

A.F.R.

Neutral Citation No. - 2024:AHC:99998

Reserved on 27.5.2024

Delivered on 31.5.2024

**Court No. - 36**

**Case :- WRIT - A No. - 23843 of 2018**

**Petitioner :- Sanjay Kumar Singh And 3 Others**

**Respondent :- District Basic Education Officer, Jaunpur And 2 Others**

**Counsel for Petitioner :- Adarsh Singh, Indra Raj Singh,**

**Counsel for Respondent :- Abhishek Srivastava, C.S.C., Mrigraj Singh**

**Hon'ble Piyush Agrawal, J.**

1. Heard Sri Adarsh Singh, learned counsel for the petitioners and Sri Abhishek Srivastava, learned Chief standing counsel for the State-respondents.
2. By means of the present writ petition, the petitioners have prayed to issue a writ, order or direction in the nature of mandamus commanding the respondent no.1- District Basic Education Officer, Jaunpur to grant salary to the petitioners on the posts of Assistant Teachers in the institution namely, Keshav Nath Senior Basic School, Horaiya, Ram Nagar Vidhmanuwa, Jaunpur along with arrears, within stipulated time as may be fixed by Hon'ble Court as well as permit them to work.
3. Counsel for the petitioners submits that on 25.5.2003 Authorised Controller was appointed in the Institution in question. Thereafter permission was sought for appointment of four Assistant Teachers by the Authorised Controller vide letter dated 28.7.2003. The approval was accorded by the District Basic Education Officer, Jaunpur on 29.7.2003. Thereafter advertisement with regard to appointment of Assistant Teachers was published in the newspaper in which interview was fixed for 14.8.2003.
4. The petitioners being duly qualified and eligible applied for the posts. The Selection Committee including the nominee of the

District Basic Education Officer, Jaunpur conducted the interview. After conclusion of the interview, the petitioners were found most suitable candidates amongst all the candidates and their names were recommended by the Selection Committee.

5. On 15.8.2003 the Authorised Controller of the Institution forwarded all the requisite papers pertaining to selection of the petitioners on the posts of Assistant Teacher to the District Basic Education Officer, Jaunpur for approval. On 21.8.2003 the District Basic Education Officer, Jaunpur after verifying the requisite documents and after duly satisfied accorded approval for selection of the petitioners on the post of Assistant Teachers. Thereafter the petitioners joined on the post of Assistant Teachers in the Institution in question and were discharging their duties diligently. Salary was paid to the petitioners by the Finance and Accounts Officer in the office of the District Basic Education Officer, Jaunpur.
6. He further submits that one Bachai Singh has filed Civil Misc. Writ Petition No. 4888 of 2007 before this Court and by order dated 31.1.2007 payment of salary to the petitioners was stayed. By order dated 11.4.2018 the said writ petition was dismissed and the interim order stood vacated.
7. He further submits that some enquiry was made behind the back of the petitioners but neither any disciplinary proceedings were initiated nor suspension order was passed nor services of the petitioners were terminated till date nor approval granted by the District Basic Education Officer, Jaunpur on 21.8.2003 was recalled.
8. He further submits that in pursuance of the ex parte report of the year 2008, first information reports had been lodged against the

petitioners and charge sheet had been submitted to which application under section 482 Cr. P.C. had been filed in which interim order had been passed.

9. He further submits that for approval of appointment of the petitioners as Assistant Teachers papers were forwarded by the Authorised Controller and on his application approval was granted by the District Basic Education Officer, Jaunpur, who happens to be State Authorities. He further submits that apart from bare allegation absolutely no material is on record to show how the petitioners had colluded for any manipulation, therefore, the petitioners should not be penalised for none of their fault.
  
10. In support of his submissions counsel for the petitioners relied upon the judgments of the Apex Court in **A(i) Radhey Shyam Yadav vs. State of U.P. And others** (2024 AIR (SC) 260; **(ii) Civil Appeal No. 3904 of 2013 ( Nahar Singh and others vs. State of U.P. And others)** decided on 14.7.2017; **(iii) Special Leave Petition (Civil) Diary No. 7348 of 2024 (Basic Shiksha Adhikari, District Basti and another vs. Uday Pratap Singh and others)** decided on 16.4.2024; **(B) Division Bench judgment of this Court in Special Appeal (Defective) No. 870 of 2023 (Basic Shiksha Adhikari, District Basti and another vs. Uday Pratap Singh and others)** decided on 19.1.2024.
  
