

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

\*\*\*\*\*

Neutral Citation No. - 2024:AHC:115774

A.F.R.

**Judgment Fixed for pronouncement on:18.07.2024**

**Judgment pronounced on: 22.07.2024**

**Court No. - 9**

**Case :-** WRIT - A No. - 1064 of 2021

**Petitioner :-** Ashok Kumar Singh

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Rahul Jain

**Counsel for Respondent :-** C.S.C.

Along with

**Case :-** WRIT - A No. - 6500 of 2022

**Petitioner :-** Ashok Kumar Singh

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Rahul Jain

**Counsel for Respondent :-** C.S.C.

And.

**Case :-** WRIT - A No. - 7672 of 2024

**Petitioner :-** Ashok Kumar Singh

**Respondent :-** State Of Up And 3 Others

**Counsel for Petitioner :-** Rahul Jain

**Counsel for Respondent :-** C.S.C.,Ramesh Chandra Dwivedi

**Hon'ble Subhash Vidyarthi J**

1. Heard Sri. Rahul Jain, the learned Counsel for the petitioner, Sri. Shailendra Singh, the learned Standing Counsel for the State of U. P. appearing for the respondent nos. 1 to 3 and Sri. Ramesh Chandra Dwivedi, the learned Counsel for the respondent no. 4 – Committee of Management, Janta Inter College, Ramkola, Kushi Nagar.
2. All the three Writ Petitions have been filed by the same petitioner relating to the same set of disputes, as would appear from the narration made in the following paragraphs and, therefore, the three Writ Petitions are being decided by a common judgment.

3. Briefly stated, the facts pleaded in the Writ Petitions are that on 30.01.1993 the Committee of Management, Janta Inter College, Ramkola, Deoria (Now Kushi Nagar) passed a resolution for appointment of the petitioner as an L.T. Grade Teacher on ad-hoc basis against a short term vacancy till return of one Rakesh Govind Ram to his original post. The District Inspector of Schools, Deoria granted approval and financial sanction to the petitioner's appointment by means of an order dated 04.03.1993, in which the description of the petitioner is "Ashok Kumar Singh, B.Sc. Agriculture, B.Ed." The Manager of the College issued a letter to the petitioner on 06.03.1993 appointing him on ad-hoc basis till a regularly selected candidate joins the post. The petitioner took charge of the post on 10.03.1993.
4. The petitioner has pleaded that he possesses B.Sc. Agriculture and M.A. Political Science qualifications and he does not possess a B.Ed. degree and that B.Ed. was not an essential qualification for the post on which he was appointed and he had been appointed on the basis of the qualification which he actually possessed.
5. On 15.09.2008, the Regional Level Selection Committee recommended regularization of the petitioner's service and it was specifically mentioned in the resolution that if any fact regarding the ad hoc appointment of the petitioner has been concealed, the regularization of the petitioner's service shall automatically stand cancelled upon such fact coming to light and being affirmed in an enquiry.
6. The District Inspector of Schools, Kushinagar passed an order dated 09.11.2015 sanctioning payment of selection grade pay to the petitioner with effect from the date of regularization of his services and this order also specifically mentions that in case any fact has been concealed in the matter, the order shall be cancelled automatically and the amount paid to the petitioner shall be recovered.

7. On 18.09.2020, the District Inspector of Schools Kushinagar sent a letter to the Committee of Management of the college stating that by means of a Government Order dated 08.07.2020, a direction has been issued for verification of the educational certificates of the teachers working in government secondary schools, non-government aided schools and to send a report to the Government for taking the final action in the matter. A District Level Committee constituted under the chairmanship of the District Magistrate has to take action in the matter. Upon verification of the B.Ed. Marks-sheet of the petitioner from Deen Dayal Upadhyay Gorakhpur University, it was found that the particulars mentioned in the self-attested marks-sheet provided by the petitioner did not tally with the verification report provided by the University and the roll number 6969 mentioned in the self attested marks-sheet provided by the petitioner belonged to one Ashok Kumar Upadhyay, from which it transpired that the B.Ed. marks-sheet provided by the petitioner was forged and he has obtained employment on the basis of a forged certificate of an essential qualification. The letter directed the respondent no. 4 to lodge a First Information Report against the petitioner and to pass a resolution for termination of the petitioner's service under Section 16 E (10) of the U. P. Intermediate Education Act. All the original documents relating to the appointment of the petitioner be sent to the District Inspector of Schools. The payment of salary to the petitioner was stopped and it was directed that no work be taken from him.
8. On 21.09.2020, the Manager of the college sent a letter to the petitioner stating that the District Inspector of Schools had informed through his letter dated 18.09.2020 that the petitioner's marks sheet of B.Ed. is forged and an enquiry had been scheduled to be held in the office of the Additional District Magistrate (Finance and Revenue) on 22.09.2020 and the District Inspector of Schools had demanded the original educational certificates of the petitioner. The letter directed the petitioner to provide

