

RESERVED

AFR

Court No. - 49

Case :- WRIT - A No. - 15765 of 2014

Petitioner :- Jai Prakash

Respondent :- State of U.P. and others

Counsel for Petitioner :- Pradeep Kumar Upadhyay, Vikas Budhwar

Counsel for Respondent :- K.R. Singh, Krishna Ji Khare, Sanjay
Srivastava, Vimal Chandra Mishra

CONNECTED WITH

Case :- WRIT - A No. - 51031 of 2015

Petitioner :- Nanku Ram

Respondent :- State of U.P. and others

Counsel for Petitioner :- Pradeep Upadhyay

Counsel for Respondent :- C.S.C., K.R. Singh, Vimal Chandra
Mishra

AND

Case :- WRIT - A No. - 20351 of 2022

Petitioner :- Nanku Ram and another

Respondent :- State of U.P. and others

Counsel for Petitioner :- Pradeep Kumar Upadhyay

Counsel for Respondent :- C.S.C., Vimal Chandra Mishra

Hon'ble J.J. Munir, J.

1. This judgment will dispose of Writ-A No.15765 of 2014 and Writ-A No.51031 of 2015 but not Writ-A No.20351 of 2022. Writ-A No.15765 of 2014 has been instituted by Jai Prakash, a class IV employee with the Vikramaditya Inter College, Sikandra, Allahabad (now Prayagraj), which was earlier called the Janta Inter College, Sikandra, Allahabad. The petitioner, Jai Prakash, questions through this writ petition the order dated 01.12.2014 passed by the Principal of the aforesaid College, removing him from service after holding disciplinary proceedings. Writ-A No.51031 of 2015 has been instituted by Nanku Ram, another Class-IV employee, a *Mali*, with the Vikramaditya Inter College, Sikandra, Allahabad (for short,

'the Institution'), impugning the order of the Principal of the Institution dated 07.10.2013, terminating his service, also after holding disciplinary proceedings. Also under challenge in this writ petition by the petitioner is the order of the Committee of Management of the Institution dated 19.07.2015, dismissing his appeal from the Principal's order, terminating his services. Writ-A No.20351 of 2022 has been instituted by Nanku Ram and Jai Prakash jointly, both dismissed employees of the Institution at the time of bringing this writ petition, seeking to quash the advertisement dated 08.10.2022, advertising for recruitment by direct appointment one post of Assistant Clerk with the Institution. The further relief that the petitioners jointly seek in this writ petition is to summon the record of proceedings held for promotion of Janardan Singh, respondent No.7, to the post of Assistant Clerk and quash the order of his promotion.

2. It must be remarked at the outset that though all the three matters are interconnected and involve some common questions of fact and law, on account of which these have been heard together, there are distinct and different features to each of them, requiring some separate consideration. It is also worthy of note that Writ-A No.20351 of 2022 can be determined at the instance of the petitioners, only if one or both of them succeed in their individual writ petitions, entitling them to reinstatement in service as Class-IV employees. The reason is that their claim for promotion to the two Class-III posts with the Institution, to one of which Janardan Singh, respondent No.7 in Writ-A No.20351 of 2022 has been promoted, and, the other, that has been advertised for direct recruitment, would arise if the one or both the petitioners are reinstated in the cadre of Class-IV employee/ employees in the Institution.

3. We propose to take up Writ-A No.15765 of 2014 for a first. It is common ground between parties that the Institution is recognized under the Uttar Pradesh Intermediate Education Act, 1921 (for short, 'the Act of 2021') and in receipt of a maintenance grant from the State Government under the U.P. Act No.24 of 1971. The Institution is managed by a Committee of Management, headed by a Manager. Bankey Bihari Singh is the Manager of the Institution. The petitioner was appointed a Class-IV employee with the Institution *vide* appointment letter dated 03.01.1995. He was assigned the duties of a *Chowkidar* (Watchman). The petitioner's appointment was approved by the District Inspector of Schools, Allahabad (for short, 'the DIOS') *vide* order dated 16.01.1995. Ever since, he was discharging his duties as a Class-IV employee in the Institution regularly. The petitioner says that his service record is unblemished and he has always discharged duties assigned to him, without complaint by his superiors. So long as he was in service, he was in receipt of regular salary and other benefits payable from time to time, all borne on the exchequer. The petitioner claims to hold the certificate of intermediate earned from the U.P. Board of High School and Intermediate Education, an examination that he passed in the IInd Division. He was placed at serial No.5 in the seniority list of Class-IV employees of the Institution.

4. It is the petitioner's further case that employees placed at serial Nos.1, 2 and 3 of the seniority list of Class-IV employees, are barely literate and do not possess the requisite educational qualification for promotion to the post of *Daftari*. The employee at serial No.4 of the seniority list, Nanku Ram, who ranks above the petitioner, is also the holder of an Intermediate Certificate, but he has put in a 'no objection' in the petitioner's favour, saying that he

would have no grouse if the petitioner were promoted to the position of a *Daftari*. The petitioner, accordingly, claimed promotion to the post of a *Daftari*, making an application dated 17.01.2012 for the purpose. The Principal of the Institution, after considering the seniority list and the no objection letter dated 07.05.2012, given by the other eligible Class-IV employee, Nanku Ram at serial No.4 of the list, was satisfied of the petitioner's claim. He, accordingly, forwarded the petitioner's papers for promotion to the DIOS *vide* his letter dated 14.05.2012. The petitioner asserts that though the DIOS has granted approval for the petitioner's promotion to the post of a *Daftari*, but a formal order could not be issued. The petitioner made representations dated 03.12.2012 and 03.06.2013, requesting the DIOS for the issue of early orders relating to his promotion.

5. Faced with inaction that persisted on the second respondent's part, the petitioner instituted Writ-A No.38533 of 2013 before this Court, praying that a *mandamus* be issued to the DIOS to consider his case for promotion on the post of *Daftari* on the basis of papers submitted by the Principal of the Institution. The petitioner also claimed payment of salary for the post of *Daftari* from the date that his case was recommended. This Court, by an order dated 18.07.2013, directed the DIOS to pass appropriate orders in accordance with law on the petitioner's papers, seeking promotion to the post of *Daftari*, preferably within a period of two months from the date of receipt of a certified copy of the order made in the aforesaid writ petition. But, before passing his orders, the DIOS was directed further to take into consideration the stand of Nanku Ram as well, a Class-IV employee, senior to the petitioner. The petitioner's claim was directed to be decided by a reasoned order.

6. A notice dated 11.07.2013 was issued by the DIOS upon the petitioner's claim for promotion to the four senior Class-IV employees, asking them if they would have any objection to the petitioner's promotion as a *Daftari*. While these proceedings for a consideration of the petitioner's promotion were afoot, the petitioner received a show cause notice dated 10.05.2013 from the Principal of the Institution, asking him to peruse a copy of the Manager's memo enclosed, and disclose his stand in defence to the fact that according to the Manager, some papers belonging to the institution had been stolen. This show cause notice issued by the Principal is confounding, and, therefore, a reference has to be made to the Manager's memo dated 26.04.2013, which is on record at page 61 of the present writ petition's paper book.

