

RAMESH SINGH

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v.

THE STATE OF UTTAR PRADESH AND ANR.

(Civil Appeal No. 1918 of 2020)

MARCH 03, 2020

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[S. ABDUL NAZEER AND INDU MALHOTRA, JJ.]

U.P. Basic Education (Teachers) Service Rules, 1981 – r.r. 16 and 19(3) – Uttar Pradesh Civil Service (Discipline and Appeal) Rules, 1999 – The appellant was the in-charge District Basic Education Officer, where he issued appointment letters to 521 candidates for the post of Assistant Teachers – The State placed appellant under suspension and directed a disciplinary/departmental enquiry under the Rules, 1999 – The charge-sheet was filed wherein it was alleged that the appointments of Assistant Teachers made by the appellant were irregular and in violation of rr.16 and 19(3) of the Rules, 1981 – After the series of litigations, the order of the removal from the service passed by the Governor dated 21.4.2008 was stayed and appellant was directed to co-operate with the disciplinary proceedings – All the appointments made were declared void-ab-initio – The enquiry was conducted without affording any opportunity of hearing and adducing evidence through production of witnesses – The disciplinary authority granted a personal hearing to the appellant and found all charges proved against the appellant and passed an order of removal from service on 27.6.2017 – The appellant challenged the order dated 27.6.2017 by way of writ petition – The High Court concluded that since the enquiry was held in violation of the principles of natural justice, the order dated 27.6.2017 was quashed and the matter was remitted to the discipline authority to hold the enquiry afresh from the stage of charge-sheet – On appeal, held: A perusal of Service Rules, 1981 makes it clear that the appellant as the District Basic Education Officer, being the appointing authority was empowered to make appointments only on the basis of the recommendations of the Selection committee as contemplated by Rules 16 and 19(3) – The allegations of corruption and appointments being made without complying with the 1981 Rules were made against

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- A *the appellant – The plea of appellant that appointments were made in compliance with an earlier order passed by the High Court and under the directions of senior functionaries, are required to be considered in the enquiry – Therefore, the impugned judgment passed by the High Court in remitting the matter to the disciplinary authority, which would be conducted from the stage of the charge-sheet, upheld.*
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Dismissing the appeal, the Court

- HELD:1. A perusal of the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 reveals that the appellant as the District Basic Education Officer, being the appointing authority was empowered to make appointments only on the basis of recommendations of the Selection Committee as contemplated by Rules 16 and 19(3) as set out hereinabove. It is the case of the Respondent-State that the appellant made the appointments without complying with the 1981 Rules. Serious allegations of corruption have been raised against the appellant by the state, which would require determination in a full-fledged enquiry by the disciplinary authority. It is pertinent to note that all these appointments were declared to be void ab initio by the State, as mentioned in the appellant's reply dated 04.12.2012 to the second show cause notice. The plea of the appellant that the appointments were made in compliance with an earlier order passed by the High Court, and under the directions of senior functionaries, would require to be considered in the enquiry. [Para 16] [1126 A-C]**
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- 2. This Court upholds the impugned judgment passed by the High Court in remitting the matter to the disciplinary authority, which would be conducted from the stage of the charge sheet. The disciplinary authority will conduct the enquiry in accordance with the principles of natural justice, after giving a full opportunity of hearing to the appellant, who will be allowed to produce both oral and documentary evidence. [Para 17][1126 C-D]**
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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1918 of 2020.

- From the Judgment and Order dated 10.05.2018 of the High Court of Judicature at Allahabad in Writ A. No. 31098 of 2017.
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Kapil Sibal, Sr. Adv., Imtiaz Ahmed, Naghma Imtiaz, Ahmed A
Zargham, Farheen Fatima, Ahmed Faraz (for M/S. Equity Lex
Associates), Advs. for the Appellant.

A.K. Mishra, Sr. Adv., Krishnanand Pandeya, Siddharth Sengar,
Advs. for the Respondents.

The Judgment of the Court was delivered by B
INDU MALHOTRA, J.

Leave granted.

1. The appellant was posted as Zila Basic Shiksha Adhikari, District C
Basti in January 2003. The appellant was the In-charge District Basic
Education Officer Gorakhpur, when he issued appointment letters to
400 candidates holding B.Ed. degrees to the post of Assistant Teachers
in Basic Schools (Primary Schools) in District Gorakhpur, and 121
candidates in District Basti during April to June 2003.