his original educational certificates alongwith a set of self attested copies of the same.

9. The petitioner claims that on 21.09.2020, he had sent a letter to the District Inspector of Schools stating that he was not keeping well and he needs two weeks' time to submit his version. He further stated that he had already sent information of his illness to the school on 19.09.2020, but he has not brought on record a copy of any such information. The petitioner has annexed a copy of a prescription dated 18.09.2020 issued by the District Hospital, Deoria, in which complaints of fever, pain in abdomen and viral hepatitis have been recorded, the petitioner was advised bed rest for 15 days and the following medicines have been prescribed to him: -

Tab. Ciplox 500 twice a day

Tab. Cefexime twice a day

Tab. PCM (Paracetamol) thrice a day

Tab. Becosules once a day

Tab. Liv 52 once a day

For 15 days

10. The petitioner has annexed another prescription dated 03.10.2020, which also records complaints of fever, nausea and viral hepatitis have been recorded and the following medicines have been prescribed: -

Tab. Cefexime twice a day

Tab. PCM (Paracetamol) twice a day

Tab. Liv 52 once a day

For 15 days

11. The petitioner did not provide any documents and on 09.10.2020, the District Inspector of Schools wrote another letter with contents similar to his earlier letter dated 18.09.2020 and a copy of the verification report sent by Deen Dayal Upadhyay Gorakhpur University, Gorakhpur and a copy of petitioner's marks sheet of B.Ed. were also enclosed with this letter.

12. The petitioner did not provide any documents and his salary was stopped by means of an order dated 09.10.2020 passed by the District Inspector of Schools.
13. The petitioner filed Writ A No. 1064 of 2021 challenging the order dated 09.10.2020 passed by the District Inspector of Schools and this Court passed an interim order dated 01.02.2021 staying the operation of the order dated 09.10.2020, on the ground that the order had been passed without following the principles of natural justice.
14. The State through the District Inspector of Schools has filed a stay vacation application alongwith a counter affidavit in Writ A No 1064 of 2021 inter alia stating in paragraph 6 thereof that at the time of applying for appointment, the petitioner had shown his qualification as B.Sc. (Agriculture) and B.Ed., which is clear from the approval letter dated 04.03.1993 annexed by the petitioner as Annexure No. 3 to the Writ Petition.
15. In the rejoinder affidavit filed in Writ A No 1064 of 2021, the petitioner has denied that he had shown B.Ed. as his qualification and he has stated that the approval order dated 04.03.1993 wrongly mentions B.Ed. as his qualification. He has further stated that B.Ed. is only a desirable qualification for the post in question and it is not an essential qualification.
16. A notice was issued to the petitioner on 17.12.2020 directing him to show cause within a period of 15 days as to why the appointment obtained by him on the basis of a forged marks-sheet be not cancelled and the amount paid to him as salary be recovered from him. It was also mentioned in the notice that if the petitioner fails to show cause, it shall be deemed that he admits the charges and an appropriate decision will be taken in the matter. When the petitioner did not respond to the notice, reminders were sent to him on 25.01.2021 and 04.03.2021. The petitioner personally received the notice from the office of the Director Education on 16.03.2021 and he

asked for 15 days' time to submit his reply. When he did not submit any reply within the stipulated period, again reminders were sent to him on 15.04.2021 and 31.05.2021 through registered post. Ultimately, the petitioner submitted his reply on 22.06.2021 stating that he does not hold B.Ed. degree and he had no concern with the forged B.Ed. Marks-sheet. He further stated that B.Ed. was not an essential qualification for the post of Assistant Teacher and it was merely a preferential qualification.