11. Per contra, learned Chief Standing counsel submits that while making appointment of the petitioners, provisions of the Act and Rules have not been complied with. He specifically refers to Rules, 4,5, and 7 of the Uttar Pradesh recognized Basic Schools (Junior High Schools) (Recruitment and conditions of Service of Teachers) Rules, 1978. He further submits that in absence of compliance of specific provisions the appointment of the

petitioners are illegal as well as bad in law, therefore, the salary of the petitioners have rightly been stopped.

12. He further submits that in pursuance of the order dated 31.1.2007 of this Court an enquiry was conducted and enquiry report was prepared on 24.3.2008, a copy of which has been filed along with the counter affidavit. He further submits that in the said enquiry various defects/deficiencies in the process of appointment of the petitioners were found. The advertisements were not made in two news papers as well as required details were also not mentioned in it. He further submits that the petitioners do not have the requisite qualifications to be appointed as Assistant Teachers, therefore, the appointment is void ab initio.

13. He further submits that in pursuance of the enquiry report dated 24.3.2008 first information report was lodged in which charge sheet has been submitted and cognizance has been taken by the officer concerned.

14. In support of his contention he has relied upon the judgments of the Apex Court in **(A) (i) Civil Appeal Nos. 7634-7635 of 2022 (Professor (Dr.) Srejith P.S. vs. Dr.Rajasree M.S. And others)** decided on 21.10.2022,; **(ii) State of Odisha and others vs. Sulekh Chandra Pradhan etc.** (2022 LiveLaw( SC) 393); **(iii) Devesh Sharma vs. Union of India** (Misc. Application (Diary No. 4303/2024 decided on 8.4.2024; **(B) Division Bench Judgment of this Court in Special Appeal (Devective) No. 890 of 2023 (State of U.P. And others vs. Ram Avtar Singh and others)** decided on 9.1.2024.

15. Rebutting the submission of the learned Chief Standing Counsel, counsel for the petitioners submits that the appointments of the

petitioners cannot be said to be illegal. He further submits assuming without admitting for the sake of argument that the appointment of the petitioners can be said to be irregular only. He further submits that in pursuance of ex parte enquiry report dated 24.3.2008 only first informaton report has been lodged against the petitioners as they are beneficiary but no action against the erring officer has been brought on record. In support of his submission he has relied upon the judgment of the Apex Court in Civil Appeal No. .. of 2024 (Arising out of SLP (C) Nos. 22241-42 of 2016) **(Vinod Kumar and others vs. Union of India)** decided on 30.1.2024.

16. He further submits that it is not in dispute that neither the petitoners were suspended nor charge sheets were issued to them, nor the petitoners' services have been terminated. In support of his submission he has relied upon the recent judgment of the Apex Court in **Sandeep Kumar vs. G.B. Pant Institute of Engineering and Technology, Ghurdauri** (2024 0 Supreme (SC) 346. He further submits that the Apex Court has held that if the procedure prescribed under the Rules has not been complied with the services of the petitioners cannot be terminated. He prays that a writ of mandamus be issued to the respondents for payment of salary to the petitoners regularly.

17. After hearing the learned counsel for the parties, the Court has perused the record.

18. It is not in dispute that in the Institution in question the Authorised Controller was appointed by the District Basic Education Officer who sought permission for filling up the vacancies of the Assistant Teachers. After due approval on 29.7.2003 by the District Basic Education Officer the advertisement was issued. The selection was held in presence of the nominee of the District Basic Education

Officer. After concluding the interview selected names of the candidates were forwarded by the authorised controller for approval by the District Basic Education Officer. It is also not in dispute that by order dated 21.8.2003 the District Basic Education Officer after verification of the requisite documents and after duly satisfied granted approval for selection of the petitioners on the post of Assistant Teachers. Thereafter the petitioners joined their duties and payment of salary was also made to them. But payment of salary was stopped in pursuance of order dated 31.1.2007 passed in Writ Petition No. 4888 of 2007. On 11.4.2018 the said writ petition was dismissed and stay order stood vacated.

