

# Rohit Spring vs State Of ... on 4 December, 2018

**Author: Irshad Ali**

**Bench: Irshad Ali**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Court No. - 23

A.F.R.

Case :- SERVICE SINGLE No. - 23501 of 2018

Petitioner :- Rohit Spring

Respondent :- State Of U.P.Throu.Prin.Secy.Deptt.Of Secondary  
Edu.& Ors.

Counsel for Petitioner :- Himanshu Kamboj

Counsel for Respondent :- C.S.C.,Amarendra Kumar Bajpai

Hon'ble Irshad Ali,J.

1: Learned counsel for the petitioner has filed supplementary affidavit bringing on record the copy of the quality point marks awarded in the proceeding of selection to the petitioner, the same may be taken on record.

2: Heard learned counsel for the petitioner Sri Som Kartik Shukla, learned Standing counsel on behalf of the respondent No.1 to 4 and to Sri A.K. Bajpai, learned Advocate who appeared alleging himself to be representing the Committee of Management of Lucknow Christian College, Lucknow.

3: Factual matrix of the case is that Lucknow Christian Inter College is an institution recognized under the provisions of U.P. Intermediate Education Act, 1921. The institution is receiving aid from the State Government, therefore, the provision of U.P. Act No.24 of 1971 is applicable to the said institution. The institution is a minority institution, therefore, in view of the embargo under Section 30 of the U.P. Act No.5 of 1982, the provisions of U.P. Secondary Education Services Selection

Board Act, 1982 are not applicable.

4: Sri Narendra Kumar Nath was working on the post of Principal in the aforesaid institution. He retired on attaining the age of superannuation on 30.6.2012. Thereafter, a substantive vacancy on the post of Principal came into existence. The Committee of Management resolved to make regular selection on the post of Principal in the aforesaid institution in its meeting held on 23.10.2013. The Committee of Management of the College authorized the Manager of the institution to take prior permission to initiate selection proceeding on the post of Principal. The Manager of the institution requested to the Regional Joint Director of Education to grant prior permission to initiate selection on the post of Principal.

5: Regional Joint Director of Education vide order dated 7.7.2014, accorded prior permission to initiate selection process by advertising the vacancies in one Hindi newspaper and one English newspaper.

6: The Manager of the institution published advertisement in Navbharat Times (Hindi) and Indian Express (English) on 9.7.2014, whereby applications were invited from the eligible and qualified candidates to apply for selection on the post of Principal.

7: In pursuance to the advertisement issued, the petitioner along with the other candidates applied, being fully eligible and qualified for the selection and appointment on the post of Principal of the institution.

8: The Manager of the College vide letter dated 9.7.2014 requested the respondent No.3 to make available the panel of experts to participate in the interview for the purpose of selection on the post of Principal of the College. In pursuance to the letter dated 9.7.2014, the respondent No.3 provided the panel of experts on 25.8.2014 to the Manager of the College to select the expert to participate in the selection for the post of Principal.

9: Dr. Krishna Pathak, Joint Director of Education (Retired) was opted as an expert to be present in the selection. The selection committee constituted under law held the selection by way of interview on 31.8.2014, wherein 7 candidates appeared and the petitioner being qualified and eligible, was selected by the selection committee with the recommendation to make appointment.

10: The Committee of Management considered the recommendation of the selection committee in the meeting held and resolved to place the papers before the Regional Joint Director of Education for the grant of approval as required under Section 16-FF of U.P. Intermediate Education Act, 1921. The Regional Joint Director of Education accorded approval vide order dated 3.9.2014 and in pursuance thereof, the petitioner was issued an appointment letter on 3.9.2014 and he joined in the institution. The signature of the petitioner was also attested by the District Inspector of Schools vide order dated 4.9.2014 to discharge administrative and financial work of the institution.

11: A dispute in regard to the selection of the petitioner arose by lodging a complaint by Dr. R.R. Lyall alleging himself to be the Manager of the Committee of Management of the College.

12: In this regard brief fact is that Dr. S.W. Prasad was removed from the office of Manager of the College by the Board of Governors on 5.7.2014. The decision of the Board of Governors was agitated before the Deputy Registrar, Firms, Societies and Chits, Lucknow and vide order dated 9.10.2014, it was held that the decision of the Board of Governors dated 5.7.2014 is illegal, being violative of principle of natural justice.

