

A.F.R.

In Chamber

Reserved

1. **Case :-** WRIT - A No. - 5540 of 2020

Petitioner :- C/M Sri Durga Ji Purva Madhyamik Balika Jamin And Another

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Kunwar Bhaskar Parihar

Counsel for Respondent :- C.S.C.,Bhanu Pratap Singh,Lalji Yadav

Connected with

2. **Case :-** WRIT - A No. - 5795 of 2020

Petitioner :- C/M Sarswati Junior High School And Another

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Kunwar Bhaskar Parihar,Radha Kant Ojha (Senior Adv)

Counsel for Respondent :- C.S.C.,Bhanu Pratap Singh

Connected with

3. **Case :-** WRIT - A No. - 5831 of 2020

Petitioner :- C/M Kuba Purva Madhyamik Vidyalaya, Azamgarh And Another

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Kunwar Bhaskar Parihar,Radha Kant Ojha (Senior Adv)

Counsel for Respondent :- C.S.C.,Bhanu Pratap Singh

Connected with

4. **Case :-** WRIT - A No. - 5743 of 2020

Petitioner :- C/M Sri Krishnanand Smarak Junior High School And Another

Respondent :- State Of U P And 5 Others

Counsel for Petitioner :- Shivendu Ojha,Sr. Advocate Sri Radha Kant

Ojha

Counsel for Respondent :- C.S.C.

Connected with

5. **Case :-** WRIT - A No. - 5592 of 2020

Petitioner :- Suman Kala Devi

Respondent :- District Basic Education Officer And 4 Others

Counsel for Petitioner :- Indra Raj Singh, Adarsh Singh

Counsel for Respondent :- C.S.C.

Connected with

6. **Case :-** WRIT - A No. - 5582 of 2020

Petitioner :- Rajni Rai

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Samarath Singh, Hritudhwaj Pratap

Sahi, Sankalp Narain

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia, J.

The present petitions have been filed by the Committee of Management as well as the Teachers challenging the enquiry report dated 28.1.2020, the notices issued in pursuance to the enquiry report dated 25.6.2020 as well as the order dated 17.2.2020 issued by the respondent no. 1 dated 17th February, 2020 directing the respondent no. 2 and respondent no. 5 to take requisite action in pursuance to the enquiry report dated 28.1.2020.

The present judgment decides all the above writ petitions filed by the Committee of Managements and individual Teachers.

Heard Sri R.K. Ojha, learned Senior Advocate assisted by Sri K.B. Parihar, counsel for the petitioners and Sri M.C. Chaturvedi, learned

Additional Advocate General assisted by Sri Apoorva Hajela, counsel for the respondents.

The present petitions raises a very important question with regard to the role of the District Authorities in the working of the Authorities created under a statute and conferred powers by virtue of the said specific statutes.

Facts in brief

The facts in brief are that the petitioners were appointed Assistant Teachers/Head Masters in the Junior High School in the Institutions which are duly recognized under the U.P. Basic Education Act, 1972. It is stated that the appointment of the Assistant Teacher/Head Master was made under the U.P. Basic Education Act and the service conditions are governed by the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Condition of Service of Teachers) Rules, 1978 and the payment to the said Teachers is made under the U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978. The petitioners claim that they were appointed by following the procedure prescribed in the Acts and the Rules referred above. It is also stated that the appointment of the petitioners was in consonance with the permission given by the Zila Basic Shiksha Adhikari, which was done after following the procedure prescribed with regard to the advertisements and in the presence of the nominee of Zila Basic Shiksha Adhikari in the Selection Committee duly constituted with the approval of the Zila Basic Shiksha Adhikari. It is claimed that the petitioners in terms of their appointment were working against the posts against which they were appointed and were being regularly paid their salaries without any objection with regard to either the working of the petitioners or any other misconduct being alleged against them.

