

Chhote Lal Rajpoot vs State Of U.P. And 5 Others on 1 May, 2025

Author: Ashwani Kumar Mishra

Bench: Ashwani Kumar Mishra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:68921-DB

Court No. - 29

Case :- SPECIAL APPEAL No. - 307 of 2025

Appellant :- Chhote Lal Rajpoot

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

Counsel for Appellant :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Praveen Kumar Giri, J.

1. Appellant claims to have been appointed as assistant teacher in the Sarvjanik Kisan Uchchatar Madhyamik Vidyalaya, Jagdishpur, Bhaurajpur, Kannauj on 10.12.1988. At the time of his appointment the institution was not getting any aid from the State. The appointment of appellant came to be approved by the educational authority on 17.6.1998. The order of approval records that appellant was appointed as an untrained teacher on 2/3 salary on the post of LT grade teacher and thereafter he attained the B.Ed. qualification in 1991. His adhoc appointment consequently was approved. Institution came on the list of aided schools in the year 2004. The name of appellant was

also included in the list of teachers of the institution and he started getting salary. All was good till a complaint was made in respect of appointments made in the institution on the ground that the Committee of Management appointed its own relatives by violating the procedure laid down for appointment. This Court intervened in the matter and a detailed order came to be passed by learned Single Judge of this Court on 30.3.2011 in Writ-A No.16586 of 2011, which is reproduced hereinafter:-

"This petition is another example as to how the orders passed by the writ Court are being deliberately violated and situation is being created by the highest officers of the Education Department namely the Secretary (Secondary Education) and the Director of Education (Secondary) for approving payment of salary to teachers and staff without actually verifying as to when they were appointed and after following what procedure.

This Court may refer to the judgment of the Hon'ble Single Judge dated 06.04.2007 passed in Civil Misc. Writ Petition No. 26113 of 2006 to which both the officers were a party. The Hon'ble Single Judge in paragraph 9 of the said judgment recorded that kith and kins of Principal, Manager, teaching, non-teaching staff, employees of District Inspector of Schools' office were inserted in the list of Staff of the institution for payment of salary after the institution was taken on grant-in-aid list by the State Government with a vested interest to benefit their own men whose names were:

- (a) Jay Prakash Rajpoot s/o. Manager of the institution.
- (b) Chhote Lal Rajpoot: real nephew of the real brother-in-law of the Manager.
- (c) Malikhan Singh : real nephew of the Principal.
- (d) Dinesh Chandra : son of the Manager.
- (e) Rakesh Kumar Katiyar : relative of clerk in the office of the District Inspector of Schools.
- (f) Anita : daughter of retired Clerk of the office of the District Inspector of Schools.

Thereafter the Court proceed to direct the Director of Education to not only examine the correctness or otherwise of the relationship noticed above but also see the mode and manner of their appointment. It was provided as follows :

The Director of Education (Secondary) U.P. at Allahabad Camp Officer at Lucknow after calling for entire record from the institution. It shall also be seen as to at what point of time, incumbents in whose favour order had been passed under U.P. Act No. 24 of 1971, had been appointed and the way and manner in which they had been appointed. Needless to say that fresh exercise be taken preferably within period of

three months from the date of production of certified copy of this order.?

It is surprising that the Director who was granted three months' time to undertake the exercise, took three years to do the needful. The findings recorded by the Director of Education in his order dated 10.09.2009 are shocking. The Director in his order after issuing notices to the parties concerned, in paragraph nos. 3, 4 and 5 records that the relationship with the persons concerned as noticed above, could not be established from records. Such approach of the Director practically amounts to abuse of the powers vested in him and an attempt to defrauding the public exchequer by deliberately not recording a finding as to whether the employee concerned was related to the prohibited degree with the management of the institution or not.

What makes the position worst is that the Director despite the specific direction of this Court did not record any finding whatsoever with regard to the procedure adopted in the matter of appointment of teachers and employees who were directed to pay salary under the impugned order. The Director in order to save his skin adopted a smart procedure and instead of passing final orders, as directed by this Court, forwarded the papers to the Secretary, Secondary Education for final orders after recording the aforesaid findings.