19. It is a matter of record that an enquiry was instituted in pursuance of the order dated 31.1.2007 passed by this Court in public interest litigation in which a report was prepared on 24.3.2008. In pursuance thereof the only action was taken against the petitioners by way of stopping their salary and were restrained from discharging their duties but nothing has been brought on record that after the report was prepared in the year 2008 any notice was issued to the petitioners. It is also not in dispute that no material have been brought on record on behalf of the State to show that either the petitioners were suspended from services or charge sheets were issued to them or services of the petitioners were terminated. Further the respondents have not brought on record any material to show that the approval granted on 21.8.2003 by the District Basic Education Officer for appointment of the petitioners on the post of Assistant Teachers has been recalled.

20. Further it is not in dispute that after the report dated 24.3.2008 alleging that the petitioners were in collusion with the State Authorities but no departmental action has been taken against the erring officers of the State. No material has been brought on record to show that any action has been taken against the erring officers

except filing of first information report against the petitioners. The affidavits filed by the respondents, not a single word has been whispered about the same. Further in-turn the respondent authorities gave a safe passage to the erring officers to superannuate. Even after retirement no action has been taken against the erring officers within the stipulated time provided in the Service Rules. The conduct of the respondent authorities shows that the petitioners are only made scape goat leaving aside the role of the erring officers.

21. On the aforementioned facts the Court proceeds to examine the arguments raised as well as judgments relied upon by the counsels.
22. The record of the case in hand shows that there is only bald allegation about colluding of the petitioners with the State Authorities but no material has been brought on record.
23. The Apex Court in the judgment of **Radhey Shyam Yadav** (supra) has held in the relevant paragraph nos. 5, 6, 8, 10, 14, 15, 33 and 34 as follows:

*5. Thereafter, responding to the letter of the School, the District Basic Education Officer by his letter of 20.11.1998 accorded permission to issue advertisement for appointment of three posts of Assistant Teachers. On 25.11.1998, an advertisement was issued. The School, thereafter, on 08.12.1998, wrote a letter to the District Basic Education Officer to nominate a Member for the selection of the teachers.*

*In response, the District Basic Education Officer nominated the Assistant District Basic Education Officer, Bahorikpur as a Member of the Selection Committee. The Selection Committee duly met and considered the twelve applications received by it. Seven out of the twelve applicants, including the three appellants herein, participated in the interview.*

*By its letter of 27.12.1998, the Selection Committee informed the District Basic Education Officer that the appellants, on basis of their ability, have been selected and their case was being submitted for approval. The order in which the Selection*

*Committee has sent subjectwise names were as follows:*

- i. Lal Chandra Kharwar - Science and Math*
- ii. Radhey Shyam Yadav - English*
- iii. Ravindra Nath Yadav - Agric & Gen. Topic*

*It is not disputed that by an order of 09.06.1999, the District Basic Education Officer granted approval for the appointment of the appellants. As stated earlier, they were appointed on 25.06.1999 and were working continuously.*

*6. The undisputed case is that from October, 2005, their salaries were stopped from being disbursed, forcing them to file Writ Petitions in the High Court, namely, Civil Misc. Writ Petition No. 10286 of 2007 and Civil Misc. Writ Petition No. 18641 of 2008. The three appellants, in all, filed two writ petitions. In the writ petitions, the prayer was for a writ of mandamus commanding the respondents to pay the arrears of salary from July, 1999 to January, 2002 and continue to pay salary from October, 2005. It was their case that from the date of appointment till January 2002, their salary had not been released.*

***8. Apart from this bare allegation, absolutely no material was placed on record to show how the appellants had colluded or were blameworthy for any manipulation.***

***10. The Learned Single Judge, by order dated 10.09.2013, held that if based on the forged order, proceedings were initiated for the selection of Assistant Teacher, then the entire selection needs to be cancelled. It was also held that since forgery was committed by the persons involved in the selection of Assistant Teachers and since the selection process was not fair, being based on a forged letter, the candidates who were selected in the selection process are not entitled to be appointed and retained on the post of Assistant Teacher, and holding so, the writ petitions were dismissed. The appellants filed writ appeals. By the impugned order, the appeals were dismissed reiterating the findings of the learned Single Judge.***

*14. We have given our thoughtful consideration to the matter and considered the submissions of the rival parties and perused the records. The correspondence between the School and the Directorate of Education culminated in the order of 26.12.1997. There is a dispute about the number of posts that were sanctioned. According to the State, two posts were, in fact, sanctioned and it was the School that manipulated it, to make it three. We will proceed on the basis that the version of the State is correct.*