17. Thereafter the petitioner was given opportunity of personal hearing on 17.09.2021, 12.10.2021 and 12.11.2021.
18. On 11.03.2022, the Director Education (Secondary) U.P. passed an order holding that the petitioner had obtained appointment on the basis of a forged marks-sheet of B.Ed. and he got the same regularized by concealment of fact. The regularization order categorically states that in case any concealed fact comes to light, the regularization order will be cancelled automatically. The Director declared the appointment of the petitioner to be without qualification and void and he has been removed from the service.
19. The petitioner challenged the validity of the aforesaid order dated 11.03.2022 by filing Writ A No. 6500 of 2022 and this Court passed the following interim order on 04.05.2022: -

*“The State Government is directed to initiate inquiry against all the public servants who were involved in the regularization and grant of selection grade to the petitioner since the year 2008 till date and fix the responsibility on the erring public servant / servants as to how the person having a forged mark sheet was permitted to be given regular public employment at the cost of public exchequer by them.*

*The state government will initiate inquiry against all the public servants involved in this dispute and submit its report before this court in three months after conducting the inquiry in accordance with law, granting opportunity of hearing to each and every public servant involved in this case.*

*Put up this case as a fresh case on 10.08.2022.*

*Issue notice to respondent no. 4.*

*Steps be taken within a week.*

*The impugned orders dated 11.03.2022/21.03.2022 passed by Director of Education shall remain stayed till the next date and the working of the petitioner shall not be disturbed.”*

20. The Principal Secretary, Secondary Education, Government of U.P. has filed his personal affidavit stating that an enquiry was conducted in compliance of the order dated 04.05.2022 passed by this Court and five officers named in the affidavit were found guilty for approval of ad-hoc appointment of the petitioner, regularization of his service and grant of selection grade to him without verification of his certificates / marks sheets, but all those officers had retired from service and disciplinary proceedings could not be initiated against them under Rule 3 of the U. P. Government Servants (Discipline and Appeal) Rules, 1999.
21. The Deputy Director of Education (Secondary) has filed a counter affidavit in Writ A No. 6500 of 2022 inter alia stating that the minimum educational qualification for appointment to a post of Assistant Teacher in subject Civics is a Bachelor's degree in any two subjects – History, Geography, Civics or Economics and B.Ed. training. The minimum educational qualification for the post of Assistant Teacher L.T. Grade in Agriculture subject is B.Sc. Agriculture and L.T. training. The petitioner was appointed on ad hoc basis against a substantive vacancy of Assistant Teacher L.T. Grade in subject Civics and that too, on the basis of a forged B.Ed. degree and, therefore, his initial appointment is null and void. It is further mentioned in the counter affidavit that an F.I.R. No. 0292 under Sections 419, 420, 467, 468, 471 I.P.C. has been lodged against the petitioner on 17.10.2022 in Police Station Ramkola District Kushinagar.
22. The Committee of Management of the college has also filed a counter affidavit in Writ A No. 6500 of 2022 inter alia stating that the manager of the college had sent a show cause notice dated 19.10.2020 to the petitioner through registered post and he had been called to appear on 26.10.2020 but he did not submit any explanation and he did not appear

also. Thereafter a three member inquiry committee was constituted on 19.11.2020 and a notice dated 29.10.2020 was sent to the petitioner giving him another opportunity to show cause. The Enquiry Committee held its meetings on 08.11.2020, but the petitioner did not appear. The enquiry committee sent another notice dated 09.11.2020 to the petitioner fixing 13.11.2020 as the next date, but the petitioner did not appear again. The enquiry was adjourned to 19.11.2020, but he did not appear again and he was not attending the college also. The three member enquiry committee submitted its recommendation dated 19.11.2020 stating that as per the information provided by Deen Dayal Upadhyay Gorakhpur University, the B.Ed. marks-sheet of the petitioner is forged and the petitioner has no explanation to offer. Accordingly, the committee recommended termination of services of the petitioner.