It is alleged that the Commissioner of Azamgarh, who was due to retire on 30th June, 2020 passed an order dated 6th December, 2019 and

thereby constituted a four member Enquiry Committee to conduct enquiry over the approvals granted to the appointment of Teachers and Head Masters by the then Zila Basic Shiksha Adhikari in the District of Azamgarh during his tenure. The four member Enquiry Committee comprised of the Additional Commissioner (Administration) as Chairman, the Assistant Account Officer, Azamgarh, Assistant Director of Education, Azamgarh and the Joint Director of Education, Azamgarh as its members. The said four member Committee never gave any information to the petitioners nor was any notice served to either the petitioners or the Committee of Management and a report dated 29.1.2020 was submitted by the said four member Committee. The said report is on record as Annexure-3 to the writ petition.

A perusal of the enquiry report dated 28.1.2020 reveals that the said Enquiry Committee called for the records from the Office of Zila Basic Shiksha Adhikari and found minor discrepancies as under:-

- (a) A permission for publication was referred as sought by the Manager on 26.9.2018, however, the same was not found on record.
- (b) The interview for the selection on one post for Science was fixed on 28.10.2018, however, as the interview could not be held on the said date, the same was adjourned to 3.11.2018 and the said adjournment was published in only one newspaper.
- (c) The same also records that in the interview out of eight persons, five persons had appeared.
- (d) It was also recorded that in the School in question, there was no Teacher for Mathematics, however, the Basic Shiksha Adhikari assigned them for teaching Science alone, which was irregular.

After observing the said irregularities, the report dated 28.1.2020 was forwarded along with a covering letter dated 29th January, 2020 by the

Enquiry Committee to the said Commissioner. The Commissioner in turn forwarded the said report to the Education Secretary, State of U.P. for further action on the matter. The Education Secretary based upon the said recommendation dated 29th January, 2020 and the report dated 28.1.2020 passed an order on 17th February, 2020 directing the respondent no. 5 to lodge FIRs against the officials and the respective Committee of Managements. Simultaneously on the same day i.e. 17.2.2020, the Secretary respondent no. 1 passed an order directing the respondent no. 2 to immediately dismiss the services of the appointed Teachers in accordance with law.

In pursuance to the directions given on 17th February, 2020, the respondent no. 5 issued a notice dated 25.6.2020 calling upon the petitioners to show cause as to why their services may not be terminated. The said notice is on record as Annexure No. 6. A perusal of the said notice shows that the sole ground for issuance of the show cause notice was the enquiry report of the four member Committee. It is also on record that simultaneously another order was passed stopping the salaries of the petitioners pending the adjudication of the show cause notice. The petitioners have thus approached this Court seeking quashing of the enquiry report as well as the show cause notice and the consequential action of stopping the salaries of the petitioners.

Submissions of the Counsels

Shri R.K. Ojha, learned Senior Advocate has extensively argued that the appointment of the Assistant Teacher/Head Master in the Junior High School which are duly recognized under the U.P. Basic Education Act, are governed by the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Condition of Service of Teachers) Rules 1978 and the payment of the salary to Teachers and the other staff is governed under the provisions of U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978. He argues that the recruitment

and the conditions of service are governed by statutory rules which provide for manner of recruitment and the conditions of service. He further argues that all the requirements for recruitment were scrupulously followed while making the recruitment and there was no complaint whatsoever with regard to either the appointments or the working of the petitioners Teacher. He further argues that the constitution of four member Committee by the Commissioner was wholly arbitrary and contrary to the scheme of the Act inasmuch as under the Acts specific powers are conferred upon the specific Authorities and the Commissioner or the persons appointed in the Enquiry Committee do not have any role to play in the scheme of the statute covering the recruitment or the dismissal of the Teachers/Head Masters. Shri R.K. Ojha further argues that on the bare perusal of the scheme of the Acts, it is clear that it lays down a complete code and confers specific powers on various Authorities.

He has further highlighted that Rule 15 of the 1978 Rules prohibits the termination/removal/dismissal or discharge of the services without serving a notice to be given after approval from the District Basic Education Officer. Similarly, Rule 16 provides for the manner of disciplinary proceedings.

