

Mahendra Kumar vs State Of U.P.And 4 Ors. on 28 February, 2025

Author: Saurabh Shyam Shamshery

Bench: Saurabh Shyam Shamshery

HIGH COURT OF JUDICATURE AT ALLAHABAD

2025:AHC:28050

Reserved - 10.02.2025

Delivered - 28.02.2025

Court No. - 10

Case :- WRIT - A No. - 46542 of 2013

Petitioner :- Mahendra Kumar

Respondent :- State Of U.P.And 4 Ors.

Counsel for Petitioner :- Sharad Chandra,Vijay Kumar Singh(Senior Adv.)

Counsel for Respondent :- K.Shahi,Rajendra Prasad,Yogesh Kumar Saxena

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri Ram Pal Singh Rajpoot, learned counsel for petitioner and learned Standing Counsel for State.

2. This is second round of litigation. In earlier round of litigation, the petitioner has filed a Writ A No. 9196 of 2013 whereas one Uma Devi and Neelesh Kumar has filed Writ A Nos. 59637/2012 and 12173/2013 respectively, which were disposed of by different orders with a direction to consider

their grievances and since issues involved appear to be similar in nature, therefore, they were decided by a common impugned order dated 18.05.2013 passed by District Basic Education Officer, Etawah whereby approval of appointment of petitioner as Head Master and one Smt. Uma Devi, Clerk were cancelled on a ground that they were appointed by their relatives being in violation of relevant provisions.

3. This writ petition is filed only by Mahendra Kumar, and it appears that Smt. Uma Devi and Neelesh Kumar have not filed any writ petition.

4. Facts which are essential for disposal of present case are that the petitioner has claimed that he was appointed on post of Head Master by an appointment order dated 09.04.1999 on a probation period of 1 year and thereafter he was regularly working. It is further case of petitioner that respondent-college came into grant-in-aid vide order dated 14.03.2007 w.e.f. 21.12.2006 and name of petitioner was mentioned in the list submitted by the respondent college.

5. It is further case of petitioner that he was put under suspension vide order dated 27.07.2012, however, it was revoked later on by order dated 11.07.2013. Before it, petitioner has approached this Court against his suspension order and some other writ petitions were also filed and by impugned order, despite issue was only in regard to salary and suspension order which was already revoked, concerned respondent has entertained a complaint in regard to appointment of petitioner and other and travelled beyond the order passed by the Court.

6. Learned counsel for petitioner has also denied the allegation that petitioner was a close relative of Hari Singh Verma, the then Manager of Committee of Management of respondent college, who has appointed him on 09.04.1999.

7. Per contra, learned Standing Counsel has supported the impugned order and submitted that in the order passed in earlier round of litigation, a direction was passed by this Court that pending complaint in regard to relationship of petitioner with the then Manager be also looked into and he has referred order dated 20.02.2013 passed in Writ A No. 9196 of 2013 filed by petitioner and some other persons which is quoted below :-

"Heard learned counsel for the petitioner and Sri K.Shahi learned counsel for the respondent no.2 to 4. It is not necessary to issue notice to the respondent no.5 at this stage keeping in view the order that is proposed to be passed.

The petitioner has come up against the order dated 27.7.2012 whereby the petitioner has been suspended. He is the Head Master of privately managed and recognised Junior High School.

The contention of the learned counsel for the petitioner is that enquiry is not proceeding and no salary or subsistence allowance is being paid to the petitioner. It is in these circumstances a prayer has been made for quashing of the suspension order.

Sri K.Shahi has invited the attention of the Court to the notice dated 12.7.2012 whereby another complaint had been made against the petitioner in relation to his status of relationship with the Manager at the time of his appointment.

Thus there are two complaints one by the Manager for which the petitioner has been suspended under the order dated 27.7.2012 and the other is with regard to his relationship at the time of the appointment which enquiry is being made by the Basic Education Officer.

In the aforesaid background it would be appropriate that the Enquiry Officer in relation to the charges mentioned in the suspension order dated 27.7.2012 proceeds to conclude the enquiry within 3 months from today.

Simultaneously the petitioner shall also file a reply to the notice dated 12.7.2012 issued by the Basic Education Officer as indicated in his reply as contained in Annexure 6. Accordingly the petitioner will file a copy of this order before the Basic Education Officer within 3 weeks from today and the Basic Education Officer shall decide the same within a period of three months thereafter.

The writ petition is accordingly disposed of."

8. Learned Standing Counsel has also referred that on basis of above order, other writ petitions were also disposed of.

9. Learned Standing Counsel has further submitted that D.I.O.S. has rightly considered the complaint so far as relationship of petitioner and Manager is concerned and that it is well settled that Manager cannot appoint his relatives.

10. Heard learned counsel for parties and perused the records.

11. Court is of considered opinion that since in earlier round of litigation, this Court has directed the D.I.O.S. to look into complaint so far as relationship of petitioner and the then Manager is concerned, therefore, there was no illegality in impugned order where such issue was considered specifically when said order was never challenged at behest of petitioner.

12. Learned counsel for petitioner has not able to deny that it is well settled that Manager of a college would not appoint any of his close relatives.

13. Learned counsel for petitioner has denied the relationship with the then Manager i.e. Hari Singh Verma.

14. In this regard, it would be relevant to refer few part of impugned order :-

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15. Petitioner before this Court is Mahendra Kumar S/o Late Bhajan Lal whereas Hari Singh Verma is son of Late Mohan Lal. Late Bhajan Lal and Mohan Lal were real brothers and were sons of Late Lotan Lal. In simple words, it could be said that Mahendra Kumar and Hari Singh Verma, the then Manager are first cousins which means they are closely related to each other. Even when impugned order was passed, the Manager was Smt. Ram Roshni, wife of Babu Ram, the other cousin, therefore, relationship as mentioned in impugned order could not be denied.

16. In the impugned order, a reference is given of Clause (x) of Section 6 of U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Teachers) Rules, 1978 which is as follows :-

"6. Disqualification. -

(1) No person who is related to any member of the Management shall be appointed as Headmaster or Assistant Teacher of a recognised school. (2) For the purposes of this rule, a person shall be deemed to be related if he is related to such member in any one of the following ways, namely -

- (i) Father or mother;
- (ii) Grandfather, grandmother;
- (iii) Father-in-law, mother-in-law;
- (iv) Uncle, aunt, maternal uncle, maternal aunt;
- (v) Son, daughter, son-in-law, daughter-in-law;
- (vi) Brother, sister;

(vii) Grandson, grand-daughter;

(viii) Husband, wife;

(ix) Nephew, niece;

(x) Cousin;

(xi) Wife's brother, or wife's sister, wife's brother's wife, sister's husband;

(xii) Husband's brother, husband's brother's wife;

(xiii) Brother's or cousin's wife."

17. It appears that on basis of copy of family register issued by Gram Panchayat of concerned village, relationship between petitioner and the then Manager, as referred in impugned order, cannot be put under doubt as well as learned counsel for petitioner has also not able to deny such relationship, therefore, petitioner was in fact disqualified for appointment at relevant time since he was relative of Manager of Committee of Management of said college.

18. In aforesaid circumstances, Court is of considered view that appointment of petitioner was de-hors of relevant Rules (supra) which has been rightly considered in impugned order and there is no material on record on fact or on law which could contradict such findings which were based on material.

19. Accordingly, this Court does not find any ground to interfere with impugned, therefore, writ petition lacks merit, hence, dismissed.

Order Date :- February 28, 2025 Sinha_N.

[Saurabh Shyam Shamshery, J.]