23. On 23.11.2020, the Committee of Management has passed a resolution stating that the conduct of the petitioner in not giving any explanation or evidence in spite of being granted numerous opportunities shows that he has nothing to say and he has no evidence in his favour. Therefore, the committee recommended termination of service of the petitioner and his suspension till termination.
24. A copy of the petitioner's service book has been annexed with the counter affidavit filed by the committee of management, wherein the petitioner's qualification is mentioned as "B.Sc. Agriculture, B.Ed."
25. The Committee of Management, Janta Inter College filed Special Appeal No. 39 of 2023 against the interim order dated 04.05.2022 passed in Writ A No. 6500 of 2022, which was dismissed by means of an order dated 28.02.2023 leaving it open to the appellant to file a counter affidavit in the Writ Petition and seek vacation of the stay order.
26. The petitioner filed a petition for contempt due to non-compliance with the interim order dated 04.05.2022 passed in Writ A No. 6500 of 2022 and the Contempt Court had passed an order dated 18.01.2023 whereby the

salary of the district Inspector of Schools was withheld. Thereafter the District Inspector of Schools filed Special Appeal No. 80 of 2023 against the order dated 18.01.2023 passed contempt case, which was allowed by means of an order dated 16.03.2023 and the order dated 18.01.2023 was modified.

27. Thereafter the petitioner submitted representations for registering his name on the Human Resources Portal and for preparation of his pension papers and meanwhile he retired on 31.03.2024. After retirement, the petitioner submitted representations for payment of pension and he has filed Writ A No. 7682 of 2024 for issuance of a Writ of Mandamus commanding the respondent no. 4 to prepare the papers regarding payment of pension to the petitioner and forward the same to the District Inspector of Schools, Kushinagar, and to direct the respondents to pay pension and other retiral dues for the post of L.T. Grade Teacher to the petitioner.
28. The learned Counsel for the petitioner has submitted that the petitioner did not ever claim that he possesses B.Ed. degree and that B.Ed. was merely a desired qualification for the post in question and it was not an essential qualification. He has further submitted that the impugned orders have been passed in violation of the principles of natural justice. In support of his submissions, the learned Counsel for the petitioner has relied upon the judgments in the cases of **Jaswant Singh and another versus District Inspector of Schools and another**: 1980 All.L.J. 174, **Gauri Shanker Rai and others versus Dr. Ram Laxhan Pandey and others**: 1984 All. L. J. 291, **Smt. S. K. Chaudhari versus Manager, Committee of Management, Vidyawati Darbari Girls Inter College, Lookerganj, Allahabad & others**: (1991) 1 UPLBEC 250 (FB) and **Rajeev Kumar Singh versus State of U.P. and others**: 2001 All.L.J. 485.

29. Per Contra, the learned Standing Counsel and the learned Counsel for the Committee of Management of the college have submitted that the petitioner had secured appointment on the basis of a forged marks sheet of B.Ed. and he deliberately failed to avail the opportunity of hearing provided to him. They have relied upon the judgments in the cases of **Reena Devi versus State of U.P. and 4 others**: 2019 6 AWC 6355 All and **Ramanand Bharti versus State of U.P. and 2 others**: 2023:AHC:111702.
30. In **Jaswant Singh v. District Inspector of Schools**, 1980 SCC OnLine All 44, a coordinate bench of this Court was dealing with the matter of passing of successive orders by the District Inspectors of Schools regarding grant of recognition to a duly elected committee of management. This Court referred to various precedents on the point and formulated the following principles: -

*“In view of the aforesaid decisions and in view of **the nature of the jurisdiction which the District Inspector of Schools exercises in the matter of recognition of a committee of management and further in view of the consequences of the orders which he passes we are of opinion that the following principles emerge in this behalf:—***

*(1) The District Inspector of Schools does not have the jurisdiction to adjudicate upon a claim made by rival committees of management, each one of them asserting to have been duly elected and to give a final decision thereon. No such power has been conferred on him either by the U.P. Intermediate Education Act or by the High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. The jurisdiction to decide such a dispute rests with the Civil Court.*

*(2) Since the District Inspector of Schools under the aforesaid two Acts has to perform various administrative functions of statutory character in collaboration with the management of High Schools and Intermediate Colleges and since these duties cannot be discharged by him unless he is in a position to find out on an administrative level as to who are the real office-bearers of the college, he for this limited purpose must of necessity satisfy himself as to who, according to him, are the validly elected office-bearers of the institution. This satisfaction has to be reached by the District Inspector of Schools by making a summary enquiry on an administrative level.*

