

# Rajendra Pratap And Another vs State Of U.P. And Others on 4 February, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:15088

Judgment reserved on 26.09.2

Judgment delivered on 04.02

Court No. - 80

Case :- APPLICATION U/S 482 No. - 10772 of 2005

Applicant :- Rajendra Pratap And Another

Opposite Party :- State of U.P. and Others

Counsel for Applicant :- Ashok Kuamr Pandey

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Ram Manohar Narayan Mishra,J.

1. By means of instant application under Section 482 Cr.P.C., the applicants has made following prayer:-

"(a) To quash the Charge-sheet No. 16 of 2005, dated 16.6.2005, and consequential proceedings against the applicants arising out of the Criminal Case No.1253 of 2005, relating to case crime No. 309 of 2003, Under Sections 409, 419, 420,467, 468, 471, 201 and 120-B I.P.C. Police Station Kotwali, District Ballia pending in the Court of Chief Judicial Magistrate, Ballia.

(b) To stay the further proceedings against the applicants in Criminal Case No. 1253 of 2005, pending in the Court of Chief Judicial Magistrate, Ballia relating to Case crime No.309 of 2003, Under Sections 409,419, 420, 467, 468, 471, 201 and 120-B I.P.C. Police Station Kotwali, District-Ballia.

(c) To restrain the opposite party no.5 from harassing the applicants in relation with the above noted case and or may pass any such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances stated above, of the case."

2. Heard Sri Ashok Kumar Pandey, learned counsel for the applicants and Sri Jai Baharur Singh, learned AGA for the State and perused the record.

3. Learned A.G.A. filed a copy of counter affidavit dated 02.02.2020 on 26.09.2024 which is taken on record.

4. The factual matrix of the case is brief as appears from FIR version and counter affidavit filed on behalf of the State is that in the year 1999, an enquiry was conducted under the direction of State Government with regard to the illegal and irregular appointments made in Narheji Inter College Narhi, District Ballia at mass level, resulted into burden of payment of salary upon the State exchequer. After completion of enquiry, a First Information Report was lodged on 25.07.2003 against the officials and employees of Education Department, and Management of the College. The said First Information Report was registered as Case Crime No. 309 of 2003 under sections 419, 420, 409, 467, 468, 471, 201 and 120-8 of I.P.C. at Police Station Kotwali, District Balla.

5. That the investigation of aforesaid Case Crime No. 309 of 2003 was conducted by the C.B.C.I.D., Varanasi Sector Varanasi and after completion of the same, a chargesheet vide Charge Sheet No. 16 of 2005 dated 16.06.2005 was submitted before the court below.

6. That during the course of investigation, it had come into picture that one person namely Surendra Nath Singh, alleged as Assistant Teacher. Narheji Inter College, Narhi, District Ballia was removed from the service after due process of inquiry on the ground of absence from the service since February 1999 and misconduct. The above named Surendra Nath Singh prepared forged documents with regard to his service book in conspiracy with the officials and employees of education department and had got his bill of arrears forwarded to the superior authorities for release of payment. On the basis of which, later on, he had been paid a total sum of Rs. 6.68.843/- in a wholly forged manner in conspiracy to the erstwhile District Inspector of Schools, Ballia, Finance and Accounts Officer, Assistant Finance and Accounts Officer, Assistant / Senior Clerks and other persons.

7. That for the aforesaid payment to the above named Surendra Nath Singh, forgery with regard to verification of forged Arrear bills and other documents relating to the payment was committed by the persons involved in the aforesaid criminal case in conspiracy with each other and the said payment was made to the above named Surendra Nath Singh, who had not even rendered his

services as Assistant Teacher. The said payment had caused a loss to the tune of Rs. 6,68,843/- Ample evidences were collected by the Investigating Officer in support of the aforesaid facts and on the basis of said evidences, the aforesaid Charge Sheet No. 16 of 2005 dated 16.06.2005 was submitted in accordance with law before the learned court below. Such payment was made from time to time despite the fact that the Joint Director (Secondary Education) had stayed such payments vide order dated 03.06.1999 but the said order was suppressed by the accused persons in conspiracy to each other with an intention to commit the offences mentioned in the charge-sheet in question.