2. The State vide Office Order dated 24.07.2003 placed the D
appellant under suspension, and directed a disciplinary/departmental
enquiry to be conducted under the Uttar Pradesh Civil Service (Discipline
and Appeal) Rules, 1999. The State appointed the Joint Director, Basic
Education as the Enquiry Officer.

The Charge Sheet was filed on 21.08.2003 wherein it was alleged E
that the appointments of Assistant Teachers made by the appellant were
irregular, as they were in violation of Rules 16 and 19(3) of the U.P.
Basic Education (Teachers) Service Rules, 1981 ("1981 Rules").

3. The appellant submitted his reply to the charge sheet on F
09.11.2003 denying the charges levelled against him. It was contended
that the appointments were made by him in compliance with earlier orders
passed by the High Court, and directions from senior functionaries.

4. The enquiry officer found the appellant guilty of the charges G
levelled against him in the charge sheet. The Report of the Enquiry
Officer was forwarded to the Disciplinary Authority on 19.06.2004.

5. The appellant challenged the order of suspension by way of
W.P. (C) 52287/2005, wherein the High Court vide interim Order dated
28.07.2005 granted stay of the order of suspension.

6. During the pendency of the Writ Petition, the Deputy Secretary, H
Basic Education Department vide Order dated 10.01.2006 proposed
punishment of removal from service.

A The appellant challenged the Order dated 10.01.2006 by filing W.P. (C) No. 14083/2006, wherein vide interim order dated 08.03.2006, the High Court directed stay of the aforesaid Order of proposed punishment.

B 7. On the basis of the enquiry report, the Government decided to award major punishment of removal from service under the provisions of the U.P. Civil Service (Discipline and Appeal) Rules, 1999, and referred the matter to the Uttar Pradesh Public Service Commission vide Government Order dated 17.10.2005. The U.P. Public Service Commission approved the punishment of service to the appellant vide letter dated 21.12.2006. The order of removal from service was passed by the Governor dated 21.04.2008.

C 8. The appellant challenged the Order of Removal in W.P. (C) No. 28842/2008, wherein the High Court vide interim order dated 20.06.2008 directed that the operation, implementation and execution of the order of dismissed dated 21.04.2008 shall remain stayed.

D Subsequent to the interim order, the State Government withdrew the proposed order of punishment on 19.05.2010.

E As a consequence, the High Court dismissed the Writ Petition on 25.05.2010 with the observation that the disciplinary proceedings may be concluded in accordance with law, preferably within a period of 6 months. The appellant was directed to co-operate with the disciplinary proceedings.

F 9. The disciplinary authority issued a second show cause notice along-with the enquiry report.

G The appellant inter alia submitted that conditional appointments had been made against fixed pay scale pursuant to the orders of the court, and pressure from the government. All appointments made were declared void ab initio. The enquiry was conducted without affording any opportunity of hearing and adducing evidence through production of witnesses.

H 10. The disciplinary authority granted a personal hearing to the appellant.

 The disciplinary authority found all the charges proved against the appellant, and passed an order of removal from service on 27.06.2017.

11. The appellant challenged the order dated 27.06.2017 by way of Writ A. No. 31098/2017 before the Allahabad High Court. A

The High Court *vide* the impugned judgment and order dated 10.05.2018 partly allowed the Writ Petition.

The High Court held that the enquiry officer had not recorded any finding as to whether the appellant was given a notice intimating the date, time and place of holding the oral enquiry. The appellant had expressly taken the plea that the enquiry officer had not afforded any opportunity of hearing. The disciplinary authority while passing the order of punishment overlooked the mandatory requirement of holding a valid enquiry by complying with the principles of natural justice. B C

In these circumstances, the High Court felt that it would not be appropriate to consider the contention of the appellant that the appointments were made in compliance with the order passed by High Court and pursuant to the directions of the higher authorities, since it would require appreciation of the evidence on record. D

The High Court, however, rejected the contention that the enquiry officer was biased, as there was no material on record to reveal any element of bias on part of the enquiry officer.