*The nominee of the State participated in the selection process.*



*Twelve candidates had applied and ultimately three appellants were empanelled for selection. Due approval was given for the appointment and admittedly they discharged their duties on their post from 25.06.1999 till September, 2005. Even according to the State, admittedly, till date there is no order terminating their services. What impelled the appellants to go to the High Court was the stoppage of their salary.*

***15. There is not an iota of material to demonstrate how the appellants, who were applicants from the open market, were guilty of colluding in the manipulation.***

*33. This judgment in Sachin Kumar (supra) is clearly distinguishable from the case at hand. First of all, Sachin Kumar (supra) involved the cancellation of the selection process before any appointments were made. No rights were crystallized to any of the candidates. The issue was about the validity of the cancellation of the selection process. Sachin Kumar (supra) falls in that genre of cases concerning validity of cancellation of the selection process due to largescale irregularities. The Case at hand is proximate to the facts and ratio in Suresh Raghunath Bhokare (supra) and cases of that ilk set out hereinabove.*

***34. We feel that the appellants were not at fault and the State could not have abruptly stopped their salaries. Accordingly, we set aside the judgments of the High Court dated 15.09.2021 in Special Appeal Nos. 1435/2013 and 1445/2013 and direct that the State shall pay the salaries of the appellants for the period from 25.06.1999 till January, 2002 in full. We also direct that insofar as the period from October 2005 till today is concerned, the State shall pay the appellants 50% of the backwages. Since the appointment order and the approval order are still in force, we declare that the appellants have always been and are deemed to be in service. Apart from 50% backwages, as ordered above, we direct that all consequential benefits, including seniority, notional promotion, if any, and fitment of salary and other service benefits due, be granted to the appellants. We direct the State to comply with these directions within four weeks from today. We also direct that the appellants be allowed to commence work within the said period of four weeks.” (Emphasis supplied)***

24. The record further reveals that State Authorities took a conscious decision after being satisfied, accorded approval for selection of petitioners vide order dated 21.8.2003 on the posts of Assistant Teacher.

25. The Apex Court in the case of **Md. Zamil Ahmad** (supra) has held in the relevant paragraph nos. 15, 19, 21 and 22as follows:

*Firstly, the appellant and wife of the deceased at the time of seeking compassionate appointment did not conceal any fact and nor filed any false or incorrect document/declaration. On the other hand, both of them disclosed their true family relations and conditions prevailing in the deceased family on affidavit.*

*19) In the light of aforementioned reasons, which rightly persuaded the State to grant compassionate appointment to the appellant, we do not find any justification on the part of the State to dig out the appellant's case after 15 years of his appointment and terminate his services on the ground that as per the State policy, the appellant did not fall within the definition of the expression "dependent of deceased" to claim compassionate appointment.*

*21) In our considered view, the aforesaid facts would clearly show that it was a conscious decision taken by the State for giving an appointment to the appellant for the benefit of the family members of the deceased who were facing financial hardship due to sudden demise of their bread earner. The appellant being the only close relative of the deceased could be given the appointment in the circumstances prevailing in the family. In our view, it was a right decision taken by the State as a welfare state to help the family of the deceased at the time of need of the family.*

*22) In these circumstances, we are of the view that there was no justification on the part of the State to woke up after the lapse of 15 years and terminate the services of the appellant on such ground. **In any case, we are of the view that whether it was a conscious decision of the State to give appointment to the appellant as we have held above or a case of mistake on the part of the State in giving appointment to the appellant which now as per the State was contrary to the policy as held by the learned Single Judge, the State by their own conduct having condoned their lapse due to passage of time of 15 years, it was too late on the part of the State to have raised such ground for cancelling the appellant's appointment and terminating his services.** It was more so because the appellant was not responsible for making any false declaration and nor he suppressed any material fact for securing the appointment. The State was, therefore, not entitled to take advantage of their own mistake if they felt it to be so. The position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of material fact for securing the appointment. As mentioned above such was not the*

*case of the State. (Emphasis supplied)*

26. The appointment of the petitioners cannot be said to be illegal as after due selection interviews were made in presence of the nominee of the District Basic Education Officer. Thereafter on 21.8.2003 approval was granted after duly being satisfied by the District Basic Education Officer.
27. The Apex Court in the case of **Vinod Kumar** (supra) has held in the relevant paragraph nos. 7 and 8 as follows:

*7. The judgement in the case Uma Devi (supra) also distinguished between “irregular” and “illegal” appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case.*