Thus, in sum and substance, the argument of Shri R.K. Ojha, Senior Advocate is that the Commissioner has no jurisdiction to initiate the enquiry as has been done by the Commissioner. The Enquiry Committee did not have the jurisdiction in the scheme of the Act to initiate and complete the enquiry as has been done by the Enquiry Committee. The Enquiry Committee has erred in not even seeking a response from the petitioners before concluding the enquiry and the Authorities entrusted with the exercise of the powers under the Act are acting under dictation without application of their own mind, which is contrary to the statutory scheme and thus the entire proceedings initiated and pending against the petitioners are nothing but an outcome of colourable exercise of powers and exercise of power without jurisdiction and thus liable to be quashed.

Shri R.K. Ojha, Senior Advocate has placed reliance on the judgment of this Court dated 13.3.2003 in the case of *Madan Kumar and Others Vs. District Magistrate, Auraiya and Others* reported in [2013 (10) ADJ 606], judgment dated 9.9.2019 passed in *Writ Petition No. 48256 of 2009, Manish Kumar Rai Vs. State of U.P. and Others*, judgment dated 22.3.2018 passed in *Writ Petition No. 38429 of 2017, Chhote Lal Singh Vs. State of U.P. and 5 Others*, judgment dated 27.10.2015 passed in *Writ Petition No. 58619 of 2015, V.N. Daipuria Vs. State of U.P. and 3 Others* and Judgment dated 29.5.2018 passed in *Writ Petition No. 73647 of 2010, Surya Prakash Rai Vs. State of U.P. and Others*.

Shri M.C. Chaturvedi, learned Additional Advocate General was specifically asked to address this Court as to how and under what powers has the Commissioner constituted an Enquiry to which Shri M.C. Chaturvedi argued that the Commissioner merely acted as a Whistle Blower and he did not pass any orders as a disciplinary authority, however exercised his jurisdiction being the supervisory authority. He thus argued that no fault could be found with the bona fides of the Commissioner. He has further argued that mere show cause notices have been issued and thus the petitioners have approached this Court immaturely and thus the writ petitions are liable to be dismissed.

The written submissions filed by the learned counsel for the petitioners as well as the State are on record and reiterated their arguments as recorded above.

Discussion

In view of the specific submissions raised by Shri R.K. Ojha that in terms of the scheme of the Act, the Commissioner has no role to play, it is essential to see the scheme of the Act namely The Uttar Pradesh Basic Education Act, 1972 (hereinafter referred to as the '1972 Act'. The said Act was enacted to provide for establishment of a Board of Basic

Education with a view to regulate the Basic Education in the State of Uttar Pradesh. The constitution of the Board is defined under Section 3 and Section 3(2) provides that the Board shall be a body corporate and Section 3(3) provides for Officers, who shall be the member of the said Board. Section 3(3) is being quoted hereinbelow:-

“(3) The Board shall consist of the following members, namely -

(a) the Director, ex officio, who shall be the chairman;

(b) two persons to be nominated by the State Government from amongst the Adhyakshas, if any, of [Zila Panchayats established under Section 17 of the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961];

(c) one person to be nominated by the State Government from amongst the Nagar Pramukhs, if any, of the [Corporations constituted under Section 9 of the Uttar Pradesh Municipal Corporation Act, 1959];

(d) one person to be nominated by the State Government from amongst the Presidents, if any, of the [Municipal Council and Nagar Panchayats established under the Uttar Pradesh Municipalities Act, 1916];

(e) the Secretary to the State Government in the Finance Department, ex officio;

(f) the Principal, State Institute of Education, ex officio;

[(f1) the Secretary, Board of High School and Intermediate Education, Allahabad, ex officio;

(f2) the President of the Uttar Pradesh Prathamik Shikshak Sangh, ex officio;]

(g) two educationists to be nominated by the State Government;

(h) an officer not below the rank of Deputy Director of Education, to be nominated by the State Government, who shall be the Member Secretary.”