7. A perusal of the Manager's memo dated 26.04.2013, which was the basis of the show cause notice issued to the petitioner regarding the case of misconduct imputed to him, alleges that in connivance with each other, the petitioner and Nanku Ram, the writ petitioner of Writ-A No.51031 of 2015, stole from the records of the Institution the letter of approval for appointment of one Brijesh Kumar Shukla, a Class-IV employee, now working with the Adarsh Inter College, Gheenpur, Mau Aima, Allahabad and the transfer order of another Class-IV employee, Janardan Singh dated 21.06.2008, working with the Institution, the transfer being made apparently from the Adarsh Inter College to the Institution with the DIOS's approval. The Manager imputes in his memo dated 26.04.2013 theft of copies of these documents to the petitioner, that were filed along with a PIL, bearing No.15464 of 2013 instituted before this Court, questioning, by mutual transfer, the appointment of Brijesh Kumar Shukla from the Institution to the Adarsh Inter College and that of Janardan Singh, *vice versa*. The

Manager, apparently, in his letter dated 26.04.2013 imputed the misconduct of breach of trust to the petitioner and Nanku Ram, the writ petitioner of Writ-A No.51031 of 2015 in stealing copies of the said documents, and getting these filed as part of a PIL, to question the appointment of two other Class-IV employees in the Institution.

8. It is also said in the Manager's memo dated 26.04.2013 that the Principal of the Adarsh Inter College was also impleaded as a party respondent to the PIL. In substance, it is said, in the Manager's memo dated 26.04.2013, that is the basis of the show cause notice dated 10.05.2013, that the petitioner along with the petitioner of Writ-A No.51031 of 2015, Nanku Ram, stole the two documents, above referred, from the records of the Institution and got them annexed to the PIL filed by Kamlesh Kumar, questioning the appointments and the mutual transfer of the two Class-IV employees, to wit, Brijesh Kumar Shukla and Janardan Singh, between the Institution and the Adarsh Inter College, which constituted a cognizable offence. There is also an imputation in the Manager's memo dated 26.04.2013 that the documents under reference, allegedly stolen by the petitioner and the writ petitioner of Writ-A No.51031 of 2015, were utilized in the earlier Writ-A No.28856 of 2012 filed by Nanku Ram. Why the Managers of the Institution as well as Adarsh Inter College, and *a fortiori* their Principals, were so upset with the institution of PIL No.15464 of 2013 by a third party, Kamlesh Kumar, would be adverted to during the course of this judgment. It must, however, be remarked here that what commenced as a claim by the petitioner here for promotion to the post of a *Daftari*, turned to disciplinary action against him, the culmination whereof is impugned in the present writ petition.

9. Apart from details of the case, that would soon be referred to in the terms pleaded, it is also imperative to notice that the petitioner's case is that he suffered the impugned disciplinary action because he staked his claim for promotion to the post of a *Daftari*, and, may be, later in the day, a further promotion to the post of an Assistant Clerk. Currently, it seems, that there are three posts of the Assistant Clerks in the Institution, to one of which the petitioner would have claimed. The petitioner, apart from pointing out unfair proceedings and procedural irregularities in the disciplinary proceedings, leading to his termination from service, urges a case of *mala fide* action, because he claimed promotion to a higher post, that is to say, an Assistant Clerk, which the Manager of the Institution eyed for accommodating Janardan Singh, serving at that time as a Class-IV employee, but the Manager's nephew after all. It is for this reason that the petitioner has impleaded Bankey Bihari Singh, Manager of the Institution and Karunesh Bahadur Singh, Principal of the said Institution as party-respondents to the writ petition *eo nomine*.

10. With so much background of the petitioner's case noticed to establish *mala fides* in fact, vitiating the disciplinary action against him, the Court would revert to the petitioner's case as to procedural validity of the proceedings themselves.

11. Upon receipt of the notice dated 10.05.2013 from the Principal of the Institution, based on the Manager's memo dated 26.04.2013, the petitioner was utterly shocked because he had no idea about the basis of the imputation, connecting him to the filing of a PIL in this Court by a third party. The petitioner made efforts to inquire into the matter, but nothing was found that would enable him to answer the show cause notice dated 10.05.2013. The

petitioner personally requested the Manager of the Institution, as well as the Principal, to provide some detail or particulars of the imputations made against him in order to enable him to answer. Both the respondents did not oblige. While the petitioner was about his effort to know the correct facts, he received another notice/warning letter dated 08.07.2013 from the Principal of the Institution, cautioning him about his visits to the office of the DIOS, without seeking the Principal's permission, after disclosing the object and purpose of the proposed visit.

12. The petitioner received still another show cause notice, also dated 08.07.2013, from the Principal of the Institution saying that he and Nanku Ram, writ petitioner of Writ-A No.51031 of 2015, in conspiracy with each other, stole papers from the Institution, committing breach of trust misusing their office, and in connivance with each other, got a photostat copy of these documents done, in particular, that of the mutual transfer order of Brijesh Kumar Shukla and Janardan Singh dated 21.05.2008, which the petitioner and Nanku Ram handed over to Kamlesh Kumar for the purpose of instituting PIL No.15464 of 2013, impleading the Principal of the Institution as a party. It was imputed in this notice to the petitioner that he was involved in activities prejudicial to the Institution and his integrity was doubtful. The petitioner was required to show cause within a week. The petitioner, *vide* his reply dated 29.07.2013, denied the allegations and demonstrated his non-complicity, as he pleads.

13. The petitioner was then served with another show cause notice dated 26.07.2013, also issued by the Principal of the Institution, carrying eight counts of imputations, similar to the earlier show cause notice. He submitted a para-wise reply dated

05.08.2013, answering each of the allegations, rebutting and explaining them supported by affidavit, as the petitioner says. Once again, the petitioner was served with a letter dated 20.08.2013, calling for further explanation from him, substantially on the same allegations, but adding to them some imputations about the employment of impertinent language, approach to the DIOS, the filing of affidavits in support of his reply, sworn by himself and other persons as well etc. The petitioner submitted a reply to the letter dated 20.08.2013, clarifying his stand and also tendering unconditional apology, if his earlier reply had given some wrong impression to the Principal.

14. The petitioner was suspended from service pending inquiry and an Inquiry Officer appointed, both done *vide* order dated 31.08.2013. A charge-sheet, also dated 31.08.2013, was served upon the petitioner, which too finds mention in the suspension order. The petitioner submitted his reply to the charge-sheet *vide* his reply dated 23.09.2013, denying all the charges and substantiating his defence.

15. It is the petitioner's case that the Inquiry Officer proceeded with the inquiry not fairly, but in a manner that was one-sided to vindicate the Management and condemn the petitioner. It is also the petitioner's case that he appeared before the Inquiry Officer and did his best to submit a reply, which the Inquiry Officer did not accept. He was, therefore, compelled to send his reply, along with copies of previous letters dated 07.10.2013 and 09.10.2013, by registered post. At this stage, the petitioner says that he questioned the suspension as well as disciplinary proceedings, initiated on the basis of the charge-sheet dated 31.08.2013, by means of Writ-A

No.55758 of 2013. This Court, on 25.10.2013, passed the following order:

“Supplementary affidavit filed today is taken on record.

Heard learned counsel for the parties.

The papers relating to the suspension of the petitioner are said to have been forwarded to the District Inspector of Schools, who is Authority competent under Regular 39 (3) of Chapter III of the Regulations framed under the U.P. Intermediate Education Act, 1921 either to approve or disapprove the suspension which are pending before the said Authority.

Sri S.C. Dwivedi, learned Additional Chief Standing Counsel may obtain instructions from the District Inspector of Schools, Allahabad as to what orders have been passed on the suspension matter of the petitioner.

List this case on 13.11.2013.”

16. The writ petition aforesaid came up for hearing on 14.11.2013. The learned Additional Chief Standing Counsel produced an order dated 12.03.2013, passed by the District Inspector of Schools, under Regulation 39 (3) of Chapter III of the Regulations framed under the Act of 2021. The DIOS approved the petitioner's suspension by his order dated 12.11.2013. Accordingly, this Court proceeded to dismiss Writ-A No.55758 of 2013 *vide* order dated 14.11.2013, granting liberty to the petitioner to challenge the order of the DIOS, approving his suspension from service.