It is now that the Secretary comes into the act. He even after noticing the directions of the high Court as per the order dated 06.04.2007 which had been quoted in the order of the Director, deliberately did not consider any of the directions issued by this Court qua the process adopted in the matter of appointment of teachers and staff concerned. He vide order dated 14.02.2011 directed payment of salary to the staff of the institution (Annexure-15 to the writ petition) after removing names of persons and by inducting two new names. It is against this order that the present writ petition has been filed.

This Court is surprised as to how the highest officers of the Education Department are acting. While sanctioning payment of salary to the teachers and staff of the institution from State exchequer, absolutely no exercise has been undertaken which could establish that the teachers and staff had been validly appointed, what is worst is that there has been wilful disobedience of the directions issued by the writ Court.

Before any further orders are passed, it would be in the interest of justice that the officers may be afforded an opportunity to explain the facts noticed above.

Put on 06.04.2011.

The Secretary (Secondary Education) and Director of Education (Secondary) shall file their personal affidavits explaining the facts noticed above, by the next date fixed.

Copy of the order may be issued to the learned Standing Counsel by 02.04.2011."

2. The educational authorities examined the legality of appointment offered to appellant and it transpired that his high school certificate itself was cancelled. It was also noticed that this aspect of the matter was agitated by the appellant right up to the Supreme Court and he had lost. The authorities, therefore, were of the view that neither the appellant possessed qualification for appointment to the post of LT grade teacher nor he had the qualification for the post and, therefore, he was not entitled to payment of any salary. The State Government consequently passed orders holding the appointment of appellant to be illegal and also directed the salary paid to the appellant to be recovered. Aggrieved by this order, the appellant approached learned Single Judge, who by his composite judgment has dismissed the writ petition. Thus aggrieved the appellant is before this Court in the present special appeal.

3. Sri Ashok Khare, learned Senior counsel for the appellant argues that the appellant was validly appointed and his appointment was also approved by the educational authority. It is submitted that the appellant had in fact passed high school examination but later it was found that his result was placed in category-E which apparently related to cases of mass copying. It is also submitted that the appellant was not aware of such facts and he was allowed to pursue further studies and consequently he passed intermediate, graduation and B.Ed on the strength of which he was appointed as a teacher and was allowed to work. It is pointed out that for the first time appellant came to know that his result had been cancelled pursuant to the communication of the board dated 7.11.2008, whereby the appellant was informed that his result had been cancelled. This communication was challenged by the appellant by filing Writ-A No.6270 of 2008. This writ petition was allowed on the ground that principles of natural justice had been violated. The judgment of learned Single Judge was assailed in Special Appeal Defective No.928 of 2009 which was allowed by the Division Bench vide following orders passed on 26.8.2009. The judgment of the Division Bench reads as under:-

"Appellant aggrieved by order dated 23.7.2009 passed in Civil Misc. Writ Petition No.62701 of 2008 has preferred this appeal under Rule 5 Chapter VIII of the High Court Rules.

Short facts, giving rise to the present appeal, are that writ petitioner - appellant challenged the communication dated 7.11.2008 of the Secretary of Board of High School & Intermediate Education addressed to the Deputy Director of Education wherein it has been informed that Chhote Lal S/o Ram Vilas, the petitioner herein, had appeared in the High School Examination 1983 bearing Roll No.1123691 and his result was cancelled under 'E' category. He challenged the aforesaid order inter alia contending that the order is to his prejudice and that has been passed without giving any notice to him, as such, suffers from violation of principles of natural justice and, accordingly, said communication be quashed. Counter-affidavit was filed on behalf of State and in paragraph no.14 thereof, it was averred as follows:-

"14. That in reply to the contents of paragraph nos. 21 and 22 of the writ petition it is stated that the result of those candidates whose result has been withheld under category 'e', they have been given charge sheet for submitting their explanation. Thereafter, the matter in question was produced before the Committee for its

disposal and after taking decision by the Committee the same has been duly informed to the concerned person. The result of the petitioner' High School Examination Year 1983 had been cancelled under category 'e' by the order of Committee dated 26.5.84. Allegation to the contrary is incorrect and denied."