Section 4 of the said Act provides for the functions of the Board. Section 4(2) (h) confers the ancillary powers on the Board. Section 4(2) (h) is quoted herein below:-

“(h) to take all such steps as may be necessary or convenient for, or may be incidental to the exercise of any power, or the discharge of any function or duty conferred or imposed on it by this Act :

[Provided that the courses of instruction and books prescribed and institutions recognised before the commencement of this Act shall be deemed to be prescribed or recognised by the Board under this Act.]”

Section 13 of the said Act confers the control of the State Government over the functioning of the Board. In pursuance to the powers conferred under Section 19 of the said Act for framing the rules, the State Government has framed the Rules with regard to the recruitment and condition of service of the Teachers known as the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Condition of Service of Teachers) Rules 1978. Rule 4 of the said Rules of 1978 provide for minimum qualification for appointment of Assistant Teachers and Rule 5 of the said Rules provides for the eligibility to be appointed as Head Master. Rule 7 of the said Rules provides for advertisement of vacancies and Rule 10 provides for procedure in selections. Rule 15 of the said Rules provides for disciplinary proceedings and rule 26 provides for power to inspect. The said power to inspect has been conferred upon the Education Officer for inspecting the records of the management with regard to the payment of salaries to its Teachers and employee and he is further empowered to give directions to the management to observe financial propriety as he may deem fit.

The salaries and other benefits payable to the Teachers and other employees are governed under the provisions of Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978. The said Act has been framed to regulate the payment of salaries to Teachers.

Thus, a perusal of the two Acts and the Rules, as referred above, show that no powers have been conferred upon the Commissioner or the District Administration to interfere in the functioning of the Schools and

statutory authorities have been created for regulating the functioning of the Schools, the recruitment and removal of Teachers and other employees and payment of their salaries. Under the scheme of the Acts, it is a Board which exercises the controls over the affairs with regard to the Basic Education in the State of Uttar Pradesh and the Commissioner or any Officer of the District Administration is neither a member of the Board nor does he have any supervisory control over the Board. The supervisory control of the States over the Boards is also very limited in nature and is confined to issuing the directions to the Board for efficient administration of the Act. The State is also an arbitrator in the event of dispute arising between the Board and the State Government. Thus, the entire control over the Basic Education is conferred upon the statutory authorities created under the Act with a limited supervisory control of the Board and also with a very limited supervisory role of the State Government confined only for proper and efficient administration of the scheme of the Act. This Court in its judgment dated 13.3.2013 in the case of *Madan Kumar (supra)* was confronted with question of the role of the District Magistrate in issuing directions to the educational authorities under the statutes, which are self contained and this Court held that from the perusal of the scheme of the Act, it is clear that District Magistrate is a foreign authority and has no role to play in the scheme of the Act. This Court relied upon the judgment of the Apex Court in the case of *Anirudhsinhji Karansinhji Jadeja v. State of Gujarat, (1995) 5 SCC 302* and the judgment of the Apex Court in the case of *Tarlochan Dev Sharma v. State of Punjab, (2001) 6 SCC 260* as well as the judgment in the case of *Purtabpore Co. Ltd. v. Cane Commissioner of Bihar, (1969) 1 SCC 308*.

The order dated 9.9.2009 passed in Writ-A No. 48256 of 2009 cited by Shri R.K. Ojha is only an interim order and has no precedential value. Similarly, the order dated 22.3.2018 passed in Writ-A No. 38429 of 2017 also is based upon an agreement and has no precedential value.

The other judgment cited by Shri R.K. Ojha being judgment dated 27.10.2015 passed in Writ-A No. 58619 of 2015 is an authority on the question whether the discretion can be exercised on dictation and this court held that the discretion has to be exercised after exercise of independent mind and not on recommendation. The said judgment is relevant only for adjudicating of the order dated 17.2.2020 in the present case.

The next judgment cited by Shri R.K. Ojha is the judgment dated 29.5.2018 passed in Writ-A No. 73647 of 2010, wherein this court was confronted with conclusion as to whether the Additional Commissioner and the Joint Commissioner are vested with any power under the Intermediate Education Act. This Court concluded that the Divisional Commissioner could not have directed an enquiry.