13: It was further held that Dr. S.W. Prasad shall continue to act as Secretary/Manager of the College.

14: After removal of Dr. S.W. Prasad, Dr. R.R. Lyall was nominated as Secretary/Manager of the College and the signature of Dr. R.R. Lyall was attested by the Lucknow University on 19.9.2014, as Manager of the College. Dr. S.W. Prasad filed Writ Petition No.6105 (S/S) of 2014 before this Court, challenging the attestation of signature of Dr. R.R. Lyall, the writ petition was dismissed vide judgment and order dated 24.9.2014, against which Dr. S.W. Prasad preferred Special Appeal No.604 of 2014, which was allowed by this Court by means of judgment and order dated 13.10.2014, whereby the order passed by the learned Single Judge dated 24.9.2014 and the order of Vice Chancellor dated 19.9.2014 were set aside with the direction to the Vice Chancellor to give opportunity of hearing to the parties and to pass appropriate order in accordance with law, as expeditiously as possible, preferably within a period of 8 weeks from the date of production of certified copy of the order.

15: It is further clarified that the respondent No.4 vide letter dated 12.8.2014 enquired from the Deputy Registrar, Firms, Societies and Chits, Lucknow regarding status of Management of Lucknow Christian College Society and in response to which, the Deputy Registrar, Firms, Societies and Chits, Lucknow vide letter dated 19.8.2014 informed that the Society is renewed for a period of 5 years from 10.10.2010 and as per record, presently Dr. S.W. Prasad is the Secretary/Manager of the Society.

16: The Manager of the institution issued a show-cause notice on 12.3.2015 under the name of Professor Dr. R.R. Lyall alleging himself to be the Manager of the Committee of Management, which was duly replied by the petitioner vide reply dated 21.3.2015. Thereafter, the Committee of Management approached the Chairman, Regional Level Committee constituted under the Government Order dated 19.12.2000 and requested to cancel the approval granted to the selection of the petitioner. On the complaint lodged by the Committee of Management, an order was passed on 13.5.2015, whereby the earlier order granting approval to the petitioner was reviewed and recalled holding that the selection of the petitioner has not been made in accordance with law.

17: The District Inspector of Schools passed a consequential order on 15.5.2015 to the same effect. The order passed by the Regional Level Committee on 13.5.2015 and the order of the District Inspector of Schools dated 15.5.2015 was challenged before this Court in Writ Petition No.2594 (S/S) of 2015, wherein at subsequent point of time, an amendment application was filed challenging the order dated 18.5.2015 passed by respondent No.3 and of the same date order passed by the District Inspector of Schools.

18: In the writ petition, no interim order was passed by this Court.

19: In spite of grant of approval and appointment, the petitioner was not paid salary, then he filed Writ Petition No.298 (S/S) of 2015 and Writ Petition No.2594 (S/S) of 2015, wherein counter affidavit was called for and the writ petitions were connected along with this petition and subsequently, were dismissed as withdrawn with liberty to avail appropriate remedy before appropriate Forum.

20: Further fact is that the petitioner against the order of the Regional Level Committee also approached to the State Government which was impugned in the Writ Petition No.2594 (S/S) of 2015. The State Government considered the claim of the parties and passed an order on 22.12.2016, whereby direction was issued to the Regional Joint Director of Education to constitute a committee wherein both the District Inspector of Schools, Lucknow and District Inspector of Schools-2 shall enquire into the matter and the special committee constituted shall pass appropriate orders in accordance with law.

21: In view of the above, the committee constituted under the order of the State Government passed an order on 3.1.2017, whereby direction was issued to permit the petitioner to discharge his duties on the post of Principal and to ensure payment of salary to him. When the order dated 3.1.2017 was not complied with, then the present writ petition has been filed for issuance of writ of mandamus directing the respondents to permit the petitioner to continue on the post of Principal and to pay him regular monthly salary month by month along with the arrears of salary w.e.f. 3.9.2014 till date with all consequential benefits.