*(3) The order so passed by the District Inspector of Schools does not have the effect of finally adjudicating upon the dispute between the parties. The remedy of the aggrieved party is to institute a suit in the Civil Court for appropriate relief and the decision given in the suit will alone have the effect of making a final and binding adjudication in the matter and the said decision will have to be given effect to by the District Inspector of Schools in supersession of the order that may have been passed by him earlier.*

*(4) The inquiry which the District Inspector of Schools has to make for his satisfaction as aforesaid is to be confined to the question as to whether a fresh election has taken place and if so who are the persons who have been elected to constitute the committee of management. This inquiry is to be made by first ascertaining as to whether the meeting to hold the election had been convened in accordance with the requirements of the scheme of administration and any other relevant provision in this behalf applicable to the affairs of the society which runs the institution. If the meeting had been so convened reference should be made to the minutes of the meeting in order to find out as to who were the persons who were duly elected to constitute the committee of management. Such disputes which the parties may raise before him which are contrary to the minutes of the meeting held and which involve decision of disputed questions of fact after taking evidence should be left open to be decided by the Civil Court in a suit which may be filed by the person aggrieved by the order of the District Inspector of Schools.*

*(5) The District Inspector of Schools is not expected to write a detailed order as if it were a judgment of a Court of law. His order must, however, indicate that he has applied his mind to the controversy involved before him for if the order does not disclose application of mind it is likely to be termed arbitrary.*

*(6) The District Inspector of Schools having once passed an order in the manner stated above does not have jurisdiction to review his order unless it is established that the said order had been obtained by misrepresentation or fraud or was the result of mistake in the sense that it was passed on incorrect facts and would not have at all been passed if the correct facts had been brought to his notice. These facts should, however, be such which go to the very root of the matter. The District Inspector of Schools has no power to review his earlier order on a fresh assessment of facts or law.*

*(7) Even in those cases where it is established that the earlier order had been obtained by misrepresentation or fraud or had been given under mistake as aforesaid the District Inspector of Schools must not recall or revoke the said order without giving an opportunity of hearing to the person in whose favour the said order had been passed.*

*(8) The opportunity of hearing which the District Inspector of Schools has to give either at the stage of passing the initial order or*

*recalling or revoking it in the circumstances stated above is to be confined to giving the persons concerned an opportunity to put forward their case. It is not to be converted into a regular hearing as is done by a Civil Court. The District Inspector of Schools has to keep in mind that the inquiry to be made by him is of a summary nature and on an administrative level meant to satisfy himself as to who, according to him, are the validly elected office-bearers of the committee of management. In other words the District Inspector of Schools should not arrogate to himself the jurisdiction of a Civil Court and thereby assume the power to decide the fate of the parties before him.*

31. **Jaswant Singh** (Supra) specifically deals with the scope of powers of the District Inspector of Schools in passing successive orders in the matter of grant of recognition to a duly constituted Committee of Management of a college and the question of obtaining appointment on the basis of forged educational certificate was not involved in this case. Therefore, it is not relevant for adjudication of the present case.
32. In **Gauri Shanker Rai v. Dr. Ram Lakhan Pandey**: 1983 SCC OnLine All 794 : 1984 All LJ 291, there was a dispute of management of the college. The District Inspector of Schools passed an order holding that the Committee of management elected on 13.02.1979 was entitled to continue to manage the affairs of the Institution. After change of the person holding the post of D.I.O.S., the subsequent incumbent passed another order reviewing the earlier order passed by his predecessor. Two contentions were raised before this Court: -

*1. The District Inspector of Schools had no jurisdiction to review the order passed by his predecessor on 13-6-1980.*

*2. No opportunity whatsoever was given to the petitioners before the District Inspector of Schools passed the impugned order dated 1-8-1980.*

This Court held that both these contentions are right. The aforesaid case also related to recognition of rival committees of management and the question of scope of interference in the matter of appointment obtained on the basis of forged education certificates was not involved in this case.