The learned Judge by impugned order found the communication dated 7.11.2008 as illegal being in violation of the principles of natural justice and, accordingly, set aside the said order. While doing so, it observed as follows:-

"Accordingly, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the order dated 7.11.2008 contained in Annexure No.9 to the writ petition with consequential benefits. The petitioner is permitted to pass fresh order with due compliance of principle of natural justice. It is clarified that while allowing this writ petition, this Court has not entered into the merits of the case and the order has been set aside only on the ground of non-compliance of principles of natural justice."

Mr. Yogish Kumar Saxena, appearing on behalf of the appellant, submits that letter dated 7.11.2008 was just a communication and the writ petitioner, without disclosing the fact that his result was already cancelled in the year 1984, got the relief on an erroneous assumption that the impugned communication is in violation of principles of natural justice. He further points out that learned single Judge, while quashing the impugned communication, did not take into consideration the averment made in the counter-affidavit of the State referred to above.

Mr. Shobhit Dubey, appearing on behalf of Respondent No.4, however, submits that in the facts of the present case, the learned Judge did not err in setting aside the impugned communication.

The submission of Mr. Saxena, commend us. It seems that result of the writ petitioner was cancelled as back as on 26.5.1984 and a communication to that effect appears to have been made to him. It seems that at the instance of the appellant, the Deputy Director of Education made some query from the Secretary of Board of High School and Intermediate Examination and in response thereto, the former was informed that the result of the writ petitioner was already cancelled in the year 1984. Writ petitioner, without disclosing the aforesaid fact, pretended before the learned single Judge that he came to know about the cancellation for the first time by the impugned communication contending that it is in violation of principles of natural justice. As observed earlier, the result of the writ petitioner was cancelled as back as in the year 1984 in accordance with the prescribed procedure. The impugned communication is not a decision but communication and hence the principles of natural justice are not even remotely attracted. The exchange of such information did not obligate the authority to give any notice to the appellant.

We are of the opinion that learned single Judge erred in setting aside the communication on the ground of violation of principles of natural justice.

In the result, the appeal is allowed. The impugned judgment of the learned single Judge is set aside. No order as to cost."

4. Our attention has also been invited to the fact that one Ram Asre, who had filed the appeal had sought leave from the Court to institute appeal which was allowed by the Division Bench on 26.8.2009. The Division Bench judgment was thereafter challenged before the Supreme Court in Special Leave to Appeal (Civil) No(s).26479-26480 of 2009 which was dismissed on 30.10.2009. It is submitted that mere fact that the high school certificate of the appellant has been cancelled would not mean that his qualifications of intermediate, graduation and B.Ed ceases to exist. It is also submitted that the appellant was fully qualified and his appointment was also approved. Since he had already worked for more than 22 years, as such the action of the State in treating his appointment to be void and directing recovery of salary paid to him is wholly arbitrary and unsustainable.

5. Learned State counsel, on the other hand, has invited attention of the Court to order passed by the learned Single Judge in writ petition no.26113 of 2006, wherein allegations were made against appointments made in the institution concerned on various grounds. The allegations made before the learned Single Judge had been noticed in para 9 of the writ petition, which is reproduced hereinafter:-

"9. That it was surprising that the name of Kith and Kins of Principla, Manager, teaching, non-teaching staff, employees of District Inspector of Schools office, were incorporated and inserted in the list of staff of the institution with a vested interest to benefit their own men whose names are details below:-

1. Mr. Jay Prakash Rajpoot: son of Manager of the institution.
2. Mr. Chhote Lal Rajpoot: real nephew of Sri Lal Ram, Sanchalak of college who is real brother-in-law of Mr. Mewa Ram, Manager of College.
3. Mr. Malikhan Singh : real nephew of the Principal Mr. Bachcha Lal Verma.
4. Mr. Dinesh Chandra : son of Mr. Lal Ram, Sanchalak.
5. Mr. Rakesh Kumar Katiyar : relation of Mr. Sarvjeet Katiyar, clerk of D.I.O.S. office.
6. Mrs. Anita : daughter of Suresh Saxena the retire clerk of D.I.O.S. office."