22: Submission of the learned counsel for the petitioner is that once there is an order of the committee constituted under the order of the State Government for permitting the petitioner to discharge his duties on the post of Principal and to ensure payment of salary, there is no justification on the part of the Committee of Management to sit tight over the matter in complying the order passed by the committee. His next submission is that the Committee of Management headed by Dr. S.W. Prasad is the duly elected and recognized Committee of Management who has made selection of the petitioner on the post of Principal, therefore, any other committee alleging himself to be the elected committee does not have power to hold the selection and appointment of the petitioner to be illegal.

23: In support of the submission, learned counsel for the petitioner placed reliance upon an order dated 9.10.2014, passed by the Deputy Registrar, Firms, Societies and Chits, whereby the Committee of Dr. S.W. Prasad was held to be valid Committee of Management. He further submitted that the order passed by the Deputy Registrar dated 9.10.2014 has never been challenged at any Forum, therefore, the same attained finality in the eyes of law, thus, the Committee of Management headed by Dr. R.R. Lyall alleging himself to be the Manager of the Committee of Management cannot be treated to be validly elected and recognized Committee of Management.

24: He next submitted that once the selection and appointment of the petitioner has been made by a duly constituted and recognized Committee of Management, then any other committee has no right

to make complaint in regard to the selection of the petitioner, therefore, his submission is that the Regional Level Committee who reviewed and recalled the order of recognition is based on false and frivolous material placed by the Manager of Committee of Management, who was not the Manager in any manner in the Committee of Management of the aforesaid institution. His next submission is that the institution is a minority institution and there is very limited scope of interference on the part of the Regional Joint Director of Education in the selection of a Principal. The Regional Joint Director of Education on the complaint lodged by a non recognized Manager has proceeded to recall the order, therefore, that has no legal sanctity in the eyes of law.

25: Learned Standing counsel appearing on behalf of the State-respondent submitted that the petitioner is relying upon an order passed by the committee constituted under the order of the State Government, which does not bear the signature of the Regional Joint Director of Education, thus, has no legal sanctity in the eyes of law. He also produced record before this Court showing that in the dispatch register of District Inspector of Schools, there is an endorsement in regard to the passing of order dated 3.1.2017 but in the dispatch register maintained in the office of Regional Joint Director of Education, there is no endorsement in this regard, therefore, in regard to the validity of the order dated 3.1.2017, no credibility can be placed.

26: Learned Standing counsel further pointed out that in this regard, a query was made by the then Regional Joint Director of Education by writing letter and in response thereto, she wrote a letter on 23.5.2017 stating therein that she has not passed any order as has been placed in the shape of order dated 3.1.2017. He next submitted that in view of the overall facts and circumstances, the credibility on the order dated 3.1.2017 is doubtful.

27: Sri A.K. Bajpai, learned Advocate appearing on behalf of the Committee of Management headed by Professor Dr. R.R. Lyall submitted that he is the duly elected Committee of Management and within the power of the Committee of Management, he lodged complaint against the selection and appointment of the petitioner which was taken care by the Regional Level Committee and thereafter, an order was passed by the Regional Level Committee, whereby the order of approval granted to the selection of the petitioner was recalled. He next submitted that the Committee of Management who made appointment of the petitioner, his power was recalled, therefore, he was not having jurisdiction to issue advertisement and to make selection on the post of Principal, thus, the selection of the petitioner is made by the Manager who is not recognized, thus, the entire selection vitiated in law.

28: He next submitted that the order on which the petitioner is relying upon, is not an order in the eyes of law in view of the fact that the same does not bear signature of the Regional Joint Director of Education and District Inspector of Schools-II. He further submitted that only to mislead the Court, learned counsel for the petitioner submitted that in the Writ Petition No.298 (S/S) of 2014 and Writ Petition No.2594 (S/S) of 2015, there was an interim order operating against the order passed by the Regional Level Committee on 13.5.2015, therefore, this act of the petitioner is misleading, thus, is liable to be deprecated. He next submitted that the submission advanced on behalf of the petitioner that on identical matters, interim order was granted in respect of the Teachers of the same institution is factually incorrect. In fact, the writ petitions were entertained and were dismissed as

not pressed on the application moved by the petitioner. He next submitted that the present writ petition is not maintainable in view of the fact that the petitioner for the same relief, at earlier point of time has filed 3 petitions, one of them has not been disclosed in the present writ petition, therefore, the prayer made in the present writ petition is barred by Doctrine of res judicata and Chapter-22 Rule 7 of the High Court Rules. He also placed reliance on the judgment passed in the case of Sarguja Transport Service vs State Transport Appellate Tribunal; AIR 1987 SC 88.