17. The Inquiry Officer then proceeded to submit his report before the Manager of the Institution on 08.01.2014, a copy of which was forwarded to the petitioner along with a covering letter. The petitioner submitted a reply on 29.01.2014. The Principal *vide* order dated 01.02.2014, without considering the petitioner's reply or his defence, proceeded to order his removal from service.

18. Aggrieved by the order dated 01.02.2014, the present writ petition has been instituted.

19. A notice of motion was issued on 18.04.2014. Parties have exchanged affidavits, lavishly setting forth their case in the fullest measure. There is a supplementary affidavit filed by the petitioner dated 19.03.2014, a counter affidavit on behalf of respondent No.2 dated 25.07.2023, to which, there is a rejoinder dated 04.08.2023. There is a supplementary counter affidavit filed on behalf of respondent No.2 dated 25.07.2023, to which there is a supplementary rejoinder affidavit dated 11.09.2023. There is a counter affidavit filed on behalf of respondent Nos.3 and 5, which is a personal affidavit of the Manager of the Institution, that is to say, Bankey Bihari Singh. This affidavit is dated 25.07.2023. The petitioner has filed a rejoinder to the said counter affidavit on behalf of respondent Nos.3 and 5, the rejoinder being one dated 04.08.2023. There is a supplementary counter affidavit also filed on behalf of respondent Nos.3 and 5, which too is a personal affidavit of the Manager, Bankey Bihari Singh, to which the petitioner has filed a supplementary rejoinder dated 11.09.2023. There is a second supplementary counter affidavit filed on behalf of respondent Nos.3 and 5, which again is a personal affidavit of the Manager, Bankey Bihari Singh. To this second supplementary counter affidavit, the petitioner has filed a second supplementary rejoinder affidavit dated 12.12.2023. There is then a counter affidavit filed on behalf of respondent No.4, the Principal of the Institution, which is a personal affidavit of the Principal, Mukesh Kumar Saroj. To the said affidavit filed on behalf of the Principal of the Institution, Mukesh Kumar Saroj, a rejoinder affidavit dated 04.08.2023 has been filed.

20. This petition was admitted to hearing on 08.08.2023 and extensively heard on various dates. The personal affidavits of the Manager were required to be filed, giving ample opportunity, which he availed, because there are allegations of *mala fides* against him, in getting his nephew appointed with another institution, and then, getting the nephew transferred to his own. Later on, it is also said that the Manager's nephew, Janardan Singh was promoted to the post of Assistant Clerk and the sheet anchor of the petitioner's case is that his services were terminated *mala fide*, because he was staking claim to promotion, initially on the post of a *Daftari*, and ultimately, as an Assistant Clerk, a position which the Manager eyed for his nephew and whom he did promote to that post. It is said that the petitioner had to be got rid of, in order to pave way for the Manager's nephew, that led to all the disciplinary proceedings on charges that are virtually non-charges and incredulous. These were cooked up without basis in order to put the petitioner out of way of the Manager's nephew, Janardan Singh for promotion to the post of Assistant Clerk. These are indeed very sordid allegations, and, therefore, this Court permitted the Manager to file multiple affidavits, giving him the fullest opportunity.

21. Now, turning to the connected writ petition, being Writ-A No.51031 of 2015, the one that has been preferred by Nanku Ram, it must be said at the outset that substantially the same allegations, that have been levelled by the Manager and the Principal of the Institution against Jai Prakash, too have been levelled against Nanku Ram. Nanku Ram too has been removed from service *vide* order dated 07.10.2013, after holding disciplinary proceedings against him on the basis of a charge-sheet dated 04.05.2013. The petitioner (Nanku Ram) submitted a reply to the charge-sheet on 14.05.2013. The Inquiry Officer submitted a report dated

05.09.2013. Nanku Ram was served with a second show cause, after which the impugned order of termination dated 07.10.2013 was passed. In this case, Nanku Ram carried a statutory appeal to the Committee of Management on 04.01.2014, followed by a representation dated 17.10.2014. The petitioner's appeal was dismissed by a resolution of the Committee of Management dated 19.07.2015, which was communicated to him *vide* order dated 30.07.2015.

22. In substance here as well, the petitioner's case is that he was at serial No.4 of the list of Class IV employees and senior to Jai Prakash. He had given a 'no objection' about Jai Prakash, staking claim to the post of *Daftari*, but the petitioner claimed the post of Assistant Clerk in the promotion quota, that was available at the time. His interest came in conflict with Janardan Singh, the Manager Bankey Bihari Singh's nephew. It is for this reason that Bankey Bihari Singh engineered the entire incredible allegations, which are in fact non-charges, to draw disciplinary proceedings against the petitioner and got an order of termination passed after securing a favourable inquiry report, paving way for Janardan Singh to be considered for promotion. It is pleaded that Janardan Singh, after removal of Jai Prakash and the petitioner, remained the only qualified candidate in the feeding cadre of Class-IV employees, eligible to be promoted.

23. In the present case also, a notice of motion was issued on 08.09.2015 and in course, parties have exchanged affidavits. There is a supplementary affidavit filed in support of the writ petition dated 02.09.2015. After issue of notice of motion, a counter affidavit has been filed on behalf of respondent No.3, the DIOS, to which, the petitioner has filed a rejoinder dated 11.09.2013. A supplementary

counter affidavit on behalf of the DIOS, respondent No.3, dated 18.08.2023 was filed, to which the petitioner has filed a rejoinder dated 11.09.2023. There is then a counter affidavit filed on behalf of respondent Nos.4 and 6, that is to say, the Committee of Management represented by its Manager and Bankey Bihari Singh, the Manager, impleaded *eo nomine*. The aforesaid counter affidavit on behalf of respondent Nos.4 and 6 dated 25.07.2023 has been answered by the petitioner *vide* rejoinder dated 04.08.2023. A counter affidavit has been filed on behalf of respondent No.5, the Principal of the Institution as well, to which the petitioner has filed a rejoinder dated 04.08.2023. This petition too was admitted to hearing on 08.08.2023 and heard on various dates, along with Writ - A No. 15765 of 2014.

24. Heard Mr. Pradeep Kumar Upadhyay, learned Counsel for the petitioners, Mr. Vimal Chandra Mishra, learned Counsel appearing on behalf of the Principal and the Retd. Principal Karunesh Bahadur Singh, Mr. Sanjay Srivastava, learned Counsel for the Manager and the Committee of Management and Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel appearing on behalf of the State-respondents.

25. Upon hearing learned Counsel for the parties and perusing the record, we consider it expedient to quote the charges carried in the charge-sheet dated 31.08.2013, against Jai Prakash, the petitioner of Writ-A No.15765 of 2014, *verbatim*. These read:

“1. अभिलेखों एवं पत्रजातों की चोरी-आपने अपने पदीय दायित्वों का दुरुपयोग करते हुए इस विद्यालय में पूर्व में कार्यरत श्री बृजेश कुमार शुक्ल (परिचारक) सम्प्रति कार्यरत आदर्श इं० का० धीनपुर इलाहाबाद का नियुक्ति अनुमोदन तथा श्री जर्नादन सिंह कार्यरत (परिचारक) विक्रमादित्य सिंह इं० का० गोरपुर इलाहाबाद एवं उक्त श्री बृजेश कुमार शुक्ल के पारस्परिक स्थानान्तरण पृ० सं०/एस०/स्था०/1396-1402/2008-09 दिनांक 21.05.2008 को विद्यालय से चुराकर संस्था से विश्वासघात करते हुए नैतिक अपराध किया है। आप द्वारा चुराये गये पत्र आरोप के पुष्टि में संलग्नक (1) के रूप में पत्रांक