6. It was in this context that subsequent orders were passed by the writ court directing the State Government to conduct an inquiry into legality of the appointment and it was at that stage that the State found that the appointment was obtained by the appellant fraudulently. It is alleged that the appointment of the appellant was otherwise impermissible, inasmuch as on the date of his appointment i.e. 10.12.1988 the appellant was not even qualified for appointment to the LT grade post. The minimum qualification for the post included Bachelor of Education which was acquired by the appellant later in the year 1992. It is also noticed that the qualification of B.Ed. had been obtained as a regular student from Rohtak, Haryana while the appellant claims to be working in the

same institution from 1988. It is further submitted that the appellant is the real nephew of Sri Lal Ram, who was the sanchalak of the college and is brother-in-law of Mr. Mewa Ram who is the Manager of the institution. It is, therefore, submitted that appointment of appellant being fraudulent in nature confers no right upon the appellant to continue.

7. Sri Ashok Khare, learned Senior counsel for the appellant, in reply, submits that though allegations were made of appellant being a relative of the Manager but this aspect was examined in the inquiry and it was found that there was no relationship of the appellant with the then Manager. It is, therefore, submitted that there was no basis for the authorities to suspect the legality of appointment offered to the appellant. It is also submitted that after such long lapse of time it is inequitable to question the appellant's appointment for the reasons put forth by the State.

8. We have heard learned counsel for the parties and have carefully perused the materials placed on record.

9. The appellant claims to have been appointed on 10.12.1988. There is nothing on record to show that any fair procedure was followed for appointment offered to the appellant. Apart from it we also find that on the date of his appointment in 1988 the appellant was not even possessing minimum qualification for the post, inasmuch as he was only a graduate. His appointment apparently came to be approved by the authorities on 17.6.1998 alongwith large number of other teachers and employees of the institution. There was apparently no detailed examination of the legality of appointment offered to the appellant. However, it remains undisputed that the approval order of 17.6.1998 was not set aside or questioned.

10. The B.Ed. result of the appellant is also on record as per which he obtained the qualification in a one year course from Maharshi Dayanand University, Rohtak. This qualification was also obtained during the period when the appellant was working as a teacher in the same institution. Though this aspect has not been highlighted by the State authorities and it is also not clear as to whether such qualification was obtained after availing study leave from the management nevertheless the manner in which the appointment itself has been offered to the appellant raises serious cloud upon the appellant's appointment itself.

11. We otherwise find that the appointment of the appellant was based on his educational certificates including his high school certificate. Record reveals that the appellant had never passed the high school examination. It was only when the legality of certificate was checked that the board informed the concerned Deputy Director of Education on 7.11.2008 that the result of the appellant has already been cancelled. The challenge laid to such decision ultimately failed with the order passed by the Division Bench in special appeal against the appellant. The special leave petition filed against such Division Bench judgment also failed. In such circumstances, it is clearly admitted on record that the appellant had not passed high school examination. Once he is not shown to have legally passed high school certificate the subsequent qualifications obtained by the appellant would also be in cloud. This is because unless a candidate passes high school he would not be entitled to appear in intermediate and other examination.

12. Examining the facts of the present case in its entirety, we find that the very entry of the appellant into the institution pursuant to his appointment dated 10.12.1988 is not free from doubt. The fact that no procedure is shown to have been followed before issuing appointment; the appellant was not qualified to be appointed on 10.12.1988; he acquired the qualification of B.Ed. while in service; his high school certificate was cancelled and challenge to such cancellation had failed, we are of the view that the appellant is not entitled to claim that he was lawfully appointed or that he is entitled to continue or receive salary. In such circumstances, we do not find any error in the judgment of learned Single Judge dismissing the writ petition of the appellant.

13. Learned State counsel lastly submits that a sum of Rs.2 lakhs and odd is still recoverable from appellant. Although we have dismissed the appeal of the appellant and sustained the order of the State Government and learned Single Judge yet, in the facts and circumstances, we find that no further recovery be allowed to be made from the appellant. Considerations of equity demands that such limited relief be granted to the appellant as he has otherwise worked during this period.

14. Subject to the observations made above, this special appeal fails and is dismissed.

Order Date :- 1.5.2025 RA