33. In **Asha Saxena (Dr.) v. S.K. Chaudhari**: 1990 SCC OnLine All 602 = (1991) 1 UPLBEC 250, the first question involved was about the inter se seniority of the three Lecturers. The next question was as to whether the provisions of clause 3(1)(bb) of Chapter II of the U. P. Intermediate Education Act are retrospective in its operation or not, on which the Full Bench held that the provisions of clause 3(1)(bb) of Chapter II are not retrospective in operation. In light of the aforesaid answer, the Full Bench held that the controversy regarding seniority of the three lecturers was determined by the Managing Committee on 29.04.1976 and the seniority list had remained in existence since then. The Full Bench further held that the law is well settled that the court will not interfere with a seniority list which had remained in existence for a long time and which had become final. The Management had determined the seniority on 29.04.1976 after affording opportunity to Dr. Asha Saxena. She did not file any appeal against the decision of the Committee of Management even though an appeal may have been preferred. Objections by Dr. Asha Saxena had been filed after a lapse of nearly 15 years. She did not raise an objection that seniority list was not prepared every year. The only objection raised was that she did not know about the insertion of provisions of Section 3(1)(bb) in Chapter II and she filed the objections after coming to know of the aforesaid provision. In the aforesaid factual background, the Full Bench held that as the seniority list had been existing since the year 1975-1976, this Court was not prepared to quash the seniority list after a lapse of nearly 15 years. The Full Bench decision given in the aforesaid background is not applicable for adjudication fo the dispute involved in the present case.
34. In **Rajeev Kumar Singh v. State of U.P.**, 2000 SCC OnLine All 973 = 2001 All LJ 485, the question was whether the petitioner was qualified to be appointed as Assistant Teacher (Art). The DIOS had rejected the claim of the petitioner as he was not 'Trained' as provided in Appendix 'A' to Chapter II of the Regulations. This Court held that 'Trained' was not an

essential qualification for appointment to the post of Assistant Teacher (Art) for teaching classes IX and X. 'Trained' was a desirable qualification for the post. There is a difference in desirable or preferential qualification and essential qualification. If a candidate does not possess essential qualification, then he is ineligible for the post. Since 'Trained' was only a preferential qualification the petitioner could not be held ineligible, on this ground. The question commission of fraud by submission of a forged marks-sheet was not involved in this case and, therefore, this judgment is not relevant for adjudication of the controversy involved in the present case.

35. In **Amrendra Pratap Singh v. Tej Bahadur Prajapati**, (2004) 10 SCC 65, the Hon'ble Supreme Court held that:

*“A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the judges, and inferring from it a proposition of law which the judges have not specifically laid down in the pronouncement.*

36. In **State of Orissa v. Mohd. Illiyas**, (2006) 1 SCC 275 it was reiterated that:—

*“12.... A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates : (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent.*

*(See State of Orissa v. Sudhansu Sekhar Misra (1968) 2 SCR 154 and Union of India v. Dhanwanti Devi (1996) 6 SCC 44.) A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In Quinn v. Leathem [1901] A.C. 495 the Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.”*

37. In **P.S. Sathappan v. Andhra Bank Ltd.**, (2004) 11 SCC 672, a Constitution Bench consisting of five Hon'ble Judges held that:—

*“144. While analysing different decisions rendered by this Court, an attempt has been made to read the judgments as should be read under the rule of precedents. A decision, it is trite, should not be read as a statute.*

*145. A decision is an authority for the questions of law determined by it. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment, as is well known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it. [See Haryana Financial Corpn. v. Jagdamba Oil Mills (2002) 3 SCC 496, Union of India v. Dhanwanti Devi (1996) 6 SCC 44, Nalini Mahajan (Dr.) v. Director of Income Tax (Investigation) (2002) 257 ITR 123 (Del), State of U.P. v. Synthetics and Chemicals Ltd. (1991) 4 SCC 139, A-One Granites v. State of U.P. (2001) 3 SCC 537 and Bhavnagar University v. Palitana Sugar Mill (P) Ltd. (2003) 2 SCC 111.*

*146. Although decisions are galore on this point, we may refer to a recent one in State of Gujarat v. Akhil Gujarat Pravasi V.S. Mahamandal (2004) 5 SCC 155 wherein this Court held : (SCC p. 172, para 19)*

*“It is trite that any observation made during the course of reasoning in a judgment should not be read divorced from the context in which it was used.”*

*147. It is further well settled that a decision is not an authority for the proposition which did not fall for its consideration.”*

38. Therefore, the aforesaid judgments relied upon by the learned Counsel for the petitioner would not apply to the facts of and the points involved in the present case, which was not involved in any of those cases.