अनु0/9678-80/2005-06 दिनांक 20.07.2005 एवं उक्त स्थानान्तरण आदेश दिनांक 21.05.2008 आपको प्रेषित है।

2. विद्यालय में गुटबाजी करना-आरोप एक के वर्णित पत्रजातों, अभिलेखों को निलम्बित माली श्री ननकू राम का सहयोग लेकर आपने गुटबाजी करते हुए उक्त पत्रजातों को आपने श्री ननकू राम माली (निलम्बित) द्वारा योजित याचिका सं0 14198/13 में संलग्न करवाने का षडयंत्र किया। याचिका संख्या 14198/13 में आप द्वारा चुराए गए पत्रजात संलग्नक सं0 11 एवं 12 के रूप में लगाये गये संलग्नक की छायाप्रति आरोप के पुष्टि में आपको प्रेषित है।

(बी) आप विद्यालय में गुटबाजी करते हुए निलम्बित माली श्री ननकू राम के साथ आयेदिन जिला विद्यालय निरीक्षक इलाहाबाद कार्यालय में मेरे द्वारा कई बार देखे गये हैं। सक्षम अधिकारी से बिना पूर्व अनुमति प्राप्त किए हुए कार्यालय में आना जाना आपके स्वेच्छाचारिता का परिचायक है।

(सी) आप एवं निलम्बित माली श्री ननकू राम साजिश करके एवं गुटबाजी करते हुए चुराए गए पत्रजातों को श्री कमलेश कुमार ग्राम खोजापुर बरना इलाहाबाद को सुलभ कराकर मा0 उच्च न्यायालय में जनहित याचिका सं0 15464/13 योजित कराकर उक्त श्री कमलेश कुमार का साथ देकर अपने नियोक्ता एवं संस्था के विरुद्ध अनावश्यक रूप से एक वाद लम्बित कराया। ऐसा करके आपने विद्यालय की गरिमा को क्षति पहुँचाने का कुप्रयास किया है।

3. प्रकल्पित नाम से शिकायती पत्र पेश करना: आपने विद्यालयी अभिलेखों/ पत्रजातों को चुराकर स्वतः शिकायती पत्र तैयार कर तथा कथित जे0 एन0 चौधरी के नाम से जिसका कोई वजूद ही नहीं है। जिसे विद्यालय प्रबन्धाधिकरण एवं शिक्षा विभाग के अधिकारियों को प्रेषित कर संस्था विरोधी कार्यों में संलिप्त पाए गए हैं। आरोप की पुष्टि में आप द्वारा तैयार किया गया है प्रकल्पित नाम से शिकायती पत्र एवं अधोहस्ताक्षरी द्वारा प्रेषित प्रकल्पित व्यक्ति एवं पते पर लौटती हुए पंजीकृत डाक की छायाप्रति प्रेषित है।

4. जिला विद्यालय निरीक्षक इलाहाबाद कार्यालय में कर्मचारियों का गलत हलफनामा प्रस्तुत करना- आपने अपने वरिष्ठ साक्षर परिचारकों एवं सर्वश्री तेज बहादुर, राम लखन एवं दिनेश को अपने षडयंत्रकारी कार्यों में संलिप्त करने की मंशा से सुनियोजित साजिश करके उक्त तीनों को बहला फुसलाकर, डरवा, धमका कर एवं निरक्षरता का लाभ उठाते हुए स्वतः हलफनामा तैयार कराकर उक्त तीनों का हस्ताक्षर हलफनामों में कराया। प्रायोजित हलफनामों को जिला विद्यालय निरीक्षक कार्यालय में अपने पदोन्नति प्रकरण पत्रावली में संलग्न कराया। आरोप की पुष्टि में आप द्वारा तैयार कराए गए हलफनामों में (उक्त तीनों परिचारकों के हस्ताक्षर युक्त) की छायाप्रति संलग्नक प्रेषित।

5. मा0 उच्च न्यायालय को गुमराह करना: आपने अपने दफ्तरी पदोन्नति प्रकरण में मा0 उच्च न्यायालय में योजित याचिका सं0 38533/2013 में मा0 न्यायालय को गुमराह करते हुए, तथ्य को छिपाते हुए आपने कहीं भी उल्लेख नहीं किया कि आपकी पदोन्नति प्रकरण में जिला विद्यालय निरीक्षक इलाहाबाद के स्तर से प्रकरण में जिला विद्यालय निरीक्षक इलाहाबाद के स्तर से सुनवायी हो रही है। आरोप की पुष्टि में याचिका सं0 33533/2013 का स्वयं अध्ययन करें एवं आपके पदोन्नति प्रकरण जिला विद्यालय निरीक्षक इलाहाबाद का पत्रांक अनु0 फूलपुर/6852-56 /2013-14 दिनांक 11.07.2013 की छायाप्रति आपको संलग्नक 5 के रूप में प्रेषित है।

6. आपने अधोहस्ताक्षरी द्वारा निर्गत कारण बताओ नोटिस पर मुझसे अभद्र भाषा का प्रयोग करते हुए प्रबन्धक को भी देख लेने की धमकी दी। आपने यह भी कहा कि

सोसाइटीज रजिस्ट्रेशन कार्यालय से प्रबन्धाधिकरण से सम्बन्धित पत्रजात एक वकील के माध्यम से निकलवा लिया है। मेरे घर के लोग एवं मेरे रिश्तेदार सोसाइटी में सदस्य हैं और शीघ्र ही प्रबन्धक को बदल दूंगा। यह आपकी अनुशासनहीनता, अनधीनता एवं दुराचरण है तथा नियोक्ता के प्रति आपका कदाचार है।

आप अपने बचाव पक्ष में आरोप का उत्तर पत्र प्राप्ति के तीन सप्ताह के अन्तर्गत प्रेषित करें अन्यथा यह समझा जाएगा कि आपको कुछ नहीं कहना है एवं उक्त आरोपों से आप पूरी तरह सहमत हैं।”

26. Likewise, it is also necessary to refer to the charges against Nanku Ram, the writ petitioner in Writ-A No.51031 of 2015. The charges against Nanku Ram carried in the charge-sheet dated 04.05.2013, read:

“1. आरोप सं0- आपने जि0 वि0 नि0 इलाहाबाद को सम्बोधित एवं अधोहस्ताक्षरी को पृष्ठांकित अपने पत्र दिनांक 3.10.12 में जि0 वि0 नि0 इला0 कार्यालय के प्राप्ति अनुभाग सहायक एवं विद्यालय के सहायक लिपिक श्री सुधाकर तिवारी का फर्जी हस्ताक्षर बनाकर आप द्वारा माननीय उच्च न्यायालय में योजित याचिका सं0 14198/2013 में संलग्नक 7 के रूप में लगाया गया है। यह आप द्वारा फ्राड किया गया है, जो कर्मचारी आचरण नियमावली के विरुद्ध है। आरोप के पुष्टि में आपके पत्र दिनांक 3.10.12 की प्रमाणित छाया प्रति संलग्नक 1 के रूप में संलग्न है।

2. आरोप सं0 2- आपने प्रबंधक/ प्रधानाचार्य, विक्रमादित्य सिंह इं0 कालेज गोरपुर, इला0 को सम्बोधित अपने पत्र दिनांक 17.9.10, 17.8.12, 7.9.12 एवं प्रधानाचार्य को सम्बोधित अपने पत्र दिनांक 5.2.11, 30.5.11 जो माननीय उच्च न्यायालय में आप द्वारा योजित उक्त याचिका सं0 14198/13 में संलग्नक 8 के रूप में लगाया है, पर विद्यालय के सहायक लिपिक श्री सुधाकर तिवारी का फर्जी हस्ताक्षर बनाकर माननीय उच्च न्यायालय में प्रस्तुत कर माननीय उच्च न्यायालय को गुमराह किया है, जो आप द्वारा किया गया धोखाधड़ी का कार्य है। आरोप के पुष्टि में आपके पत्र दिनांक 17.9.10, 17.8.12, 7.9.12, 5.2.11, 30.5.11 की प्रमाणित छाया प्रतिलिपि क्रमशः संलग्नक सं0 2, 3, 4, 5 एवं 6 के रूप में संलग्न है।

