

Devendra Kumar Agrawal vs State Of U.P. And 5 Others on 28 February, 2025

Author: Saurabh Shyam Shamshery

Bench: Saurabh Shyam Shamshery

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:28081

Reserved on : 11.02.2025

Delivered on : 28.02.2025

Court No. - 10

Case :- WRIT - A No. - 17790 of 2021

Petitioner :- Devendra Kumar Agrawal

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Bheem Singh, Sr. Advocate

Counsel for Respondent :- Alok Mishra, Binod Kumar Mishra, C.S.C., Man Mohan Singh, Vijay Ku

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri V.K. Singh, learned Senior Advocate assisted by Sri Bheem Singh, learned counsel for petitioner, learned Standing Counsel and S/Sri Alok Mishra and Vijay Kumar Ojha, learned counsel for respondents.

2. The petitioner was appointed as an Assistant Teacher in LT Grade on 28.07.1992. He preferred a writ petition before this Court being a Writ Petition No.30125 of 1993 with a prayer to grant him salary, wherein an interim order was passed on 26.08.1993 and his salary was accordingly paid during pendency of said writ petition.

3. During pendency of said Writ Petition the approval to appointment of petitioner was also granted on 03.03.1994 and the Writ Petition was finally disposed of by an order dated 25.05.2004 with the direction that interim order will continue till his case for regularisation and validity of his Ad-hoc appointment is considered. The said order is reproduced hereinafter :-

"The petitioner was appointed on ad hoc L.T. Grade Teacher against the short term vacancy by means of the appointment letter dated 28.07.1992. The District Inspector of Schools, however, did not grant approval to the appointment of the petitioner as a result of which the present petition was filed in which an interim order was passed on 26.08.1993 to the effect that the petitioner shall be allowed to work on the post and shall be paid his salary. The petitioner now claims regularisation under the provisions of Section 33-C of the U.P. Secondary Service Selection Board Act, 1982 (hereinafter referred to as the 'Act'). This has to be examined by the Joint Director of Education, Aligarh.

In this view of the matter, the petition is disposed with a direction to the Joint Director of Education, Aligarh to consider the case of the petitioner for regularisation in accordance with the provisions of Section 33-C of the Act within a period of three months from the date, a certified copy of this order is produced by the petitioner before the Joint Director of Education, Aligarh after giving opportunity to the petitioner and the Committee of Management.

While deciding the case of the petitioner for regularisation, the Joint Director of Education, Aligarh shall also consider the validity of the ad hoc appointment of the petitioner. The interim protection granted to the petitioner by this Court shall continue till the decision is taken by the Joint Director of Education, Aligarh.

There shall be no order as to costs."

(Emphasis Supplied)

4. In the aforesaid circumstances, the petitioner remained working and was granted other benefits also such as selection grade, promotional pay scale etc. as well as promotion. It appears that a complaint was made against the petitioner that he was appointed on basis of a degree Shiksha Alankar, which was not a valid degree and after considering the reply to it, the Director of Education, vide order dated 24.11.2021, declared his appointment void ab initio and thereafter a consequential order dated 27.11.2021 was also passed, whereby his services were also terminated.

5. Learned Senior Counsel for petitioner has not able to much dispute about the nature of degree i.e. Shiksha Alankar that it was never recognized, therefore, the petitioner was not qualified for the post of Assistant Teacher, however, he further submitted that petitioner has worked from 28.07.1992 to till date. He was terminated on 27.11.2021 and thereafter, under the strength of interim order dated 09.12.2021 he is still in service i.e. he has already worked for more than 33 years.

6. In the above background, learned Senior Counsel for petitioner refers a judgment passed by Supreme Court in case of Radhey Shyam Yadav and another Vs. State of U.P. and others, 2024 INSC 7, that since petitioner was not at fault, therefore, their salary cannot be stopped. It is not a case of fraud and degree of Shiksha Alankar was considered to be a not eligible qualification much later on and he seeks protection of petitioner's service and salary.