The Court rejected the contention of the appellant for parity with the case of *K.C. Bharati* who had been awarded a lesser punishment of withholding one increment for one year, and a censure entry in his service record. E

The High Court concluded that since the enquiry was held in violation of the principles of natural justice, the order of dismissal from service dated 27.06.2017 was liable to be quashed. The matter was remitted to the disciplinary authority to hold the enquiry afresh from the stage of charge sheet. It was further directed that the appellant shall be treated under suspension, during the pendency of the enquiry and shall be paid subsistence allowance as per the Rules. F

The Court deprecated the casual and callous manner in which the disciplinary authorities had acted in conducting an enquiry into grave allegations of corruption of such a magnitude where hundreds of appointments were made by the appellant, without following the due process of law. A direction was issued to the disciplinary authority to appoint an enquiry officer with the approval of the Chief Minister, who should be apprised of the outcome of the disciplinary proceedings. G H

A 12. Aggrieved by the said judgment, the appellant filed the present Special Leave Petition before this Court. This Court vide Order 09.07.2018 issued notice on whether the appellant should be continued on suspension, and whether the disciplinary authority should report the matter to the Chief Minister.

B Pursuant to the impugned judgment, the State granted sanction vide Office Memo dated 11.10.2018 to re-conduct the enquiry from the stage of the charge sheet.

By a further order dated 31.10.2018, this Court ordered stay of the operation of the Office Memo dated 11.10.2018.

C 13. We have heard learned counsel for the parties, and perused the record.

The issue which arises for our consideration is whether the appointment letters issued to 521 candidates who were B.Ed. degree holders for the post of Assistant Teachers, was conducted de hors the

D mandatory procedure prescribed by the Rules.

14. The counsel for the appellant submitted that the continued suspension of the appellant was not justified, and that his client had made the appointments pursuant to an earlier order of the High Court, and also instructions from higher authorities.

E 14.1. Reliance was placed on a letter dated 10.04.2003 addressed by the Secretary, Basic Education, Government of U.P. to all the Divisional Assistant Directors of Education (Basic) U.P, wherein it was directed that orders passed by the High Court in connection with appointment of teachers be complied by the District Basic Education Officers.

F 14.2. It was further submitted that *vide* letter dated 18.4.2003, the appellant had requested the Director Basic Education, U.P. to issue directives for appointment of candidates to the post of Assistant Teachers in schools, who held qualifications of B.Ed./L.T./B.P.Ed./C.P.Ed.

G 14.3. By a further letter dated 21.04.2003, the appellant informed the Secretary, Basic Education, Govt. of U.P. that there were posts of Teachers lying vacant in District Gorakhpur, and there was no provision for appointment of candidates holding qualifications of B.Ed./L.T./B.P.Ed./C.P.Ed. to the post of Assistant Teachers.

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14.4. The appellant subsequently issued a notification dated 25.04.2003 stating that a decision was taken to issue appointment orders to candidates with B.Ed./L.T. pursuant to discussions with the Chief Minister, and the Minister for Basic Education, Secretary, Basic Education, Govt. of U.P. held on 23.04.2003. It is also mentioned that he was given directions that if the appointments were not made immediately, departmental proceedings would be initiated against him.

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14.5. Accordingly, the appellant made appointments to 521 posts of Assistant Teachers in Basic Schools during the period May to June 2003.

14.6. It was further submitted that the appellant sought the advice of the Chief Standing Counsel for the State of U.P.

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The Chief Standing Counsel vide letter dated 01.05.2003 stated that the Government Order dated 10.04.2003 was general in nature. The appellant was advised to take a decision with the consent of the Government since such cases may affect the State in similar cases.

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14.7. The appellant addressed another letter dated 06.05.2003 to the Secretary, Basic Education Council seeking instructions on whether the appointment of candidates holding higher qualifications of B.Ed./L.T./B.PEd./C.P.Ed. could be made in accordance with the High Court orders/directives.

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14.8. The Secretary Basic Education vide Order dated 28.05.2003 directed all Divisional Assistant Director (Basic Education) to make appointments of candidates to the post of Teachers only in those cases in which final/interim orders had been passed by High Court by 02.06.2003.