3. आरोप सं0 3- आपने अपने पदीय दायित्व का दुरुपयोग कर, विश्वासघात करते हुए विद्यालयीय अभिलेखों/ कागजातों (श्री बृजेश कुमार शुक्ल पूर्व परिचारक वि0 दि0 सिंह इण्टर कालेज गोरपुर, इलाहाबाद का जि0 वि0 नि0 इला0 का पूर्वानुमोदन के सम्बन्ध में पत्रांक अनु0/9678-80/2005-06 दिनांक 20.7.2005 तथा श्री बृजेश कुमार शुक्ल एवं श्री जनार्दन सिंह परिचारक वि0 दि0 सिंह इं0 का0 गोरपुर, इला0 के पारस्परिक स्थानान्तरण के सम्बन्ध में संयुक्त शिक्षा निदेशक चतुर्थ मण्डल, इला0 का आदेश सं0/एस/स्थाना/53/2008-09 दिनांक 21.5.08) को चुराकर श्री कमलेश कुमार ग्राम खोजापुर पो0 वरना जिला इलाहाबाद को सुलभ कराया है। आप एवं उक्त श्री कमलेश कुमार ने षडयंत्र पूर्ण कार्य करते हुए माननीय उच्च न्यायालय में जनहित याचिका सं . 15464/2013 योजित कराया है, जो आप द्वारा किया गया संस्था विरोधी कार्य है। आरोप के पुष्टि उक्त याचिका में संलग्नक के रूप में लगाये गये जि0 वि0 नि0 इलाहाबाद एवं संयुक्त शिक्षा निदेशक चतुर्थ मण्डल, इलाहाबाद के उक्त पत्रों की प्रमाणित प्रतिलिपि संलग्नक 7 एवं 8 के रूप में संलग्न है।

4. आरोप सं० 4 – आप द्वारा प्रेषित अनाहस्ताक्षरित पंजीकृत पत्र दिनांक 25.4.13 जिसकी पंजीकृत सं० आर० एल० 644/27.4.13 है, मुझे दिनांक 29.4.13 को प्राप्त हुआ। उक्त आप द्वारा प्रेषित पत्र पर बिना अपना हस्ताक्षर किये हुए किस दूषित मानसिकता से आपने मुझे प्रेषित किया। यह आपकी घोर अनधीनता को परिलक्षित करती है। आपने जान बूझ कर कपटपूर्ण दुराचरण तथा कर्तव्य के प्रति उपेक्षा का कार्य किया है। आरोप के पुष्टि में आपका अनाहस्ताक्षरित पत्र दिनांक 25.4.13 की प्रमाणित छायाप्रति तथा पंजीकृत लिफाफे की छाया प्रति संलग्न 9 एवं 10 के रूप में संलग्न है।

आरोप पत्र का उत्तर पत्र प्राप्ति के एक सप्ताह के अन्दर लिखित रूप से अधोहस्ताक्षरी को प्रेषित करें, अन्यथा यह समझा जाएगा कि आपको अपने बचाव पक्ष में कुछ भी नहीं कहना है तथा उक्त आरोपों से आप पूर्णतया सहमत हैं।"

27. A perusal of the charge-sheet relative to the findings of the Inquiry Officer against Jai Prakash shows that each of the charge has been held proved by the Inquiry Officer, without any evidence led on behalf of the establishment to prove the charges, and, *a fortiori* considered by the Inquiry Officer to hold these proved. The charges have been held proved on a presumption of their truth without the slightest of material to support the same. It must also be remarked that some of the charges are not charges at all. They are imputations of conduct; not misconduct. These involve no culpability at all.

28. As far as the first part of the remarks of ours about the charges not being proved by any tangible evidence or material is concerned, we may say about Charge No.1 that it imputes theft to Jai Prakash of the letter of approval relating to the appointment of Brijesh Kumar Shukla (Peon) and the letter of approval dated 21.05.2008, sanctioning mutual transfer for Brijesh Kumar Shukla and Janardan Singh from Adarsh Inter College, Gheenpur, Allahabad to the Institution and *vice versa*. The findings relating to Charge No.1, or the conclusions drawn about use of these letters in complaints pseudonymously addressed to the officers of the Education Department and filed as annexures in writ petitions before this Court, are not at all imputations or subject matter of the first charge. The first charge is only about theft of the two

documents. A perusal of the findings in the inquiry report shows that there is absolutely no material considered by the Inquiry Officer to hold the charge proved. There is no first information report of a theft of these documents nor testimony of witnesses, who might have seen the petitioner, Jai Prakash steal the documents or take out photocopies, or other tangible material, that may give rise to an inference about the case of a theft. The conclusions drawn by the Inquiry Officer on the first charge are bereft of any material at all.

29. The second charge has three parts to it, that is to say, Charge Nos.2, 2(b) and 2(c). So far as Charge No.2 is concerned, the imputation is that the petitioner, after stealing the two documents, mentioned in Charge No.1, handed over copies of these to Nanku Ram, a suspended gardener of the Institution (writ petitioner in Writ-A No.51031 of 2015) and entered into a conspiracy with him to use copies of these documents in Writ-A No.14198 of 2013, annexed to the aforesaid writ petition filed by Nanku Ram. The charge imputes to the petitioner the act that in conspiracy with Nanku Ram, he got copies of these documents annexed as Annexure Nos.11 and 12 to Writ-A No.14198 of 2013. All that is said for a finding on this charge is that theft of the two documents, according to Charge No.1, is self-proven. In the first place, it is said that the stolen documents were made use of in a pseudonymous complaint by Jai Prakash, portraying as one J.N. Chaudhary and when that effort failed, copies of these two documents were got annexed as Annexure Nos.11 and 12 to Writ-A No.14198 of 2013 instituted by Nanku Ram before this Court. It is then abruptly concluded that the second charge of conspiring with Nanku Ram is proved. The finding, again, is absolutely cryptic and sans the slightest of evidence.

30. Charge No.2(b) says that the petitioner, Jai Prakash connived with the suspended gardener of the Institution, Nanku Ram and seen in his company frequently, in the office of the DIOS, by the Principal of the Institution. The charge is that the act of visiting the office of the DIOS without permission of the competent Authority shows indiscipline (*swechchhacharita*) on the petitioner's part. The finding on this charge proceeds to hold it proved on the basis of contradictory replies furnished by the petitioner in his letters dated 29.07.2013, 23.09.2013 and 24.10.2013, and his stand during hearing on 30.10.2013. In the letter dated 29.07.2013, it is noticed that the petitioner said that he had a night duty to discharge and, therefore, never had the need to seek leave. In the letter dated 23.09.2013, the petitioner has been noticed by the Inquiry Officer to have said about Charge No.2(b) that he went to the DIOS's office in connection with work assigned by the Principal. In a still later letter dated 24.10.2013, submitted in answer to the Principal's letter dated 07.10.2013, it has been recorded by the Inquiry Officer that the petitioner had said that if the Principal saw the petitioner in the DIOS's office, it would have been a matter of chance. The last of the petitioner's answer that the Inquiry Officer has noticed was one given during hearing at the inquiry, of whatever kind it was, where the petitioner said again that he had a night duty to discharge and would, therefore, sometimes accompany the suspended gardener, Nanku Ram (presumably to the DIOS's office). On the basis of the said answers, the Inquiry Officer remarked that the petitioner's replies are neither consistent nor has he sought permission to visit the office of the DIOS from the Principal, leading to the charge being proved. *Ex facie*, the charge and the findings are both perverse to their face. The charge is not that the petitioner went to the DIOS's office during duty hours,

absenting himself without prior permission of the Principal. That alone could have been a charge in connection with visiting the DIOS's office. Else, the office of the DIOS is a public place and if the petitioner was visiting it outside duty hours, moreso as he was a watchman with a night duty, there is absolutely nothing to infer a charge about it, much less hold it proved.