8. That the learned court below has taken cognizance of the offences after perusing the entire record of investigation and has summoned the accused persons including the present applicant in accordance with law. As such, the present Criminal Misc. Application filed under section 482 of Cr.P.C. is devoid of merit and is liable to be dismissed.

9. That the present applicant no. 1 was working as District Inspector of Schools, Ballia and applicant no. 2 was working as Account Officer at the relevant point of time and had committed offences, as mentioned in the charge sheet in conspiracy with the co-accused persons.

10. FIR in the case was lodged vide Case Crime No.309 of 2003, under Sections 409, 419, 420,467, 468, 471, 201 and 120-B I.P.C. Police Station Kotwali, District Ballia against applicant Rajendra Pratap who was then District Inspector of Schools (in short DIOS) in District Ballia and Dilip Kumar Pandey who was posted as Accounts Officer in district together with 25 other named accused persons under Sections 409, 419, 420,467, 468, 471, 201 and 120-B I.P.C. and the Investigating Officer after concluding the investigation filed chargesheet against 27 persons with prayer to prosecute them.

11. Learned counsel for the applicants submitted that by way of instant Criminal Misc. Application under Section 482 the applicants seeks to challenge the chargesheet filed in the case as well as consequential proceedings pending before the Chief Judicial Magistrate, Ballia in Criminal Case No.1253 of 2005 related to above stated offence. The matter pertains to payment of salary which has been made to certain teachers namely Surendra Natha Singh, Mangala Singh and Ravi Shankar Pandey. Present case relates to payment of salary to one Surendra Nath Singh who was posted as assistant teacher in Sri Narhagee Inter College Narhai Dasra, District Ballia. Apart from that payment of salary to other teachers Mangala Singh and Ravi Shankar Pandey is also under challenge in other criminal cases in FIR lodged on 25.07.2003 against the applicant No.1 and some other person at Police Station Kotwali District Ballia with the allegation that illegal appoint has been made of one Surendra Nath Singh as assistant teacher in collusion of other accused persons, and some payments of salary have been made to him. Name of applicant is not mentioned in the FIR.

12. He next submitted that a bare perusal of the FIR demonstrates that a letter was sent to the State Government by the then SHO, P.S. Kotwali District Ballia in relation to the irregularity in appointment made by aforesaid persons and consequently the State Government formed a committee for the investigation and referred the matter for investigation. The Investigating Officer during preliminary inquiry recorded the statement of some persons and submitted report and

consequently the FIR was lodged at Police Station Kotwali District Ballia.

13. He further submitted that feeling aggrieved by said FIR, the applicant No.2 approached this Hon'ble Court challenging the FIR dated 25.07.2003. This Hon'ble after considering the material facts was pleased to stay the arrest of the applicant in Case Crime No.309 of 2003, which pertains to present criminal case pending against the applicants, till the conclusion of the investigation or submission of any report vide order dated 27.05.2005.

14. He further submitted that the Investigating Officer failed to record the statement of the applicants during the course of investigation and further more he failed to consider the counter affidavit and the other aspects of the case as he did not consider the fact that some payment of salary to Surendra Nath Singh and other assistant teachers have already been made under the directions of higher authorities, and further initially payment has been made by earlier DIOS in the year 1995. As such the ignorance of facts itself vitiates the entire proceedings against the applicants. The Investigating Officer without considering the material facts filed chargesheet against the applicants together with other accused persons, whereas the applicants had no concern with the appointment of said teachers. The main allegation in the chargesheet are with regard to illegal appointment and payment of salaries to the teachers. It is relevant to point out here that illegality in appointment and payment of salaries, the assistant teachers should be scrutinized in the manner provided under the provisions of U.P. Secondary Education (Service Selection Board) Act, 1982 and removal of difficulty order framed there under and also under the provisions of Payment of Salaries Act, 1971.