29: After having heard the rival contentions of learned counsel for the parties, I perused the material on record.

30: To resolve the controversy involved in the present writ petition, the provision of Regulation 17 of Chapter-II of the Regulations framed under U.P. Intermediate Education Act, 1921 is quoted below:

"17. The procedure for filling up the vacancy of the head of institution and teachers by direct recruitment in any recognised institution referred to in Section 16-FF, shall be as follows:

(a) After the management has determined the number of vacancies to be filled up by direct recruitment, the posts shall be advertised by the manager of the institution in at least one Hindi and one English newspaper having adequate circulation in the State giving particulars as to the nature (i.e., whether temporary/permanent) and number of vacancies, descriptions of post (i.e., Principal or Headmaster, Lecturer or L.T., C.T. or J.T.C./B.T.C. grade teacher including the subject or subjects in which the lecturer or teacher is required), scale or pay and other allowances, experience required minimum qualification and age prescribed, if any, for the post and prescribing a date which should not ordinarily be less than two weeks from the date of advertisement) by which the applications shall be received by the Manager. A copy of the advertisement shall be simultaneously sent to the Inspector concerned.

Notes-(1) All vacancies in the posts of teachers and the head of institution existing at the time of advertisement shall be advertised.

(2) No new post shall be advertised unless sanction of the appropriate authority for the creation thereof has been received by the management.

(b) All applications shall be made in the form prescribed by the management and shall contain all necessary particulars about qualifications, teaching experience and other activities and be accompanied by certified copies of all the necessary certificates and testimonials. The management may charge cost of the application form not exceeding the amount referred to in Clause (2) of Regulation 10.

(c) An application by a person employed in an institution and applying for a post elsewhere or in the same institution shall not be withheld by his employer but shall be forwarded to the authority concerned immediately.

(d) All applications received from the candidates shall be serially numbered and entered in a register and particulars of the candidates noted under appropriate columns. The candidates to be called for interview shall be seven for each post (the number of applicants, permitting). The Manager shall intimate by registered post all the members of the Selection Committee as well as all such candidates as are called for interview, the date, time and place of selection at least ten days before it is held. The Selection Committee will hold the selection accordingly. If on account of any unavoidable reason, the expert selected by the Committee of Management under Clause (a) of the proviso to sub-section (1) of Section 16-FF is unable to attend the selection on the date fixed the meeting of the Selection Committee shall be postponed.

(e) The provisions of Clauses (e) and (f) of Regulation 10 and those of Regulations 11, 12 and 16 shall mutatis mutandis apply to selections made under this regulation.

(f) A panel of experts consisting of fifteen or more persons selected from category (a) referred to in Regulation 14 shall be drawn by the Director for each region and be sent to the Regional Deputy Director of Education concerned, The Regional Deputy Director of Education shall out of the said panel communicate the names of three experts in a sealed cover to the management through its Manager as soon as he receives any request for supply of names of experts from him. The regional panel of experts shall, however, remain valid until it is replaced by a new one.

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31: Upon perusal of the aforesaid regulation, it is evident on the face of it that to fill up the vacancy of the post of Principal or Teacher of a minority institution, advertisement is to be made in the two well known newspapers; one in Hindi and other in English.

32: The Committee of Management resolved to make selection and in pursuance thereof, the Manager of the Committee of Management who was authorized to initiate the selection proceeding issued advertisement in one Hindi newspaper namely Navbharat Times and other in English newspaper namely Indian Express on 9.7.2014, inviting applications from eligible and qualified candidates and in view of the provisions contained under the regulation, a selection committee was constituted and upon examination of quality point marks, recommended the name of the

petitioner by placing him at serial No.1 in the merit list for the grant of appointment after obtaining approval from the Regional Joint Director of Education as prescribed under Section 16-FF of U.P. Intermediate Education Act, 1921.