31. Now, Charge No.2(c) is to the effect that the petitioner along with the suspended gardener, Nanku Ram, in connivance with each other, caused the stolen papers (those referred to in Charge No.1) to be given to Kamlesh Kumar, a resident of Village Khojapur, Barna, Allahabad, who instituted PIL No.15464 of 2013, aiding the said Kamlesh Kumar in bringing litigation against his employer. And, by doing this, the petitioner made an attempt to tarnish the image of the Institution. About the said charge, it is remarked in the inquiry report that the petitioner, Jai Prakash, in his reply dated 23.09.2013, has annexed as Annexure No.10 a document, in paragraph 1 whereof, in the second para (the way it is recorded in the inquiry report) he has admitted the fact that on 07.09.2013, he went to the house of Kamlesh Kumar. During hearing before the inquiry, he stated that he did not know Kamlesh Kumar. He further said that he did not handover the stolen papers to Kamlesh Kumar for filing it as part of the PIL. The finding on this charge is that the case of stealing the two documents, subject matter of the first charge, is already proved on the basis of findings *vis-a-vis* Charge No.1. It is then said that the petitioner, firstly, attempted to use the papers by addressing a pseudonymous complaint dated 17.08.2012, styling himself as J.N. Chaudhary. When he was not successful there, he gave copies of the documents to Nanku Ram, the suspended gardener, who annexed these as Annexure Nos.11 and 12 to Writ-A No.14198 of 2013 filed

by him. When there was no success in the said writ petition, the petitioner gave away copies of the two documents to Kamlesh Kumar to enable him to file PIL No.15464 of 2013 against the Institution, which is still pending. From these remarks, it is abruptly concluded that Charge No.2(c) is proved.

32. Now, we have already noticed that there is no case of theft of the documents at all established against the petitioner. If that fact is not established, there is no question of the petitioner giving away copies of the two documents to any third person in order to facilitate that person in moving a PIL against the Institution. Even otherwise, the documents mentioned in Charge No.1, which are consistently mentioned in the inquiry report, are public documents and would be available in the office of the Education Authorities as well. It must also be remarked here that the petitioner was not the custodian of these documents and, therefore, there cannot be any burden upon him to prove how these made their way to the hands of different persons. It is very exceptionable for the Institution to object to the use of copies of documents that are on the record of Education Authorities in writ petitions filed before this Court. After all, invocation of our writ jurisdiction by a citizen, annexing therewith necessary material, can neither be an offence nor misconduct. In fact, any objection or frown to the use of a document, that is otherwise public record in the sense of being letters of permission etc. by the DIOS is a very contumacious stance for the Institution to take. No government or officer of the government can object to a citizen, invoking our jurisdiction under Article 226 of the Constitution, and for the purpose, annexing all just and true record, without fabricating it. It is not the respondents' case that the petitioner had fabricated any document. The

allegation of stealing copies of documents, that are public record, is *ex facie* without the slightest of tangible material.

33. So far as the third charge against Jai Prakash is concerned, it says that after stealing the two documents or copies of these (subject matter of the first charge), he drew up a complaint himself and sent it under a pseudonym J.N. Chaudhary, who is a non-existent person. The complaint was sent to the Institution's Management and the Authorities of the Education Department, which is a conduct of the petitioner's involving activities against the Institution's interest. The charge further says that in order to verify the fact, if the petitioner was the pseudonymous author, a letter was sent to the addressee J.N. Chaudhary, which was returned with an endorsement by the postal department proving the fact. The findings on Charge No.3 recorded by the Inquiry Officer would show that the Principal of the Institution had sent a letter dated 06.06.2013 to the addressee of the pseudonymous complaint, J.N. Chaudhary, "संयोजक, अनुसूचित जाति समाज, सिकन्द्रा, इलाहाबाद", which was returned with the following postal endorsement: "उपर्युक्त नाम का कोई पता नहीं चलता है, प्रेषित को वापस".

34. The charge, like others, was denied by the petitioner, and, it is recorded by the Inquiry Officer, that in his letter dated 24.10.2013, the petitioner has said that he does not know anyone by the name J.N. Chaudhary. The petitioner is also recorded by the Inquiry Officer to have said at the hearing before the inquiry that he did not imposter as J.N. Chaudhary nor sent the pseudonymous complaint, portraying himself as J.N. Chaudhary. The Inquiry Officer, in recording, his findings proceeded on the premise that the approval letter of Brijesh Kumar Shukla's appointment dated 20.07.2005 and the mutual transfer approval order dated

21.05.2008, relating to Brijesh Kumar Shukla and Janardan Singh, were stolen by the petitioner. Now, this is a premise based on the Inquiry Officer's conclusions recorded in his findings on Charge No.1, which we have found to be utterly without material to draw that conclusion. The further finding, therefore, that after stealing the aforesaid documents, the petitioner, imposter as J.N. Chaudhary, who is a non-existent person, sent a pseudonymous complaint dated 17.08.2012 to the Authorities of the Education Department, is without any basis. The finding, still further, that he caused copies of these documents to be annexed to Writ-A No.14198 of 2013 and PIL No.15464 of 2013, is without basis for that reason. The finding holding Charge No.3 proved, is perverse for an added reason. And, it is this, that the mere fact that the letter addressed by the Principal to the pseudonymous author of the complaint returned with the postal remark, 'the addressee cannot be traced, returned to sender' can, in no way, lead to the inference that the petitioner was the pseudonymous author of the complaint. There is not the slightest of material noticed by the Inquiry Officer to infer that he was the author of the pseudonymous complaint addressed to functionaries of the Management or the Education Authorities against the Institution, the charge of stealing documents quite apart. The conclusions, therefore, on Charge No.3 are sans any material and also perverse.

35. The fourth charge against the petitioner is that he, with an intention to involve Class-IV employees, senior to himself, to wit, Tej Narain Bahadur, Ram Lakhan and Dinesh in his conspiratorial activities through persuasion, inducement, fear and threat, and taking advantage of these men's illiteracy, drew up an affidavit, making the three men named, sign it. He got the said affidavit included in his own promotion file. In disposing of this charge

against the petitioner and holding it proved, the Inquiry Officer has reasoned that after securing an affidavit from the three senior Class-IV employees, forsaking their option to earn promotion, the petitioner got the affidavit signed by the said men placed on his promotion file. In order to sustain the charge, all that has been remarked by the Inquiry Officer is that the petitioner has changed his statement in relation to the said affidavit from time to time, after denying the charge. The contradictory statements noticed by the Inquiry Officer are that in his reply to the charge, being a memo dated 23.09.2013, it is said that the said affidavit has been got submitted by someone because of a conspiracy, who does not want him promoted to the post. During the hearing on 02.12.2013, the Inquiry Officer has noted that in an answer to questions put to him orally, the petitioner had said in a written answer that he had never threatened the said employees nor persuaded or induced them to file the affidavit. To draw from these statements the inference that Charge No.4 against the petitioner, about threatening or inducing employees, senior to him, and making them forego their chance of promotion, is proved, is a conclusion that is outrightly perverse. There are no contradictory statements at all to draw a conclusion of that kind by any yardstick or principle. The only evidence, on which the Management could have acted to bring home the charge, was by production of the three men as management witnesses during the inquiry, and, if the said witnesses had taken the stand that the affidavit filed by them, foregoing their chance of promotion, was the result of inducement or threat at the hands of the petitioner and stood by their statements in cross-examination by the petitioner, the Inquiry Officer could have legitimately drawn his conclusions, that would be beyond our pale of scrutiny in a secondary review. But, to act on

non-existing material, no evidence or drawing patently perverse conclusions, is something which the respondents cannot shield from our scrutiny, even in a secondary review.