a. Learned counsel for the applicants submitted that Section-9 of the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, U.P. Act No.24 of 1971, which reads as follows:-

"9- Approval for post:- No institution shall create a new post of teacher or other employee except with the provisions approval of the Director, or such other officer as may be empowered in that behalf by the Director)."

b. He next submitted that the teachers and employees would get the payment of salary from the States Fund, if they appointed against the sanctioned post, under the provisions of Section 9 of Payment of Salaries Act, 1971. The appointment of Sri Surendra Nath Singh is said to have been made prior to 1995, when power of making the appointment on the post of assistant teachers vested in committee of management (two substantive vacancies under Section 18 of the U.P. Secondary Education (Services Selection Board) Act, 1982 and under the removal of difficulties order (if the short term vacancy). All the provisions referred above have been scrutinized by the then DIOS, Ballia, he has proved the appointment of Sri Surendra Nath Singh and his payment of salary was released as per direction of higher authorities. The appointment of Sri Surendra Nath Singh has not been challenged to any court of law or to the knowledge of the applicant and same is not declared as invalid at any forum.

c. Reference may be made to proceeding initiated by the teachers and employees of Narheji Inter College Narhi, District Ballia where Surendra Nath Singh has been appointed as assistant teacher by

filing a writ petition before this Hon'ble Court vide writ petition No.18277 of 1996, which was filed by certain staff of teachers, in that writ petition this Hon'ble Court directed to pay the salary to teachers and other employees in accordance with law.

d. The Director of Education after issuing the notices to the Management, Principal as well as to the teachers passed a detailed order on 05.08.1996, in which it has been held that in the institution there are only 26 sanctioned posts and the teachers and employees working against the said sanctioned posts are entitled to their salary. A copy of order dated 05.08.1996 of the Director of Education is being filed herewith and marked as Annexure No.4 to the affidavit. The Director of Education has referred the order of Hon'ble High Court passed on 24.05.1996 in Writ Petition No.18277 of 1996 (U.P. Madhyamik Shikshak Sangh, Narheji Inter College Narhi, District Ballia through the Mangala Prasad Singh, Assistant Teacher and another Vs. State of U.P. through Secretary Education and others) e. In contempt proceedings arising out for non compliance of the order passed in Writ Petition No.18277 of 1996, in which this Hon'ble Court was pleased to pass a detailed order and directed the State Government to form a high level committee, into the illegality in appointment of teachers and employees in said college. This Hon'ble Court vide order dated 19.09.1996 further directed the State Government to fix responsibility regarding illegal appointment of the teachers and employees of the institution initially. As per the direction of this Hon'ble court dated 19.09.1996 the high level committee was formed consisting of Additional Director of Education, Joint Secretary Education Department and Chief Accounts Officer etc. The high level committee passed a detailed order after looking into the entire record of the institution as well as sanctioned strength of post vide its order dated 08.07.1997. That in the order dated 08.07.1997 the high level committee held that the appointment of Mangala Prasad Singh and Surendra Nath Singh are against the sanctioned post. The high level committee has further fixed responsibility on several persons. The name of the applicant did not find place in that list. The copy of report of high level committee dated 08.07.1997 is annexed as Annexure No.5 to the affidavit.

f. The authority to sanction the posts and to make appointment is the Director of Education and DIOS under the provisions of law. The appointment of Sri Surendra Nath Singh has been verified by the Director of Education who was one of the members of the high level committee and the appointment has been approved by the then DIOS. The investigation conducted by CBCID was not fair on account of the fact that appointment of those teachers held valid by education department and this fact was not looked into by the Investigating Officer. The observation of Investigating Agency held that 116 posts in the institution is the result of malafide exercise with intention to facilitate the management to get illegal payments from the State fund.

g. The appointment of Sri Surendra Nath Singh was made against the sanctioned posts approved by the DIOS and held valid by Director of Education as well as High Level Committee.

h. He next submitted that there is no evidence against the applicants, what so ever to justify the fact that they have discharges their duties in collusion with other officials and disobeyed the order of their higher authorities, hence, the impugned chargesheet submitted by the investigating officer deserves to be set-aside qua applicants.