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14.9. The appellant placed reliance on an earlier judgment of the division bench of the Allahabad High Court in Special Appeal No. 21(SB)/1993. The High Court took note of an earlier judgement in *Firoz Alam Khan v. State of U.P. & Ors.* 1986 UP LBC 674 wherein it was directed that if sufficient number of B.T.C. trained candidates were not available for appointment as Assistant Teachers in the Basic Schools, the candidates who qualified for appointment as stated in the advertisement could be appointed.

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A The High Court in that case had referred to the judgement of this Court in *Mohd. Riazul Usman Ghani and Ors. v. District & Sessions Judge, Nagpur*¹, wherein it was held as under:

B *“21. A criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification than prescribed cannot be rational. We have not been able to appreciate as to why those candidates who possessed qualifications equivalent to SCC Examination could not also be considered. We are saying this on the facts of the case in hand and should not be understood as laying down a rule of universal application.”*

C [emphasis supplied]

15. We have perused the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981, which lays down the procedure for appointment of Assistant Teachers in basic schools in U.P.

D Sub-rule (1)(b) of Rule 2 defines the “competent authority” as under:

“(b) ‘Appointing Authority’ in relation to teachers referred to in Rule 3 means the District Basic Education Officer”

E Rule 8 prescribes the academic qualifications for the post of Assistant Teachers as:

“8. Academic qualifications. - (1) The Essential qualifications of candidates for appointment to a post referred to in clause (a) of Rule 5 shall be shown below against each :

F	Post	Academic Qualifications
...		
G	(ii) Assistant Master and Assistant Mistress of Junior Basic Schools	A Bachelor's Degree from a University established by law in India or a Degree recognized by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate, Vishshit Basic Teacher's Certificate (B.T.C), Hindustani teacher's Certificate, Junior Teacher's Certificate, Certificate of teaching or any other Training Course recognized by the Government as equivalent thereto.

H ¹(2000) 2 SCC 606

Rule 16 provides for constitution of the Selection Committee for making appointments to any post under these Rules : A

“16. Constitution of Selection Committee – For selection of candidates for appointment to any post under these Rules, there shall be constituted a Selection Committee comprising –

a) Principal, District Institute of Education and Training – Chairman B

b) District Basic Education Officer – Member -Secretary

c) Principal, Government Girl’s Intermediate College at the District Head-quarters C

d) District Non-Formal Education Officer) – Member

f) One Specialist in Hindu, Urdu or other languages, as the case may be, nominated by District Magistrate D

...”

Rule 19(3) provides that no appointment shall be made except upon the recommendation of the Selection Committee. E

“19. Appointment. –

...

(3) No appointment shall be made except with the recommendation of the Selection Committee, and in the case of direct recruitment except on production of residence certificate issued by the Tahsildar. F

[emphasis supplied]

16. A perusal of the aforesaid Rules reveals that the appellant as the District Basic Education Officer, being the appointing authority was empowered to make appointments only on the basis of recommendations of the Selection Committee as contemplated by Rules 16 and 19(3) as set out hereinabove. G

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- A It is the case of the Respondent-State that the appellant made the appointments without complying with the 1981 Rules. Serious allegations of corruption have been raised against the appellant by the state, which would require determination in a full-fledged enquiry by the disciplinary authority. It is pertinent to note that all these appointments were declared to be void ab initio by the State, as mentioned in the appellant's reply dated 04.12.2012 to the second show cause notice.
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The plea of the appellant that the appointments were made in compliance with an earlier order passed by the High Court, and under the directions of senior functionaries, would require to be considered in the enquiry.

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17. We uphold the impugned judgment passed by the High Court in remitting the matter to the disciplinary authority, which would be conducted from the stage of the charge sheet. The disciplinary authority will conduct the enquiry in accordance with the principles of natural justice, after giving a full opportunity of hearing to the appellant, who will be allowed to produce both oral and documentary evidence. No unnecessary adjournments will be granted to the parties.
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The appellant will continue to remain under suspension during the period of enquiry. The enquiry is directed to be completed within a period of 4 months.

- E We modify the impugned judgement to the extent that the enquiry officer be appointed by the Chief Secretary.

Let a copy of this order be despatched to the Chief Secretary.

- F It is clarified that there is no expression of any opinion on the merits of the case.

The Civil Appeal is dismissed.

Pending Applications, if any, are accordingly disposed of.

Ordered accordingly.