36. The fifth charge against the petitioner, Jai Prakash, is that in moving this Court by way of Writ-A No.38533 of 2013, for the purpose of enforcing his claim to promotion to the post of *Daftari*, the petitioner suppressed the fact in the writ petition that his case for promotion was under consideration before the DIOS, where it was being heard. To prove the charge, a copy of the writ petition was annexed to the charge-sheet as Annexure No.5. In his findings on this charge, the Inquiry Officer has taken note of the petitioner's defence, regarding which, it is recorded that the petitioner in his letter dated 28.08.2013, has said that the writ petition aforesaid was filed for the purpose of ensuring an expeditious disposal of his claim by the DIOS. It is then noticed that in his reply to the charge-sheet made on 23.09.2013, in paragraph No.15, it is said that the petitioner had not received any letter from the office of the DIOS in regard to his case. In the hearing before the Inquiry Officer on 02.12.2013, he has noted that the petitioner had referred to Annexure No.13 to his letter dated 17.12.2013, where it is said that from a perusal of the documents, whatever provided to him relating to the matter pending hearing before the DIOS, it is evident that he had never been intimated of any date of hearing before the DIOS. In his conclusions on the charge, the Inquiry Officer has referred to some matters irrelevant to the charge in the opening paragraph by referring to the case about threatening or inducing his seniors by the petitioner to give an affidavit, forsaking their right to consideration before the DIOS in the matter of the petitioner's promotion. This is not at all the subject matter of the present charge. It is then remarked that the affidavit by the three senior

Class-IV employees has made the matter suspicious. What is then remarked is that in the information sent from the office of the DIOS *vide* letter dated 28.05.2013, the date fixed in the matter of the petitioner's promotion was 31.05.2013. A second date was intimated to the petitioner *vide* letter of the DIOS dated 11.07.2013, scheduling 19.07.2013 as the date of hearing. The conclusion drawn is that without disclosing these facts, the petitioner has instituted Writ-A No.38533 of 2013. It is then remarked that the fact that the matter was being heard before the DIOS had been suppressed in the writ petition, whereas the fact was known to all the four Class-IV employees and the petitioner was duly informed of the date fixed through the four other Class-IV employees. On this reasoning, the charge has been held proved.

37. We are clear in our mind that the charge about not disclosing the fact of the promotion matter being pending before the DIOS, while filing Writ-A No. 38533 of 2013, even if true, is not a charge at all. It is no business of the employer to take cognizance of suppression of facts, or even material facts, from this Court in a writ petition as service misconduct. The respondents had to take that plea before us in the writ petition and test if the plea of suppression was upheld by this Court. In the event, it was upheld, may be there was some bleak possibility of classifying the act of deliberate suppression as some kind of a misconduct, if it fell within the mischief of the conduct rules applicable to the employee. But, it is not for the employer to conclude of their own that some fact had been suppressed on our record and proceedings, and punish it as a service misconduct. The charge itself is utterly misconceived and so are the findings. The findings, *a fortiori* on principle, would be without jurisdiction because the charge itself is a non-charge.

38. This brings us to the last charge against the petitioner, and that is about him using unparliamentary language when served with a show cause notice by the Principal, and also, threatening to 'deal' with the Manager. The imputation is that on receipt of the show cause notice, he employed unparliamentary language while addressing the Principal and threatened that he would 'take care' of the Manager. It is also imputed that he said that he would take out papers relating to the Society running the Institution, through an Advocate, from the office of the Registrar of Societies, and further said, that his relatives were members of the Society, who would ensure that the Manager is soon changed. This charge, if true, might amount to misconduct. The Inquiry Officer has recorded that the petitioner, in his reply dated 23.09.2013, has stated that in his career of 18 years, he had never indulged in any kind of indiscipline or employed unparliamentary language or threatened anyone. The Inquiry Officer has also noticed that in his letter dated 24.10.2013 sent by registered post, annexed as Annexure No.22 to his reply, the petitioner says that the Principal himself had certified his integrity every year, but it is surprising that as soon as his case for promotion was forwarded, he was saddled with unfounded charges to exclude him from the zone of consideration. During hearing on 02.12.2013 before the Inquiry Officer, it is recorded that in his written reply, the petitioner has referred to a letter dated 17.12.2013, to which he has annexed a certain Annexure No.33, where it is said that he had never employed unparliamentary language or otherwise misbehaved with the Appointing Authority or any other employee, whomsoever. It is in his findings on the charge that the Inquiry Officer has remarked that the question arises that notwithstanding 18 years of earning excellent entries in the service record, after the petitioner's case was forwarded for promotion,

why was he charged. It is remarked that the petitioner had obviously used unparliamentary language, else the Principal would not have come up with the allegation. It is then remarked by the Inquiry Officer that after a bitter experience, the Principal has come up with the allegation from his 'inner soul'. Virtually, the charge has been sustained without an iota of material or evidence before the Inquiry Officer to draw his conclusions. He has presumed it to be true on the reasoning that why would the Principal come up with a charge of this kind and gone on to remark that after a bitter experience, the Principal had arraigned the petitioner from the depth of his soul. These are hollow words, that may be of poetic worth, but cannot serve as evidence or valid material of the slightest kind to hold the charge proved. The only way this charge could have been proved, was for the establishment to produce the Principal as a witness, who alleged that the petitioner employed unparliamentary language with him, when served with the show cause notice. If he spoke for the charge and faced the petitioner's cross-examination, there would be material on record, on the basis of which, the Inquiry Officer could have drawn his conclusions, whichever way, that we would be forbidden from re-appreciating in the exercise of our power of Wednesbury review. This is not that case. This is a case of total absence of material or evidence to sustain the finding.

39. The findings on each of the six charges against Jai Prakash are not at all valid in law for all the reasons indicated, specifically appraising the relative findings on the charges, during the course of this judgment. The Disciplinary Authority, who has blindfoldedly accepted the findings of the Inquiry Officer by his order dated 01.02.2014, removing the petitioner from service, is bad, for all the reasons that vitiate the Inquiry Officer's finding.

40. This takes us to the findings of the Inquiry Officer and the order impugned passed in the other writ petition, that is to say, Writ-A No.51031 of 2015 preferred by Nanku Ram. He is the gardener and held guilty on somewhat similar charges as Jai Prakash in the disciplinary proceedings. He is said to have acted in conspiracy with Jai Prakash in the matter of seeking promotion to the higher post of an Assistant Clerk, for which, both of them have vied.

41. The first charge against the petitioner (Nanku Ram) is that he forged the signatures of the Assistant in the Receipt Section of the office of the DIOS and a Clerk in the Office of the Principal on the copy of a letter dated 03.10.2012 addressed to the DIOS, a copy of which was marked to the Principal of the Institution; and this document he annexed as Annexure No. 7 to Writ - A No. 14198 of 2013, instituted before this Court. It is imputed to the petitioner that by this act of his, he committed fraud, which is a misconduct under the service rules applicable to him. A photostat copy of the letter allegedly bearing the forged signatures of receipt from the Clerk of the DIOS was relied in support of the charge.