I. The ingredients to charges levelled against the applicants Under Sections 409, 419, 420, 467, 468, 471, 201 and 120-B I.P.C. are not applicable in relation to the applicants, there is no evidence that they have committed any criminal breach of trust, cheating by false impersonation, cheating, disappearance of evidence or forgery as a public servant. The payment has been made to said teacher Surendra Nath Singh under the direction of higher authorities. There is no material to suggest that the applicants have fabricated any documents nor there is any finding that direction of the Director of Education for payment of salary to Surendra Nath Singh is forged. In so far as the payment of salary to Sri Mangala Singh and Surendra Nath Singh are concerned, the salaries have been paid to them pursuant to direction of Director of Education. Since the payment has been made under the permission of superior authorities against the sanctioned post, as such, no illegality was committed by the applicants in making the payment to Sri Mangala Singh and Surendra Nath Singh. The State Government had issued direction for payment of salary to these teachers pursuant to order of this Hon'ble Court, as such in making the payment of salary for compliance of order of this Hon'ble Court no offence has been committed by the applicants.

15. He lastly submitted that this court passed an order on 10.08.2005 in present petition under Section 482 Cr.P.C. that further proceedings against the applicants in pursuance of chargesheet No.16 of 2005 under said sections shall remain stayed till the next date of listing and said stay has been extended from time to time.

16. With above submissions, learned counsel prayed for quashing the proceedings initiated against the applicants by the court below in criminal case arisen out of investigation in the Case Crime No. 309 of 2003, Under Sections 409, 419, 420, 467, 468, 471, 201 and 120-B I.P.C. Police Station Kotwali, District Ballia before the criminal court concerned.

17. Per contra, learned A.G.A. pressed the grounds taken in counter affidavit submitted that the present applicant No.1 was working as DIOS Ballia and applicant No.2 was working as Account Officer at the relevant point of time, and the alleged offences are made out against them. During the course of investigation this fact came into picture that one person namely Surendra Nath Singh an alleged assistant teacher in Narheji Inter College Narhi, District Ballia was removed from the service after due process of inquiry on the ground of absence from service since February, 1999 for misconduct. This person Surendra Nath Singh prepared forged documents with regard to his service book in conspiracy with the officials and employees of education department and had got his bill of arrear forwarded to the superior authorities for arrear of payment. On the basis of which he had been paid a total Rs.6,68,845/- in illegal manner in conspiracy with the erstwhile District Inspectors of Schools, Ballia and officials of finance and account department. He lastly submitted that it is well settled principle of law laid down by the Hon'ble Apex Court as well as by this Hon'ble Court in various judgments that jurisdiction under Section 482 Cr.P.C. should be exercised sparingly in rarest of rare cases and after meticulous of evidence collected during course of investigation, the grounds taken in the present application are matter of trial. As such, the relief sought by the present applicants is misconceived and devoid of merit. The evidence resented in the case diary depicts the guilt of the present applicant for said charges.

18. That on perusal of record and annexures it appears that applicants have filed a copy of order dated 23.08.1998 passed by this Hon'ble Court as Annexure No.7 to the affidavit, wherein this Court passed the following order:-

"If the petitioners are in service and teachers in the school, in that event, the salary of the petitioners be paid within three months and arrears of salary be paid within four months from the date of production of a certified copy of this order, if the appointment is accordance with law.

With this observation the petitioner is disposed of finally."