The next judgment cited by Sri R.K. Ojha is the judgment of this Court in the case of *Dr. Arvind Kumar Ram Vs. State of U.P., 2007 (4) AWC 4163*, which relates to the exercise of discretion to suspend a person and has no relevance to the facts of the present case.

The next judgment cited by Shri R.K. Ojha is the judgment of Apex Court in the case of *Managing Director ECIL Hyderabad Etc. Etc. v. Karunakar Etc. Etc.*, passed in *Civil Appeal No. 3056 of 1991, judgment dated 1st October, 1993*, which categorically lays down that the termination without following the due procedure is bad in law. The said case has no applicability to the facts of the present case as only a show cause notice has been issued purporting to terminate the services of the petitioner and cannot be considered to be an authority on the proposition as to whether the power exercised by an authority which is violative to the scheme of the Act can be subjected to judicial review or not.

The learned Additional Advocate General has not cited any case laws in support of the contentions.

The Supreme Court in the case of *Manohar Lal (Dead) By Lrs. v. Ugrasen (Dead) By Lrs. and Others*, (2010) 11 SCC 557, while considering the power of the State Government as a revisional authority under Section 41(3) and Section 18 of the U.P. Urban Planning and Development Act, 1973 and interpreting the role of administrative and regulatory bodies in respect of the statutory powers, recorded and held as under:-

“12. *In Rakesh Ranjan Verma v. State of Bihar [1992 Supp (2) SCC 343 : 1992 SCC (L&S) 866 : (1992) 21 ATC 521 : AIR 1992 SC 1348]* the question arose as to whether the State Government, in exercise of its statutory powers could issue any direction to the Electricity Board in respect of appointment of its officers and employees. After examining the statutory provisions, the Court came to the conclusion that the State Government could only take the policy decisions as to how the Board will carry out its functions under the Act. So far as the directions issued in respect of appointment of its officers was concerned, it fell within the exclusive domain of the Board and the State Government had no competence to issue any such direction. The said judgment has been approved and followed by this Court in *U.P. SEB v. Ram Autar [(1996) 8 SCC 506 : 1996 SCC (L&S) 1023]*.

13. *In Bangalore Development Authority v. R. Hanumaiah [(2005) 12 SCC 508]* this Court held that the power of the Government under Section 65 of the Bangalore Development Authority Act, 1976 was not unrestricted and the directions which could be issued were those which were to carry out the objective of the Act and not those which are contrary to the Act and further held that the directions issued by the Chief Minister to release the lands were destructive of the purposes of the Act and the purposes for which BDA was created.

14. *In Bangalore Medical Trust v. B.S. Muddappa [(1991) 4 SCC 54 : AIR 1991 SC 1902]* this Court considered the provisions of a similar Act, namely, the Bangalore Development Authority Act, 1976 containing a similar provision and held that the Government was competent only to give such directions to the Authority as were in its opinion necessary or expedient and for carrying out the purposes of the Act. The Government could not have issued any other direction for the reason that the Government had not been conferred upon

unfettered powers in this regard. The object of the direction must be only to carry out the object of the Act and only such directions as were reasonably necessary or expedient for carrying out the object of the enactment were contemplated under the Act. Any other direction not covered by such powers was illegal.

15. *In Poonam Verma v. DDA [(2007) 13 SCC 154 : AIR 2008 SC 870] a similar view has been reiterated by this Court dealing with the provisions of the Delhi Development Authority Act, 1957. In the said case, the Central Government had issued a direction to make allotment of flat out of turn. The Court held as under: (SCC pp. 160-61, paras 13 & 15)*

“13. ... Section 41 of the Act, only envisages that the respondent would carry out such directions that may be issued by the Central Government from time to time for the efficient administration of the Act. The same does not take within its fold an order which can be passed by the Central Government in the matter of allotment of flats by the Authority. Section 41 speaks about policy decision. Any direction issued must have a nexus with the efficient administration of the Act. It has nothing to do with carrying out of the plans of the authority in respect of a particular scheme.

