11 (1) The Commission shall, as soon as may be, after a vacancy is notified under sub-section (1) of section 10, conduct, wherever necessary, examinations or interviews or conduct the examination and interview of the candidates and prepare a panel/list of those found most suitable for appointment.

(2) The panel referred to in sub-section (1) shall be forwarded to the prescribed officer or Authorized Officer referred to in sub-section (1) of section 10 in such manner as may be prescribed.

(3) After the receipt of the panel under sub-section (2), the prescribed officer or Authorized Officer shall, in the prescribed manner, intimate the Appointing Authority of the names of the selected candidates in respect of the vacancies notified under sub-section (1) of section 10.

(4) The Appointing Authority shall, within a period of thirty days from the date of receipt of such information, issue appointment letters to such selected candidates and facilitate the selected candidate to join the duties in the prescribed manner.

(5) Where such selected candidate fails to join the post of a teacher or instructor in such institution within the time allowed in the appointment letter or within such extended time as the Appointing Authority may allow in this behalf, or where such candidate is otherwise not available for appointment,

the Authorized Officer shall, on the request of Management, intimate in the prescribed manner, fresh name or names from the panel/list forwarded by the Commission under sub-section (2). Such time limit shall be up to a maximum of one year after the date of issuing of the appointment letter.

(6) If the Management/ Appointing Authority fails to issue appointment letter to a selected candidate on reasonable grounds (the Management/ Appointing Authority is to mention the appropriate reason) then a panel of remaining candidates from the list/panel of candidates under sub-section (1) will be made available to the Institute only once. Still, if the Management/Appointing Authority fails to issue appointment letter then the concerned post will be abolished as per the prescribed method."

13. The provision aforesaid would clearly show that where a selected candidate fails to join the post of a teacher in such institution within the time allowed in the appointment letter or within such extended time as the Appointing Authority may allow in this behalf, or where such candidate is otherwise not available for appointment, the Authorized Officer shall, on the request of Management, intimate in the prescribed manner, fresh name or names from the panel/list forwarded by the Commission under sub-section (2).

14. Having carefully examining the scheme under the Act of 2023, we find that the power of the authorized officer under the new enactment is limited to the steps specified in sub-section (5) for filling up the post if the selected candidate fails to join. The power under sub-section (5) does not include any power referable to section 13(4) of the previous Act. There is no power in the new Act which allows the authorized officer to recommend the name from the select list if a substantive vacancy on the post of principal comes into effect.

15. Undisputedly Dr. Sachchidanand Sharma was selected and placed in the Meerut College, Meerut as principal. He worked for about 1 year and 1/2, whereafter, he resigned. With the resignation of Dr. Sachchidanand Sharma a substantive vacancy on the post of principal had come into existence. Such vacancy once has arisen under the currency of the new Act the only way in which such post can be filled is by sending requisition to the commission for making fresh appointment. The power available to the Director under the previous enactment, particularly, section 13(4) of the Act, 1980 would not be available to be exercised after the new Act of 2023 has come into effect.

16. Sri Gagan Mehta, learned counsel appearing for Commission has invited our attention to section 31(2) of the Act 2023 in order to submit that powers of the Director under the previous Act of 1980 are protected. Section 31 of the new Act which provides for repeal and savings is reproduced hereinbelow:

"*31. (1) The Uttar Pradesh Higher Education Services Commission Act, 1980, the Uttar Pradesh Secondary Education Service Selection Board Act, 1982 and the Uttar Pradesh Education Service Selection Commission Act, 2019 are hereby repealed.*

(2) Notwithstanding such repeal, anything done or any action taken under the Acts referred to in sub-section (1) shall be deemed to have been done or taken under this Act, as if the provisions of this Act were in force at all material times.

(3) Save as otherwise provided in this Act, the repeal of the Acts referred to in sub-section (1) shall not have an adverse effect on the general application of section 6 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act no. 1 of 1904) in relation to the enforcement of provisions."

17. A careful reading of sub-section (2) would reveal that notwithstanding repeal of the Act of 1980 anything done or any action taken under the acts referred to in sub-section (1) is to be deemed to have been done or taken under the new Act and for such purposes the new Act were to be treated to have been in force at all material times. Once we find that the new Act contains no power with the Director to fill up a substantive vacancy which has come into existence later, to be filled from a candidate selected in an earlier advertisement, the action of the Director would be without jurisdiction. This is particularly so as the powers of the Director under the previous Act would continue under the new Act by virtue of section 31(2) of the Act of 2023 insofar as it is not inconsistent with the Act. A power which is not conferred upon the Director during the currency of new Act cannot be exercised by tracing the source of such power from the previous Act, which has already been repealed.

18. In view of the deliberations and discussions held above, we hold that the Director had no jurisdiction to pass the order in favour of the appellant on 15.01.2024 and such order is, therefore, held to be without jurisdiction. Though for a different reason, but we ultimately find ourselves to be in agreement with the conclusion drawn by the learned Single Judge for quashing the order of the Director.

19. This appeal, consequently fails, and is dismissed. No order is passed as to costs.

(2025) 5 ILRA 701
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.05.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 5151 of 2023

Dr. Sanjay Mittal ...Petitioner
Versus
Union Of India & Ors. ...Respondents

Counsel for the Petitioner:
Avneesh Tripathi

Counsel for the Respondents:
A.S.G.I., Rohan Gupta, Sabhajeet Singh

Service Law – Disciplinary Proceedings – IIT Kanpur Statutes, Statute 13(9)(b) – Misconduct by Professor – Allegations of disparaging remarks against a colleague belonging to SC category and convening of an unauthorized faculty meeting questioning appointment – Inquiry held, charges found proved – Board of Governors imposed penalty of withholding two increments without cumulative effect for two years and debarment from holding administrative responsibilities for three years – Validity.

Held: The charges established derogated from discipline and constituted service misconduct; penalty of withholding increments is permissible under Statute 13(9)(b)(ii). However, debarment from holding administrative responsibilities for a period of three years is not one of the penalties enumerated under Statute 13(9)(b). The said punishment is beyond the authority of the IIT, manifestly illegal, and stands quashed. Penalty of withholding two increments without cumulative effect sustained.

Writ Petition partly allowed.