33: Papers in regard to the selection of the petitioner on the post of Principal were submitted before the Regional Joint Director of Education to accord approval to the selection made by a committee constituted under the regulation. The Regional Joint Director of Education vide order dated 3.9.2014 granted approval. The District Inspector of Schools, Lucknow also attested signature of the petitioner vide order dated 4.9.2014. The petitioner joined in the institution and started duties on the post of Principal in the institution.

34: Under Regulation 17-g, there is a provision that in case on the papers submitted for the grant of approval, no decision whatsoever is taken within one month from the date of submission of the papers, it shall be deemed that approval has been accorded by the competent authority.

35: As per own admission of the Regional Joint Director of Education, the order dated 3.1.2017 does not bear her signature, therefore, the order bearing signature of the District Inspector of Schools has no valid sanctity in the eyes of law.

36: Record of the office of Regional Joint Director of Education has also been produced before this Court.

37: On its perusal, it is transpired that it is a loose set of papers and no register was maintained in regard to maintain the proceeding of minutes of meeting of Regional Level Committee. Thus, this Court issued direction vide order dated 16.11.2018, which is being quoted below:

"Heard learned counsel for the parties.

Learned Standing Counsel has produced the record in compliance of the earlier order passed by this Court. The same may be kept in safe custody along with record of this writ petition in a sealed cover.

The controversy involved in this writ petition is that whether the appointment of the petitioner has been made by a duly constituted Selection Committee or not and whether the order of approval placed as Annexure No.2 to the writ petition is genuine or not.

Vide order dated 15.11.2018, this Court directed to the learned Standing Counsel to produce the minutes of the meetings of the Regional Level Selection Committee for the year 2017-18. In compliance of the order, learned Standing Counsel produced the copy of the proceedings of Regional Level Selection Committee since 18.03.2017 to



10.01.2018. On perusal of the same, it is apparent that the original selection proceedings are maintained on separate pages and not in a register.

On a pointed query made in regard to the maintenance of the minutes of the meetings of Regional Level Selection Committee, learned Standing Counsel upon instruction received, informed to this Court that the proceedings are maintained in the manner it has been produced before this Court.

On perusal of the proceedings, the Court is surprised that the proceedings pertain to selection of the teachers appointed in the institutions recognized under the provisions of U.P. Intermediate Education Act, 1921 and on the basis of approval granted by the Selection Committee, the teachers are being paid salary from the State exchequer. The State Government is spending huge expenditure for the maintenance of standard of education in the State of U.P. and the officers working in the department are not even able to maintain the relevant records in a manner prescribed under the rules and government orders issued in this regard. In case, the proceedings of selections are maintained in separate pages in place of a register, the sanctity of the order cannot be maintained.

Taking into consideration the seriousness of the proceedings of the Regional Level Selection Committee, which has been constituted under Section 12 of the U.P. Act No.5 of 1982, this Court directs to the State Government to issue necessary Government order for maintenance of the proceedings of the Selection Committee on Register duly approved by the Chairman of the Regional Level Selection Committee and the pages in the register shall be duly paginated and signed by the Chairman of Regional Level Selection Committee.

Learned Standing Counsel is directed to place this order before the Chief Secretary, Government of U.P. for necessary action within four days from today.

Office is directed to provide a copy of this order to learned Standing Counsel free of cost to intimate to the Chief Secretary of State of U.P. within 72 hours.

The proceeding of the Regional Level Selection Committee produced by learned Standing Counsel is hereby returned back in the open Court.

Put up this matter for further hearing along with the record of connected writ petitions within top ten cases on 27.11.2018.

In the mean time, learned counsel for the petitioner shall place on record the material in regard to award of quality point marks by the Selection Committee to the petitioner."

38: Learned Standing counsel informed to this Court that the State Government in compliance of the order of this Court has issued Government Order, whereby direction has been issued in regard to the maintenance of the register of proceeding of Regional Level Committee.

39: Upon perusal of the record, including the dispatch register of the office of the District Inspector of Schools, it is well established that the papers were received in the office of the District Inspector of Schools, which were transmitted to the Regional Joint Director of Education for the grant of approval. In the entire record, there is no plea of any of the respondents that the papers were not submitted by the Manager of the Committee of Management for the grant of approval, thus, there is no hesitation to this Court to hold that the papers in regard to the grant of approval were duly submitted before the District Inspector of Schools for its transmission to the Regional Joint Director of Education for the grant of approval as required under Section 16-FF.

