

Dinesh Chand vs State Of Up And 6 Others on 1 May, 2025

Author: Ashwani Kumar Mishra

Bench: Ashwani Kumar Mishra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:68789-DB

Court No. - 29

Case :- SPECIAL APPEAL No. - 303 of 2025

Appellant :- Dinesh Chand

Respondent :- State Of Up And 6 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. Learned Single Judge has dismissed the writ petition filed by the appellant by a composite judgment dated 10.3.2025 which is under challenge in this intra-court appeal.

2. Appellant claims to have been appointed as Class-IV employee in an educational institution known as Sarvjanik Kisan Uchchatar Madhyamik vidyalaya, Jagdishpur, Bhaurajpur, Kannauj. According to the appellant he was appointed on 10.2.1997. As per the high school certificate his date of birth is 10.10.1980. At the time when the appointment was made the appellant was below 18 years of age. The appointment of the appellant was approved and he continued to work and receive 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 has 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."

3. It is thereafter that the original records were examined and it was found that most of the appointments made by the Managing Committee consisted of the close relatives of the Manager or other employees and that no procedure for appointment was otherwise followed. Learned Single Judge in the aforesaid writ petition continued to pass subsequent orders requiring the educational authorities to examine the matter in correct perspective. The allegation before the learned Single Judge was that the Committee of Management at the relevant point of time dislodged the previous employees working in the institution and in its place has manipulated appointment of its own relatives and close ones. When the facts were examined a report was submitted by a three member committee which was forwarded to the State Government under the letters of the District Magistrate, Kannauj on 5.5.2011. Relying upon such report the State Government ultimately passed orders on 27.5.2011 in respect of series of persons including the present appellant.

4. A finding was returned that the appointment of appellant was impermissible since he was not even 18 years of age on the date of his appointment and that no procedure was otherwise followed for appointing him. It was also noticed that the appellant in fact was son of the only clerk working in the institution and, therefore, the appointment was manipulated. The State Government proceeded to pass orders not only affirming the removal of appellant from service but also directed the recovery to be made of the amount paid to the appellant for the work performed by him between 2004 to 2011 when the institution was on the list of aided institution. It is this order of the State Government which was challenged before learned Single Judge. Learned Single Judge having noticed the contentions advanced in writ has proceeded to dismiss the writ petition. Thus aggrieved the appellant is before this Court.

5. Sri Ashok Khare, learned Senior counsel for the appellant argues that the appointment of appellant was a valid appointment and mere fact that he was short by few months at the time of appointment could not have been the ground to deny him appointment, particularly when he had worked for sufficiently long and has also received salary. It is contended that nature of order passed by the State Government removing the petitioner almost after 15 years in the facts and circumstances is clearly impermissible. It is also urged that the appellant was not related to the Management in any manner and, therefore, the entire exercise initiated in respect of appointment made in the institution was not initiated to include the appellant when the report submitted by the authorities clearly indicated that appellant was not related to the Management. It is also urged that at the time of appointment of appellant in the institution no aid was being provided and, therefore, in the facts of the case the removal from service of appellant is impermissible.

6. Learned State counsel submits that the appointment of appellant has been made on the strength of manipulation, particularly when the institution was brought on aid. It is submitted that large number of employees who were earlier working were removed to accommodate the near and dear ones of the Management. It is also submitted that the appellant himself was a beneficiary of this fraudulent exercise, inasmuch as his father was a clerk working in the institution who has also connived with the institution. It is further submitted that neither any procedure was followed for making of appointment nor the appointment otherwise was as per law and, therefore, the State is under no obligation pay salary to the appellant. It is also urged that the learned Single Judge in the facts and circumstances has rightly dismissed the writ petition.

7. Having heard learned counsel for the parties and upon perusing the materials brought on record, it remains undisputed that the appellant is the son of the clerk, who was working in the same institution. There is nothing on record to show that any vacancy was advertised or any procedure known to law was followed before appointing him. It is also admitted that the date of birth of appellant is 10.10.1980 and, therefore, on 10.2.1997 when the appellant was appointed he was less than 18 years of age. The manner in which the appointment of appellant is made in the institution clearly creates a grave doubt on the legality of the process itself. It transpires that the Managing Committee had acted collusively making appointment of its own close relatives and only as a part of this nefarious exercise that the share of the clerk was also offered to him by offering appointment to his son. The facts of the case are such that we are not persuaded to interfere in the matter when the appointment itself is a result of manipulation, no foul can be pleaded by the beneficiary of such appointment.

8. The limited ground on which we had entertained the appeal on the last occasion was to protect the limited interest of appellant who had admittedly worked between 2004 to 2011. He was also paid salary. It was under the orders of the authorities that such amount has been recovered from the appellant. We are of the view that though appellant may not be allowed to continue in service yet, the direction issued to recover the salary for the period he has already worked would be too harsh. In the facts of this case interest of justice would be met if such manipulated appointment is not allowed to continue and the person goes out of employment. That would be sufficient justice for the person. However, to withdraw the salary for the period he has actually worked, in our assessment, would be harsh. In that view of the matter, while affirming the decision of the State not to allow the appellant to continue as a Class-IV employee in the institution, we provide that for the period appellant has actually worked and was earlier paid salary would be reimbursed to him. Such payment would be made within a period of two months.

9. Except to the extent indicated above, this appeal fails and is consigned to records.

Order Date :- 1.5.2025 RA