7. Per contra, learned counsel for respondents submitted that in a similar circumstance, this Court by a judgment passed in Dinesh Kumar Singh Vs. State of U.P. and others, 2024:AHC:124422-DB, has unsuited the petitioner therein being on same ground that his qualification of Shiksha Alankar was not recognized and removal of said petitioner was not interfered.

8. Learned counsel further submitted that said order was subject to a Special Appeal, however, the same was rejected by an order dated 02.08.2024. The relevant part of order passed by Single Bench as well as by Division Bench is reproduced hereinafter :-

"Dinesh Kumar Singh Vs. State of U.P. and 3 others, 2024:AHC:38395

12. Facts of present case are not disputed that the petitioner has passed Shiksha Alankar (Bachelor of Education, B.Ed.) from Rashtriya Patrachar Sansthan, Kanpur which was not recognised. This Court in the year 2011, in Vinod Kumar Upadhyaya (supra) has passed mandamus to remove all such persons who got appointment on basis of such degree.

13. The judgement relied upon by the petitioners are based on individual facts of case whereas in the present case, there are judgements which are specific on the issue against the petitioners. As referred above, in Vinod Kumar Upadhyaya (supra), a general mandamus was issued.

14. In similar circumstances, a Division Bench of this Court in Surya Prakash Pandey (supra) has held that if no recognition is ever granted to qualification of Shiksha Alankar (Bachelor of Education, B.Ed.) from Rashtriya Patrachar Sansthan, Kanpur equivalent to Bachelors Degree in education, then there is no question of recognition of same.

15. Above referred order was upheld by the Supreme Court in Surya Prakash Pandey vs. State of U.P. and others, Special Leave to Appeal (C) No. 25551 of 2018 decided on 02.09.2022.

16. In view of above referred legal position, undisputedly the petitioner's degree of Shiksha Alankar (Bachelor of Education, B.Ed.) from Rashtriya Patrachar Sansthan, Kanpur is not a recognised degree, therefore, he is not qualified to become an Assistant Teacher, therefore, no circumstance exists to take a different view.

17. Therefore, impugned order cannot be interfered.

18. So far as prayer in regard to recovery of salary is concerned, there is no such direction in the impugned order, therefore, at this stage, no relief could be granted to petitioner.

19. However, in case any action is taken for recovery of salary, petitioner will be at liberty to avail a legally permissible remedy.

20. With above observations, this writ petition is disposed of.

Dinesh Kumar Singh Vs. State of U.P. Through Secretary - Basic Education and 3 others, 2024:AHC:124422-DB

10. We find that the Division Bench in the aforementioned matter had intervened in the order dated 19.7.2011 only to the extent not to recover the salary from the appellant for the period he had already worked and also not to lodge the First Information Report, until further orders of this Court. It is, therefore, very much clear that although the Special Appeal No. 1875 of 2011 is pending but the direction has been given in Vinod Kumar's case (supra) directing the State Authorities to remove all the persons having 'Shiksha Alankar' degree has not been stayed.

11. In an Intra-Court Special Appeal, no interference is usually warranted unless palpable infirmities or perversities are noticed on a plain reading of the impugned judgment and order. In the facts and circumstances of the instant case, on a plain reading of the impugned judgment and order, we do not notice any such palpable infirmity or perversity. As such, we are not inclined to interfere with the impugned judgment and order.

12. In view of above, the special appeal sans merit and is, accordingly, dismissed. "

9. In the aforesaid circumstances, since it is being now settled that degree of Shiksha Alankar was not a valid qualification for the purpose of appointment of Assistant Teacher, therefore, petitioner's appointment was de hors of rules as such the Court is of opinion that no contrary view could be taken to the view of Dinesh Kumar Singh as confirmed by Division Bench, therefore, without interfering with impugned order, it is observed that since in this case also there is no direction for recovery of salary, therefore, no relief could be granted to petitioner so far as such prayer is concerned, however, this writ petition is disposed of with an observation/direction that in case, any action is taken for recovery of salary, the petitioner will be at liberty to take legally permissible remedy, if so advised.

Order Date :- 28.02.2025 P. Pandey