40: The Regional Joint Director of Education has admitted that she has not passed any order for the grant of approval and the order dated 3.1.2017 does not bear her signature. Regional Joint Director of Education accorded approval vide order dated 3.9.2014 and in pursuance thereof, the petitioner was issued appointment letter on 3.9.2014 and in pursuance thereof, he joined in the institution and the signature of the petitioner was also attested by the District Inspector of Schools.

41: Dr. R.R. Lyall alleging to be the Manager of the Committee of Management issued a show cause notice on 12.3.2015 to the petitioner, which was duly replied by the petitioner vide reply dated 21.3.2015.

42: The Committee of Management headed by Dr. R.R. Lyall further approached to the Regional Joint Director of Education and requested to cancel the approval granted to the selection of the petitioner. The Regional Joint Director of Education passed an order on 13.5.2015, whereby he reviewed and recalled the order of approval dated 3.9.2014 holding the appointment of the petitioner to be invalid.

43: The District Inspector of Schools also passed a consequential order on 15.5.2015 to the same effect. The order of the Regional Joint Director of Education dated 13.5.2015 and the order of the District Inspector of Schools dated 15.5.2015 was challenged in Writ Petition No.2594 (S/S) of 2015. At subsequent point of time, the District Inspector of Schools passed another order on 18.5.2015, which has also been challenged by means of the amendment application in the Writ Petition No.2594 (S/S) of 2015. The said writ petition was subsequently withdrawn and following order was passed:

"Heard.

Shri Sameer Kalia, learned counsel for the petitioner submits that he may be permitted to withdraw this writ petition so as to pursue the alleged remedy available to him under Section 16-E (10) of the U.P. Intermediate Education Act, 1921.

Without adjudicating the question as to whether such a remedy is available to the petitioner or not, this writ petition is dismissed with liberty to the petitioner to pursue such remedy as may be available in law.

Accordingly, the application for withdrawal of the writ petition is allowed."

44: In the present case, moot question is that whether the complaint lodged by Dr. R.R. Lyall alleging himself to be the Manager is a recognized committee or not. In this regard, I perused the material on record which has been made available to this Court under the order passed by this Court.

45: On examination, it is found that a dispute was raised in regard to the constitution of Committee of Management with Dr. S.W. Prasad as Manager, which was decided vide order dated 9.10.2014 by the Deputy Registrar, Firms, Societies and Chits whereby the Committee of Management of Dr. S.W. Prasad was held to be the valid Committee of Management. The order of the Deputy Registrar, Firms, Societies and Chits holding the Committee of Management of Dr. S.W. Prasad has never been challenged before any Forum, thus, has attained finality in the eyes of law, therefore, the Regional Joint Director of Education while proceeding to review the earlier order would have considered that whether Dr. R.R. Lyall is a Manager of a Committee of Management, duly recognized under the relevant provisions of law or not. In this regard, there is no finding at the level of Regional Joint Director of Education to the effect that Dr. R.R. Lyall is duly elected and recognized Manager of Committee of Management. In absence of such finding, the application for review of the earlier order on the behest of Dr. R.R. Lyall, alleging himself to be Manager was not entertainable on the ground that the appointment of the petitioner has been made by a Committee of Management duly elected and recognized. On perusal of the order dated 9.10.2014 of the Deputy Registrar, Firms, Societies and Chits, it is well established that the Committee of Management of Dr. S.W. Prasad who has made selection of the petitioner is duly elected and recognized Committee of Management.

46: Regional Level Committee while considering the review application was required to record finding first on the point that whether the Committee of Management of Dr. R.R. Lyall is legally constituted Committee of Management to arrive at the conclusion that the selection of the petitioner was made by the duly elected and constituted Committee of Management or not. On perusal of the order dated 13.5.2015 it is apparent on the face of it that there is no finding returned on the order passed by the Deputy Registrar on 9.10.2014.