19. The above order of Hon'ble Court has been mentioned in Government Order No.625/15-12-2002-1601(116) dated 03.04.2002 through letter issued by the Special Secretary Uttar Pradesh Shashan to Director of Education (Intermediate) U.P. Lucknow on subject regarding payment of salary in Narheji Inter College Narhi, District Ballia in compliance of order of Hon'ble High Court. In the said letter director of education is asked to ensure payment of salary to petitioners in pursuance of order dated 23.01.1998 passed by this Hon'ble Court. The petitioner No.1 acting as District Inspector of Schools, Ballia vide letter dated 06.05.2002, wherein order of this Hon'ble Court dated 23.01.1998 passed in Writ Petition No.1253 of 1998 Shiv Kumar Sharma and others Vs. State of U.P. and Government letter dated 625/15-12-2002-1601(116) dated 03.04.2002 and letter of Deputy Director of Education dated 10.04.2002 have been referred, had directed the Principal/Manager of Narheji Inter College Narhi, District Ballia to produce salary bill of 37 employees which include 25 assistant teachers, 2 lecturers and 10 class III and Class IV employees.

20. In FIR itself it is stated that applicant No.1 Rajendra Pratap was posted as District Inspector of Schools in District Ballia during the period January 2002 to December 2002 and prior to payment of salary by orders of Rajendra Pratap to Surendra Nath Singh. The earlier District Inspector of Schools Sri Rakesh Kumar Pandey also made payment of salary to Surendra Nath Singh, but earlier District Inspector of Schools has not been made accused in the case.

21. Hon'ble Supreme Court in Ramveer Upadhyay and another Vs. State of U.P. and another in Special Leave Petition (Crl.) No.2953 of 2022 observed as under:-

"26. Section 482 of the Cr.P.C provides: □"482. Saving of inherent powers of High Court.--Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

27. Even though, the inherent power of the High Court under Section 482 of the Cr.P.C., to interfere with criminal proceedings is wide, such power has to be exercised with circumspection, in exceptional cases. Jurisdiction under Section 482 of the Cr.P.C is not to be exercised for the asking.

37. In State of Haryana and Ors. v. Bhajan Lal and Ors. 1992 Suppl (1) SCC 335 this Court held:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

11 (2021) 5 SCC 524 121992 Suppl (1) SCC 335 (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."



22. After considering the submissions of learned counsel for the parties and meticulous examination of material on record and taking into consideration the totality of the facts and circumstances of the case this Court is of the opinion that the applicants who were posted as DIOS and Accounts Officer respectively in district Ballia made payment of salary to assistant teacher Surendra Nath Singh, purportedly acting in compliance of order dated 23.01.1998 passed by this Court, Government Order No. 625/15-12-2002-1601(116) letter dated 03.04.2002 and letter of Deputy Director, Director of Education U.P., Lucknow dated 10.04.2002 and prior to their posting in said districts payments of the salary was also made by their predecessors to said assistant teachers Surendra Nath Singh and one Mangala Singh. The ingredients of the offence as alleged against the applicants/petitioners are missing in this case. There is no allegation against them that they had derived any wrongful gain by making payment of salary to said teacher or they were aware of the fact the appointment of said teacher was disputed and was found illegal in some official inquiry. There might have been lapses on their part to undertake some inquiry regarding legality of the appointments of said teachers but only due to that fact their bonafide cannot be doubted and no criminal liability can be fastened against them with regard to payment of salary to said teachers at their instance, when there were orders of this court and government orders in that regard.

23. In light of the foregoing discussion, this court finds it lawful and in fitness of things to quash the proceedings of criminal case pending against the applicants who are already facing trial together with other accused persons which was registered as Criminal Case No.1253 of 2005 in the court concerned arising out of Case Crime No. 309 of 2003, Under Sections 409, 419, 420, 467, 468, 471, 201 and 120-B I.P.C. Police Station Kotwali, District Ballia arising out of chargesheet No.15 of 2005 dated 16.06.2005 pending in the Court of Chief Judicial Magistrate, Ballia in respect of present applicants only, if the case of applicants is already decided this order will not be given effect.

24. The proceedings of above stated criminal case is accordingly quashed in respect of the applicants only, if their case is still pending.

25. It is clarified that so far as the proceedings with regard to other chargesheet accused persons is concerned the same will continue in accordance with law, until a contrary order is passed by a competent court.

26. The application under Section 482 Cr.P.C. is allowed in the manner as stated above.

Order Date :- 04. 02.2025.

Ashish/-