*8. In light of the reasons recorded above, this Court finds merit in the appellants' arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to SLP(C) Nos.22241-42 OF 2016 Page 9 of 9 recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations. (Emphasis supplied)*

28. The appointment cannot be disturbed on the ground of lack of qualification as held by the Apex Court in **Nahar Singh** (supra) in relevant paragraph nos. 2 and 3 as follows:

*Having regard to the fact that the petitioners have been in service for a long period we are of the view that their appointments ought not to be disturbed **only on the ground of alleged lack of qualification which is contested by the petitioners.** (Emphasis supplied)*

*Accordingly, the special leave petitions are disposed of by directing that the services of the petitioners be not disturbed on the above grounds.*

29. It is not the case of the respondents that any misrepresentation or fraud committed by the petitioners in getting their appointments as held by the Division Bench of this Court in the case of **Uday Pratap Singh** (supra) in relevant paragraph no. 10, which is quoted below:

*10. Facts as have been noticed above are not in issue. It remains undisputed that respondent claimed compassionate appointment in the year 2000 and was offered such appointment in 2003. The father of the respondent had clearly given an affidavit wherein it was mentioned that he was employed in the Education Department of the State. From such material it can clearly be deduced that the factum of the father of the respondent being in Government Service was a fact clearly made known to the authorities and it can therefore not be asserted by the **appellant that there was any fraud or misrepresentation made on part of the respondent.** (Emphasis supplied)*

30. Against the said order in **Uday Pratap Singh** (supra) the State went in appeal before the Apex Court, which has been dismissed on 16.4.2024.

31. In view of the judgments referred hereinabove, the respondents have failed to bring on record any material as to how the petitioners have been colluded with the State Authorities in any manipulation. Further the approval was granted by the State Authorities has not yet been withdrawn. It is also not in dispute that the petitioners were interviewed in the presence of the nominee of the State Authorities and thereafter State Authorities approved their appointments as Assistant Teacher as well as the said approval dated 21.8.2003 has not been withdrawn.

32. The salary of the petitioners cannot be withheld or stopped unless petitioners are suspended or dismissed from service. The Division Bench of this Court in the case of **Committee of Management of Dadaur Inter College, Dadaur, Rae Bareilly vs. District Inspector of Schools, Rae Bareilly and others**

(1985 UPLBEC 1378) has held in the relevant paragraph no. 6 as follows:

*6. We have examined the arguments of Mr. B. C. Saxena and we find no merit in his contention. Given the fact that opposite-parties 3 to 8 are absconding from duty and are not attending the teaching job, it is open to the petitioners to initiate disciplinary proceedings against them. Regulation No. 36 of the Regulations framed under the Act lays down the procedure for initiating disciplinary proceedings against the teachers. If opposite-parties Nos. 3 to 8 were absconding and were guilty of insubordination and they neglected the discharge of their duties, they could be suspended and proceeded with departmentally but unless opposite-parties 3 to 8 are dismissed or they are suspended, their salary cannot be withheld. Unless the said teachers are dismissed there would be no vacancy to justify the making of fresh appointments. If the delinquent teacher is suspended, he will be entitled to subsistence allowance and will not be entitled to full salary. **Unless the delinquent teachers are suspended or are dismissed from service, the payment of salary to them cannot be withheld.** Mr. Saxena made an impassioned appeal that the teachers who were not co-operating with the working of the institution should not be allowed payment of salary as that would result in spoiling the discipline of the institution. In our opinion, this contention is not tenable. The difficulty in the way of the petitioner is that the teachers against whom charges are levelled are still holding their appointment in the institution. No departmental proceedings have so far been taken against them. Their appointment has neither been terminated nor have they been suspended. In view of these facts it cannot be said that opposite-parties Nos. 3 to 8 are not entitled to salary payable to them. As long as they are teachers in the institution and their appointment subsists, they are entitled to their salary. If the said teachers misbehave or do not discharge their duties properly, it is always open to the Management of the College to suspend such teachers or dismiss them from service after departmental inquiry. Unless this is done there is no basis on which payment of salary to the said teachers can be refused. We are, accordingly of the view that writ petition No. 1585 has no merit and deserves to be dismissed. (Emphasis supplied)*

33. The respondents have not brought on record any material to show as to whether in pursuance of the report dated 24.3.2008 any disciplinary inquiry was initiated against the petitioners or the petitioners were put to notice or were suspended or any termination order was passed against them. Even the respondents have not taken any action against the erring officers except filing of first information report against the petitioners. Record also shows that the respondents, till date, have not recalled the order granting approval by the District Basic Education Officer for the

appointments of the petitioners.