39. In **Reena Devi versus State of U.P. and 4 others**: 2019 6 AWC 6355 All, a coordinate Bench of this Court referred to various precedents and concluded that: -

*“14. Thus, where a person secures appointment on the basis of a forged mark-sheet or certificate or appointment letter and on that basis he or she has been inducted in Government service then he becomes beneficiary of illegal and fraudulent appointment. Such an appointment is illegal and void ab initio. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution of India or under any disciplinary rules including the Uttar Pradesh Basic Education Staff Rules, 1973 or the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, shall not arise.”*

40. In **Ramanand Bharti versus State of U.P. and 2 others**: 2023:AHC:111702, another coordinate bench of this Court held that: -

*“Where a person secures appointment on the basis of a forged marksheet or certificate or appointment letter and on that basis he or she has been inducted in Government service then he becomes beneficiary of illegal and fraudulent appointment. Such an appointment is void ab initio. Therefore, holding disciplinary proceedings envisages by Article 311 of the Constitution of India or under any disciplinary rules including the Uttar Pradesh Basic Education Staff Rules, 1973 or the Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999, shall not arise.”*

41. When we examine the facts of the present case in light of the law laid down by this Court in the above mentioned cases, it appears that the respondents claim that the petitioner was appointed on ad hoc basis against a substantive vacancy of Assistant Teacher L.T. Grade in subject Civics and the minimum educational qualification for appointment to a post of Assistant Teacher in subject Civics includes a B.Ed. degree. Upon verification from the University, the petitioner's B.Ed. degree has been found to be forged the respondents contend that it makes the petitioner's appointment null and void. The petitioner claims that he had not claimed that he possessed a B.Ed. degree and B.Ed. was not an essential

qualification and it was merely a preferential qualification. In the letter dated 04.03.1993 issued by the District Inspector of Schools granting approval to the petitioner's appointment, his qualification is written as "B.Sc. Agriculture, B.Ed." and the same qualification is mentioned in the petitioner's service book. In case the petitioner had not claimed possessing a B.Ed. degree, there was no occasion for the authorities to include the aforesaid qualification in his service record. Further, had the authorities had erroneously mentioned this qualification on their own, it was open for the petitioner to point out the error and to get it rectified, but the petitioner did not do so. Even if the petitioner's contention that B.Ed. is not an essential qualification, is accepted, he admits that it was a preferential qualification and, therefore, even as per the petitioner, B.Ed. was not an irrelevant qualification which would have no effect on the selections, as the candidates having preferential qualification are given a preference over other candidates who possess the essential qualification but do not possess the preferential qualification.

42. Although the petitioner claims that he was not given an opportunity of hearing, the manager of the college had sent a show cause notice dated 19.10.2020 to the petitioner through registered post and he had been called to appear on 26.10.2020 but he did not submit any explanation and he did not appear also. The three member inquiry committee had sent a notice dated 29.10.2020 to the petitioner giving him another opportunity to show cause. The Enquiry Committee had sent another notice dated 09.11.2020 to the petitioner, but the petitioner did not appear. The three member enquiry committee submitted its recommendation dated 19.11.2020 stating that as per the information provided by Deen Dayal Upadhyay Gorakhpur University, the B.Ed. marks-sheet of the petitioner is forged and the petitioner has no explanation to offer. Accordingly, the enquiry committee recommended termination of services of the petitioner.
43. On 23.11.2020, the Committee of Management has passed a resolution stating that the conduct of the petitioner in not giving any explanation or

evidence in spite of being granted numerous opportunities shows that he has nothing to say and he has no evidence in his favour. Therefore, the committee recommended termination of service of the petitioner and his suspension till termination.

44. The petitioner claims that on 21.09.2020, he had sent a letter to the District Inspector of Schools stating that he was not keeping well and he needs two weeks' time to submit his version. The petitioner has annexed a copy of a prescription dated 18.09.2020 issued by the District Hospital, Deoria, in which complaints of fever, pain in abdomen and viral hepatitis have been recorded and some medicines were prescribed to him, including a particular antibiotic. Another prescription dated 03.10.2020 also records complaints of fever, nausea and viral hepatitis and the same antibiotic was again prescribed for a further period of 15 days. There is nothing on record that a copy of any of the medical prescriptions was ever provided to the respondents. There is no other medical certificate or fitness certificate on record. It is also strange that the petitioner was diagnosed with viral hepatitis without conducting any pathological examination. Although he was suffering from a viral disease, he was prescribed anti biotic medicines and further, the same antibiotic medicine was prescribed continuously for one month. All these things give rise to a strong suspicion against the genuineness of the petitioner's claim of illness.
45. The petitioner did not provide any documents and on 09.10.2020, the District Inspector of Schools wrote another letter with contents similar to his earlier letter dated 18.09.2020 and a copy of the verification report sent by Deen Dayal Upadhyay Gorakhpur University, Gorakhpur and a copy of petitioner's marks sheet of B.Ed. were also enclosed with this letter. A notice was issued to the petitioner on 17.12.2020 directing him to show cause within a period of 15 days as to why the appointment obtained by him on the basis of a forged marks-sheet be not cancelled and the amount paid to him as salary be recovered from him. It was also