47: This Court on the basis of material available on record, holds that the Committee of Management of Dr. S.W. Prasad was the Committee of Management, which was duly elected and recognized Committee of Management, therefore, the selection made by the duly elected and recognized Committee of Management cannot be held to be illegal on the score of complaint lodged by Dr. R.R. Lyall who was not recognized Manager of the Committee of Management at the time of selection nor has challenged the order of the Deputy Registrar, Firms, Societies and Chits dated 9.10.2014.

48: It is further recorded that no material was placed by Dr. R.R. Lyall in regard to the grant of recognition of the election of the Committee of Management headed by him as Manager of the Committee of Management, therefore, the basis of challenge of selection of the petitioner on the post of Principal on the score that the Committee of Management of Dr. S.W. Prasad was not validly elected Committee of Management, has no force.

49: In regard to submission advanced by Sri A.K. Bajpai, learned Advocate that this writ petition is barred by res judicata, I have also examined the record of the Writ Petition No.2594 (S/S) of 2015, wherein on its perusal it was found that there was no interim order operating in the said writ petition, therefore, the submission advanced by the learned counsel for the respondents to that score, appears to be correct. The Writ Petition No.298 (S/S) of 2014 and 2594 (S/S) of 2015 were dismissed as withdrawn with the liberty to approach the State Government under the provisions of Section 16-E(10) of U.P. Intermediate Education Act, 1921 and the State Government constituted a special committee wherein the Regional Joint Director of Education through Chairman, District Inspector of Schools and District Inspector of Schools-II were the Members of the said committee.

50: As per the case of the petitioner, an order was passed on 3.1.2017 by the committee constituted which has been disputed by the Regional Joint Director of Education that the order dated 3.1.2017 does not bear her signature.

51: It is not disputed that the State Government constituted a special committee of 2 Members and one Chairman to adjudicate the dispute in regard to the selection of the petitioner on the post of Principal. It has also not been disputed that an order was passed on 3.1.2017. The dispute is that the order dated 3.1.2017 does not bear signature of the Regional Joint Director of Education and in this regard, Regional Joint Director of Education has informed vide letter dated 23.5.2017 admitting that she has not passed any order on 3.1.2017 in regard to the dispute of selection on the post of Principal of the institution in question. In view of the above, no credibility can be attached to the order dated 3.1.2017.

52: The submission advanced by Sri A.K. Bajpai, learned Advocate in regard to the maintainability of the writ petition is that at earlier point of time, the petitioner filed Writ Petition No.2594 (S/S) of 2015 challenging the order dated 13.5.2015, 15.5.2015 and order dated 18.5.2015 and Writ Petition No.298 (S/S) of 2014, praying for issuing writ of mandamus commanding the respondents to pay the salary of the petitioner on the post of Principal, Lucknow Christian Intermediate College including all arrears of salary and to pay future salary to the petitioner regularly month by month, therefore, this writ petition is not maintainable in view of the provisions contained under the Rules of the High Court and the judgment in the case of Sarguja Transport Service (Supra).

53: This Court upon overall examination of the material on record came to the conclusion that both the Writ Petition No.2594 (S/S) of 2015 for quashing the orders dated 13.5.2015, 15.5.2015 and 18.5.2015 with the prayer to ensure payment of salary and Writ Petition No.298 (S/S) of 2015 was filed in the light of the prayer made in the aforesaid writ petition to permit the petitioner to discharge his duties on the post of Principal of the institution and to ensure payment of salary, subsequently the aforesaid two writ petitions were dismissed as withdrawn with the liberty to

approach the appropriate Forum and in pursuance thereof, the petitioner approached to the State Government under Section 16-E(10) of U.P. Intermediate Education Act, 1921 and in exercise of that power the State Government constituted a special committee to examine the issue involved in the case of the petitioner, thus on the basis of an order dated 3.1.2017, the petitioner is seeking relief to ensure continuance on the post of Principal and to ensure payment of salary of the post of Principal inasmuch as arrears of salary w.e.f. the date of joining in the institution, thus, cause of action which is subject matter of consideration in the present writ petition is different than the aforesaid two writ petition, hence, the writ petition filed on different cause of action cannot be thrown out.