15. Evidently, the Central Government had no say in the matter either on its own or under the Act. In terms of the brochure, Section 41 of the Act does not clothe any jurisdiction upon the Central Government to issue such a direction.”

16. *In State of U.P. v. Neeraj Awasthi [(2006) 1 SCC 667 : 2006 SCC (L&S) 190] this Court held as follows in the context of government directions: (SCC p. 683, para 41)*

“41. Such a decision on the part of the State Government must be taken in terms of the constitutional scheme i.e. upon compliance with the requirement of Article 162 read with Article 166 of the Constitution of India. In the instant case, the directions were purported to have been issued by an officer of the State. Such directions were not shown to have been issued pursuant to any decision taken by a competent authority in terms of the Rules of Executive Business of the State framed under Article 166 of the Constitution of India.”

17. *In Purtabpore Co. Ltd. v. Cane Commr. of Bihar [(1969) 1 SCC 308 : AIR 1970 SC 1896] this Court has observed: (SCC p. 315, paras 11-12)*

“11. ... The power exercisable by the Cane Commissioner under Clause 6(1) is a statutory power. He

alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of anyone—not even in favour of the State Government or the Chief Minister. It was not proper for the Chief Minister to have interfered with the functions of the Cane Commissioner. In this case what has happened is that the power of the Cane Commissioner has been exercised by the Chief Minister, an authority not recognised by Clause 6 read with Clause 11 but the responsibility for making those orders was asked to be taken by the Cane Commissioner.

12. The executive officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context the policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior.”

18. *In Chandrika Jha v.State of Bihar [(1984) 2 SCC 41 : AIR 1984 SC 322] this Court while dealing with the provisions of the Bihar and Orissa Cooperative Societies Act, 1935, held as under: (SCC p. 48, para 13)*

“13. The action of the then Chief Minister cannot also be supported by the terms of Section 65-A of the Act which essentially confers revisional power on the State Government. There was no proceeding pending before the Registrar in relation to any of the matters specified in Section 65-A of the Act nor had the Registrar passed any order in respect thereto. In the absence of any such proceeding or such order, there was no occasion for the State Government to invoke its powers under Section 65-A of the Act. In our opinion, the State Government cannot for itself exercise the statutory functions of the Registrar under the Act or the Rules.”

19. *In Anirudhsinhji Karansinhji Jadeja v. State of Gujarat [(1995) 5 SCC 302 : 1995 SCC (Cri) 902 : AIR 1995 SC 2390] it was observed: (SCC p. 307, para 11)*

“11. ... This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether.”

20. *In K.K. Bhalla v. State of M.P. [(2006) 3 SCC 581 : AIR 2006 SC 898] this Court has delineated the*

functions of the State Government and the Development Authority, observing that: (SCC pp. 596-97, paras 59-60 & 62-63)

“59. Both the State and JDA have been assigned specific functions under the statute. JDA was constituted for a specific purpose. It could not take action contrary to the scheme framed by it nor take any action which could defeat such purpose. The State could not have interfered with the day-to-day functioning of a statutory authority. Section 72 of the 1973 Act authorises the State to exercise superintendence and control over the acts and proceedings of the officers appointed under Section 3 and the authorities constituted under the Act but thereby the State cannot usurp the jurisdiction of the Board itself. The Act does not contemplate any independent function by the State except as specifically provided therein.

60. ... the State in exercise of its executive power could not have directed that lands meant for use for commercial purposes may be used for industrial purposes.

62. ... the power of the State Government to issue direction to the officers appointed under Section 3 and the authorities constituted under the Act is confined only to matters of policy and not any other. Such matters of policy yet again must be in relation to discharge of duties by the officers of the authority and not in derogation thereof.

63. ... The direction of the Chief Minister being dehors the provisions of the Act is void and of no effect.”