mentioned in the notice that if the petitioners fails to show cause, it shall be deemed that he admits the charges and an appropriate decision will be taken in the matter. When the petitioner did not respond to the notice, reminders were sent to him on 25.01.2021 and 04.03.2021. The petitioner personally received the notice from the office of the Director Education on 16.03.2021 and he asked for 15 days' time to submit his reply. When he did not submit any reply within the stipulated period, again reminders were sent to him on 15.04.2021 and 31.05.2021 through registered post. Ultimately, the petitioner submitted his reply on 22.06.2021 stating that he does not hold B.Ed. degree and he had no concern with the forged B.Ed. Marks-sheet. He further stated that B.Ed. was not an essential qualification for the post of Assistant Teacher and it was merely a preferential qualification. Thereafter the petitioner was given opportunity of personal hearing on 17.09.2021, 12.10.2021 and 12.11.2021.

46. On 11.03.2022, the Director Education (Secondary) U.P. passed an order holding that the petitioner had obtained appointment on the basis of a forged marks-sheet of B.Ed. and he got the same regularized by concealment of fact. The regularization order categorically states that in case any concealed fact comes to light, the regularization order will be cancelled automatically. The Director declared the appointment of the petitioner to be without qualification and void and he has been removed from the service.
47. The Principal Secretary, Secondary Education, Government of U.P. has filed his personal affidavit stating that an enquiry was conducted in compliance of the order dated 04.05.2022 passed by this Court and five officers named in the affidavit were found guilty for approval of ad-hoc appointment of the petitioner, regularization of his service and grant of selection grade to him without verification of his certificates / marks sheets, but all those officers had retired from service and disciplinary proceedings could not be initiated against them under Rule 3 of the U. P. Government Servants (Discipline and Appeal) Rules, 1999.

48. In these circumstances, the petitioner's contention that the impugned orders have been passed without giving him an opportunity of hearing, has no force and it is rejected.
49. Even otherwise, a person who secures an appointment by submitting a forged educational certificate, is not entitled to claim any opportunity of hearing, as has been held by the Hon'ble Supreme court in a number of judgments.
50. In **State of Bihar versus Kirti Narayan Prasad**: (2019) 13 SCC 250, the Hon'ble Supreme Court held that where the finding of the State Committee was that many writ petitioners had secured appointment by producing fake or forged appointment letter or had been inducted in government service surreptitiously by the Civil Surgeon-cum-Chief Medical Officer concerned by issuing a posting order, they are the beneficiaries of illegal orders made by the Civil Surgeon-cum-Chief Medical Officer, the appointment of the petitioners is ab initio void, they cannot be said to be the civil servants of the State. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules shall not arise.
51. In **R. Vishwanatha Pillai v. State of Kerala**: (2004) 2 SCC 105, the Hon'ble Supreme Court held that: -

*“19. ... The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise*

*equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.”*

52. The petitioner has been found to have secured a public employment by submitting a forged marks-sheet, which makes his initial appointment as null and void and there is no illegality in the impugned orders. The petitioner having committed a fraud by submitting a forged marks-sheet at the time of applying for his initial appointment, is not entitled to get any retiral dues. However, as this Court had passed interim orders in favour of the petitioner allowing him to continue in service, this Court does not deem it proper that the salary already paid to the petitioner be recovered from him.
53. In view of the aforesaid discussion, this Court finds no merit in any of the three Writ Petitions filed by the petitioner. All the Writ Petitions are **dismissed**.

**[Subhash Vidyarthi, J.]**

**Order Date :- 22.7.2024**  
Ruhi H.