54: To adjudicate the controversy involved in the present writ petition and the submission advanced by the learned counsel for the respondents in regard to the maintainability of the writ petition that it has been filed with the same prayer as was prayed in Writ Petition No.2594 (S/S) of 2015, the prayer made in Writ Petition No.2594 (S/S) of 2015 is quoted below:

"(i) to issue a writ, order or direction in the nature of Certiorari quashing the impugned decision of the Respondent No. -3 dated 13.5.2015 and the impugned order dated 15.5.2015 passed by the Respondent No. -5, as are contained in Annexure No. -1 and Annexure No. -2 respectively to this writ petition;

(ii) to issue a writ, order or direction in the nature of Mandamus commanding the Respondents not to give effect to the impugned decision of the Respondent No. -3 dated 13.5.2015 and the impugned order dated 15.5.2015 passed by the Respondent no. -5, as are contained in Annexure No. -1 and Annexure No. -2 respectively to this writ petition;

(ii-a) to issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 18.5.2015 passed by the Respondent No. -4 and the impugned order dated 18.5.2015 passed by the Respondent No.-, as contained in Annexure No. -15 and 16 to the instant Writ Petition respectively;

(ii-b) to issue a writ, order or direction in the nature of Mandamus commanding the Respondents not to give effect to the impugned order dated 18.5.2015 passed by the Respondent No.-4 and the impugned order dated 18.5.2015 passed by the Respondent No.-, as contained in Annexure No.-15 and 15 to the instant Writ Petition respectively;

(iii) to issue a writ, order or direction in the nature of Mandamus commanding the Respondents to allow the petitioner to function as Principal of the Lucknow Christian Inter College, Lucknow and to pay him salary for the post as and when the same falls due including the arrears of salary from 3.9.2014."

55: The prayer made in Writ Petition No.298 (S/S) of 2015 is quoted below:

"(a) to issue a writ, order or direction in the nature of mandamus commanding the respondents to pay the salary of petitioner for the post of Principal, Lucknow

Christian Intermediate College including all arrears of salary and to pay future salary to the petitioner regularly month to month in accordance with law."

56: On perusal of the prayer quoted above and the prayer of the present writ petition, there is no prayer for quashing the order dated 13.5.2015 passed by the Regional Joint Director of Education, order dated 15.5.2015 passed by the District Inspector of Schools and the order dated 18.5.2015 contained as Annexure-15 and 16 to the writ petition No.2594 (S/S) of 2015.

57: I perused the prayer of the present writ petition, wherein on the basis of an order passed by the Special Committee dated 3.1.2017 constituted under the order of the State Government, the petitioner is seeking writ of mandamus commanding the respondents to permit the petitioner to continue in the institution in question on the post of Principal and to ensure payment of salary of the aforesaid post inasmuch as arrears of salary w.e.f. 3.9.2014 to 18.2.2015, therefore, the objection in regard to the maintainability of writ petition in the light of the decision rendered in the case of Sarguja Transport Service (Supra) and Rules of the High Court by Sri A.K. Bajpai, learned Advocate is not tenable and the objection being not sustainable in law, is rejected, therefore, this Court holds that the writ petition being based on subsequent development and new cause of action arose, is maintainable.

58: In view of the above facts and circumstances of the case, it is recorded that once the order dated 3.1.2017 is disputed by the Regional Joint Director of Education, then no writ of mandamus can be issued to the respondents to ensure payment of salary and arrears of salary along with the consequential benefits in compliance of the order dated 3.1.2017, thus, in the interest of justice, this Court is issuing direction to the State Government to pass a fresh order in accordance with the provisions contained under Section 16-E(10) of U.P. Intermediate Education Act, 1921 within a reasonable time.

59: Accordingly, this writ petition is finally disposed of with direction to the State Government to pass appropriate order by exercise of power under Section 16-E (10) of U.P. Intermediate Education Act, 1921 on the issue of validity of appointment of the petitioner on the post of Principal and payment of salary inasmuch as arrears of salary from the date of joining on the post of Principal in the light of observation made above within a period of 2 months from the date of production of certified copy of this order.

60: It is however made clear that the State Government shall provide opportunity of hearing to the parties in passing the fresh order.

61: It is further directed that in case the selection and appointment of the petitioner is found in accordance with law, necessary direction to continue on the post of Principal and to ensure payment of salary inasmuch as arrears of salary shall be passed.

Order Date :- 04.12.2018 Gautam