21. *In Municipal Corpn. v. Niyamatullah [(1969) 2 SCC 551 : AIR 1971 SC 97] this Court considered a case of dismissal of an employee by an authority other than the authority competent to pass such an order i.e. the Municipal Commissioner, the order was held to be without jurisdiction and thus could be termed to have been passed under the relevant Act. This Court held that: (SCC p. 554, para 12)*

“12. ... To such a case, the statute under which action was purported to be taken could afford no protection.”

22. *In Tarlochan Dev Sharma v. State of Punjab [(2001) 6 SCC 260] this Court, after placing reliance upon a large number of its earlier judgments, observed as under: (SCC p. 273, para 16)*

“16. In the system of Indian democratic governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision-making authority and be prepared to

give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a government servant. No government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior."

23. Therefore, the law on the question can be summarised to the effect that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor can the superior authority mortgage its wisdom and direct the statutory authority to act in a particular manner. If the appellate or revisional authority takes upon itself the task of the statutory authority and passes an order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act."

Conclusion

The scheme of the Act, as extracted and referred to above, makes it clear that the Basic Education Act was enacted as a complete code for governing the Basic Education in the State of Uttar Pradesh and conferred the powers on separate authorities under the Act without conferring any authority whatsoever on the Commissioner or the Administrative Authorities other than those specified under the Acts and the Rules.

It is well settled that the creation of statutory bodies by various Acts and the Rules for discharging specific functions is aimed at development of systems of checks and balances and aims at reducing the overlapping executive interferences and thus try to overcome the malady of overlapping executive functions. I have no hesitation in holding that once the Commissioner did not have any authority under the scheme of the Act, the initiation of the enquiry by constituting a four member Committee was wholly unwarranted and was a clear interference in the functioning of the

statutory authorities conferred with the powers under the Act and thus wholly without jurisdiction.

The law laid down by the Supreme Court in *Manohar Lal (supra)* clearly covers the controversy in the present case. I am in complete agreement with the judgment of this Court in the case of *Madan Kumar (Supra)* and have no hesitation in holding that the initiation of enquiry and the enquiry were wholly without jurisdiction.

It is well settled that 'rule of law' is fundamental and the essence of a democratic set up and the enactment of various acts and the rules are aimed as strengthening the 'rule of law'. A society based upon the 'rule of law' also negates the role of executive authorities other than those specified under the Act and are vital for vibrant democracy. The Commissioner clearly exceeded its jurisdiction and powers in directing an enquiry and the submissions of the State that he merely acted as a whistle blower cannot be accepted and is liable to be rejected.

Similarly, the directions of the Secretary Education based upon the said recommendations of the enquiry Committee also do not demonstrate any independent application of mind and has also transgressed the statutory limits conferred upon the State in directing initiations of FIRs and termination of the Teachers. The Secretary Education has clearly erred in issuing the directions for lodging of the FIRs and for termination of the Teachers without there being any powers conferred upon him under the Act and that too based upon an enquiry which has already been held to be illegal and thus I have no hesitation in quashing the directions issued by the Secretary and as contained in the orders dated 17.2.2020. I have also no hesitation in holding that the show cause notices have been issued without any application of mind by the respondent no. 5 and only on the dictation of the respondent no. 1 and thus are liable to be dismissed on that ground alone.

In view of the finding recorded above, the writ petitions are **allowed**. The enquiry report dated 28.1.2020 (Annexure 3 to the writ petition) is quashed, the orders dated 17.2.2020 (Annexure-4 to the writ petition) directing lodging of the FIR is quashed insofar as it relates to petitioners in Writ Petition No. 5540 of 2020 and 5795 of 2020, the order dated 17.2.2020 (Annexure-5 to the writ petition) containing the directions in initiating proceedings for removal of Teachers in accordance with law are set aside and consequently, the show cause notice as contained in Annexure-6 to the writ petition is quashed insofar as it relates to the petitioners herein alone. The orders stopping the payment of salaries is also set aside in respect of the petitioners herein.

Copy of the order downloaded from the official website of this Court shall be treated as certified copy of this judgment.

Order Date :- 14.10.2020

SR