34. The Apex Court in **Sandeep Kumar** (supra) has held in relevant paragraph no. 19, which reads as under:

*19. In this background, we are of the firm view that the termination of the services of the appellant without holding disciplinary enquiry was totally unjustified and de hors the requirements of law and in gross violation of principles of natural justice. Hence, the learned Division Bench of the High Court fell in grave error in dismissing the writ petition filed by the appellant on the hypertechnical ground that the minutes of 26th meeting of the Board of Governors dated 16th June, 2018 had not been placed on record. (Emphasis supplied)*

35. Learned Chief Standing Counsel has vehemently argues that while appointing the petitioners Rules 4,5, and 7 of the Rules 1978 have not been complied with. In support of his submissions he placed reliance to paragraph nos. 32 and 35 of the judgment of the Apex Court in **Sulekh Chandra Pradhan** (supra) which is quoted below:

*32. It is not in dispute that the appointment of all the applicants/respondents/teachers have been made directly by the respective Management without following the procedure as prescribed under the Rules/Statute. It is a trite law that the appointments made in contravention of the statutory provisions are void ab initio. Reference in this respect could be made to the judgments of this Court in the cases of [Ayurvidya Prasarak Mandal and another vs. Geeta Bhaskar Pendse \(Mrs\) and others](#)<sup>1</sup>, [J & K Public Service Commission and others vs. Dr. Narinder Mohan and others](#)<sup>2</sup>, [Official Liquidator vs. Dayanand and others](#)<sup>3</sup>, and [Union of India and another vs. Raghuwar Pal Singh](#).*

*35. The impugned order passed by the High Court depicts total non-application of mind. Whereas the cause title would itself show that a Writ Petition (Civil) No.6557 of 2018 is disposed of by the impugned judgment, the High Court observed that the order dated 18 th May, 2017, passed by the Tribunal in O.A. No.2266 of 2015, has not been challenged by the State. Whereas the teachers have hardly worked for four years and a substantial part thereof on account of interim orders passed by the High Court, the High Court goes on to 5 (1997) 2 SCC 635 observe that the teachers have worked for a period of more than 20 years. No reasons, leave aside sound reasons, are reflected in the impugned order while dismissing the writ petitions filed by*

*the State.*

36. In the case cited above by the State, the appointment was made by the Management Committee of the School in the year 1988 and after the Government Order was issued the services of the candidates were terminated. Thereafter they approached the High Court in which interim order was passed permitting them to continue in service as in interim protection but in the case in hand the approval was sought by the State Authority as Authority Controller, approval was granted by the State Authorities i.e. the District Basic Education Officer and after adopting due process of selection in the presence of the nominee of the District Basic Education Officer the selection has been undertaken. After completing the selection process the Authorised Controller (appointed by the State Authority) forwarded the names of the selected candidates to the District Basic Education Officer for its approval for appointment. By the order dated 21.8.2003 the approval was accorded, therefore, the case referred to above is entirely different in the facts and circumstances of the present case and will not give any aid to the respondents.

37. Learned Chief Standing Counsel has further referred to paragraph nos. 8 and 9 in **(Professor (Dr.) Srejith P.S** (supra) which reads as under:

38. *8.10 At this stage, it is required to be noted that even as per [Section 13\(4\)](#) of the University Act, 2015, the Committee shall recommend unanimously a panel of not less than three suitable persons from amongst the eminent persons in the field of engineering sciences, which shall be placed before the Visitor/Chancellor. In the present case, admittedly the only name of respondent No. 1 was recommended to the Chancellor. As per the UGC Regulations also, the Visitor/Chancellor shall appoint the Vice Chancellor out of the panel of names recommended by the Search Committee. Therefore, when only one name was recommended and the panel of names was not recommended, the Chancellor had no option to consider the names of the other candidates. Therefore, the appointment of the*

*respondent No. 1 can be said to be de hors and/or contrary to the provisions of the UGC Regulations as well as even to the [University Act, 2015](#). Therefore, the appointment of respondent No. 1 on the basis of the recommendations made by the Search committee, which was not a duly constituted Search Committee as per the UGC Regulations and when only one name was recommended in spite of panel of suitable candidates (3-5 suitable persons as required under [Section 13\(4\)](#) of the University Act, 2015), the appointment of respondent No. 1 can be said to be illegal and void ab initio, and, therefore, the writ of quo warranto was required to be issued.*

39. *In view of the above and for the reasons stated above, the present appeals succeed. The impugned judgment(s) and order(s) passed by the Division Bench of the High Court as well as that of the learned Single Judge dismissing the writ petition and refusing to issue the writ of quo warranto declaring the appointment of respondent No. 1 as Vice Chancellor of the APJ Abdul Kalam Technological University, Thiruvananthapuram as bad in law and/or illegal and void ab initio are hereby quashed and set aside. The writ petition is allowed. There shall be a writ of quo warranto declaring the appointment of the respondent No. 1 as Vice Chancellor of the APJ Abdul Kalam Technological University, Thiruvananthapuram as void ab initio and consequently, the appointment of respondent No. 1 as Vice Chancellor of the APJ Abdul Kalam Technological University, Thiruvananthapuram is quashed and set aside.*

40. In the case cited above the appointment of the Vice Chancellor was made diluting some provisions where the Apex Court has taken the view that the provisions of U.G.C. Regulations will be applicable and provisions cannot be diluted but the case in hand the respondents have not approached the Court even after enquiry report dated 24.3.2008 for issuance of writ of quo warranto or appointments of petitioners were illegal or de hors the rules, therefore above cited judgments is of no aid to the respondents specially in view of latest judgment of Apex Court in the case of **Vinod Kumar** (supra) and **Sandeep Kumar** (supra).

41. Learned Chief Standing Counsel further argued that the petitioners do not possess the requisite qualification therefore, the appointment is void ab initio. He referred to paragraph nos. 9 and 10 in the case of **Ram Avtar Singh** (supra) and **Devesh**



**Sharma** (supra) are of no help as facts of the case stated hereinabove and in view of the latest judgment of the Apex Court in the cases of **Vinod Kumar** (supra) and **Sandeep Kumar** (supra) as well as of **Nahar Singh** (supra).

42. In the case in hand the approval was sought by the State Authority as Authority Controller, approval was granted by the State Authorities i.e. the District Basic Education Officer and after adopting due process of selection in the presence of the nominee of the District Basic Education Officer the selection has been undertaken. After completing the selection process the Authorised Controller (appointed by the State Authority) forwarded the names of the selected candidates to the District Basic Education Officer for its approval for appointment. By the order dated 21.8.2003 the approval was accorded which is still intact. In other words the approval has not been recalled till date.

43. Further in the case of **Radhay Shyam Yadav** (supra) the Apex Court has recently held that since the approval is still enforce, the appellants therein were deemed to be in service and directed to pay arrears of salary with all consequential benefits, including seniority, notional promotion, if any, and fitment of salary and other service benefits due, be granted to the appellants therein.

44. The report was prepared on 24.3.2008. In pursuance thereof the only action was taken against the petitioners by way of stopping their salary and were restrained from discharging their duties but nothing has been brought on record on behalf of the State to show that either the petitioners were suspended from services or charge sheets were issued to them or services of the petitioners were terminated.

45. The report dated 24.3.2008 alleging that the petitioners were in

collusion with the State Authorities but no departmental action has been taken against the erring officers of the State. In-turn the respondent authorities gave a safe passage to the erring officers to superannuate. Even after retirement no action has been taken against the erring officers within the stipulated time provided in the Service Rules. The conduct of the respondent authorities shows that the petitioners are only made scape goat leaving aside the role of the erring officers.

46. In view of the factual matrix of the case as well as judgments of the Apex Court and Division Bench of this Court referred to hereinabove, a mandamus is issued to the respondent- State Authorities concerned to pay the arrears of salary to the petitioners from the date the order was passed stopping payment of salary as well as to work (whichever is earlier) till the date of this order. Since the appointment order and approval order are still in force the petitioners are deemed to be in service. The respondents are further directed to allow all consequential benefits, seniority, notional promotion, if any, and fitment of salary and other service benefits due, be granted to the petitioners. Further mandamus is issued to the respondents -State Authorities to comply above directions within four weeks from today. Further mandamus is issued to the respondents to allow the petitioners to commence work within the aforesaid period of four weeks.

47. The writ petition is allowed in the above terms.

**Order Date :-31.05.2024.**

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