42. The second charge against the petitioner is to the effect that he addressed letters to the Manager/Principal of the Institution dated 17.09.2010, 17.08.2012 and 07.09.2012, and also addressed letters to the Principal of the Institution dated 05.02.2011 and 30.05.2011, which he annexed to his writ petition, being Writ - A No. 14198 of 2013 as Annexure No. 8, bearing forged signatures of receipt from Sudhakar Tiwari, a Clerk in the Institution, which constitutes an act of fraud. In support of the charge, copies of letters dated 17.09.2010, 17.08.2012, 07.09.2012, 05.02.2011 and 30.05.2011 were annexed.

43. As regards the first and the second charge, or for that matter, the remainder of the two charges as well, the Inquiry Officer devised a novel method to hold inquiry. He summoned the petitioner, who, no doubt, appeared, after much reluctance, and put questions to him about the veracity of the signatures of acknowledgment on the two sets of letters - one by the clerk concerned in the Office of the DIOS and the other, in the Office of the Principal of the Institution. The Inquiry Officer, more or less, based his findings on Charge Nos. 1 and 2 upon the answers given by the petitioner to the questions put to him by the Inquiry Officer. Question Nos. 1 to 14, put to the petitioner, relating to Charges Nos.1 and 2, have been set forth herein. Of these questions, Question Nos. 1 to 13 were put to the petitioner during the proceedings of the inquiry held on 16.07.2013, whereas Question No. 14 relating to Charge Nos. 1 and 2 was put to the petitioner in the next hearing before the Inquiry Officer on 12.08.2013 (the other questions put to the petitioner during the hearing on 12.08.2013 relate to the remainder of the two charges). The questions that were put to the petitioner during the hearing on 16.07.2013 and the answers given by him, extracted from the inquiry report, are shown in tabular form below :

प्रश्न नं०	प्रश्नावली	श्री ननकूराम माली (निलम्बित) का उत्तर (मौखिक)
1	श्री ननकूराम माली (निलम्बित) आप यह बतायें कि याचिका सं० 14198/2013 माननीय उच्च न्यायालय में किस आशय से योजित किया है?	जि०वि०नि० इलाहाबाद ने मेरे पदोन्नति प्रकरण में मेरे विरुद्ध निर्णय दिया है इसलिए माननीय उच्च न्यायालय की शरण में गये।
2	आपके समक्ष आप द्वारा योजित याचिका सं० 14198/2013 प्रस्तुत है। आप इसके अनुच्छेद 21 एवं 22 को पढ़कर सुनायें एवं उल्लिखित आशय से मुझे अवगत करायें।	मुझे अंग्रेजी पढ़नी नहीं आती है। वकील ने पता नहीं क्या लिखा है।
3	याचिका सं० 14198/2013 में संलग्नक 7 में आपने कहा	कोई गवाह नहीं है। घर पर

	है कि प्रबन्धक जी ने आप पर दबाव बनाकर लिखे हुए प्रार्थना पत्रों को हुबहू नकल करने के लिए कहा। इस सम्बन्ध में यदि कोई साक्ष्य है तो प्रस्तुत करें।	बुलाकर मुझसे लिखवाये।
4	आप पर आरोप है कि संलग्नक 7 आपने जि०वि०नि० कार्यालय में प्राप्त दर्शित करने के लिए प्राप्ति सहायक का आपने स्वतः हस्ताक्षर बनाकर याचिका में संलग्न किया। ऐसा आपने क्यों किया?	मैंने हस्ताक्षर नहीं बनाया है। कार्यालय में मैंने प्राप्त कराया है।
5	जि०वि०नि० इलाहाबाद कार्यालय में प्राप्त कराये गये पत्रजातों में जि०वि०नि० कार्यालय की मुहर नहीं लगती है। लेकिन आपने मुहर बनवाकर संलग्नक 7 में लगाया। सफाई में आप क्या कहना चाहेंगे?	मुझे कुछ नहीं कहना है। आप जो चाहे समझें।
6	आप द्वारा याचिका में लगाये गये संलग्नक 7 के सम्बन्ध में प्रधानाचार्य ने सूचना अधिकार अधिनियम 2005 के आधार पर दिनांक 20.04.2013 के अनुसार जि०वि०नि० इलाहाबाद से पृच्छा की है। प्रधानाचार्य का पत्र दिनांक 20.04.2013 आपके पास है, इस सम्बन्ध में आप क्या कहना चाहेंगे?	पूझे होंगे। इसमें मैं क्या करूँ।
7	जि०वि०नि० इलाहाबाद पत्रांक/1442/2012-13 दिनांक 01.05.2013 द्वारा उपलब्ध करायी गयी सूचना आपको दी गयी है एवं निम्नवत् उल्लेख किया है, "आपके पत्र दिनांक 20.04.2013 के साथ संलग्न श्री ननकूराम माली का पत्र दिनांक 03.10.2012 जो प्राप्ति पर जि०वि०नि० इलाहाबाद के कार्यालय हस्ताक्षर दर्शाया गया है, वह इस कार्यालय के किसी सहायक का हस्ताक्षर नहीं है और न ही रसीद पंजिका में कहीं भी प्रविष्टि अंकित है।"	इसे पढ़कर एवं सुनकर मौन रहे। बार-बार कुरेदने पर भी कोई उत्तर नहीं दिया।
8	आप पर दूसरा आरोप है कि "आपने प्रबन्धक/प्रधानाचार्य वि०दि० सिंह इण्टर कालेज गौरापुर, इलाहाबाद को सम्बोधित अपने पत्र दिनांक 17.09.2010, 17.08.2012, 07.09.2012 एवं प्रधानाचार्य को सम्बोधित अपने पत्र दिनांक 05.02.2011, 30.05.2011 जो माननीय उच्च न्यायालय में योजित उक्त याचिका सं० 14198/2013 में संलग्नक 8 के रूप में लगाया है, पर विद्यालय के सहायक लिपिक श्री सुधाकर तिवारी का फर्जी हस्ताक्षर बनाकर, माननीय उच्च न्यायालय में प्रस्तुत कर माननीय उच्च न्यायालय को गुमराह किया है जो आप द्वारा किया गया धोखाधड़ी का कार्य है।"	मैंने कोई धोखाधड़ी नहीं की है आप अपने मन में चाहे जो समझें।
9	आप पर लगे, दूसरे आरोप के सम्बन्ध में प्रधानाचार्य ने अपने पत्र दिनांक 08.04.2013 द्वारा विद्यालय के सहायक लिपिक श्री सुधाकर तिवारी से संपुष्टि चाहा है। श्री तिवारी (स०लि०) ने अपने पत्र दिनांक 22.04.2013 के अनुसार प्रधानाचार्य को उत्तर प्रेषित किया है, "श्री ननकूराम माली द्वारा संलग्नक 7 एवं 8 संलग्न किये गये पत्र दिनांक 17.09.2010, 05.02.2011, 30.05.2011, 17.08.2012, 07.09.2012 एवं 03.10.2012 उक्त श्री ननकूराम माली द्वारा न तो मुझे प्राप्त कराया गया है और न ही उक्त पत्रों में मेरे हस्ताक्षर ही हैं।" प्रस्तुत पत्र आपको सुलभ कराया गया है। आप क्या कहना चाहेंगे?	श्री सुधाकर तिवारी जी जानें। मुझे क्या पता।

10	उक्त प्रश्न सं० 9 के सम्बन्ध में श्री सुधाकर तिवारी से जो सुनवायी में आपके समक्ष उपस्थित हैं, कुछ जिरह या प्रश्न करना चाहेंगे।	मुझे कुछ जिरह नहीं करनी है और न प्रश्न ही पूछना है।
11	आपने अपने उत्तर में माननीय उच्च न्यायालय में याचिका सं० 14198/2013 में लगाये गये अपने ही संलग्नकों को तथाकथित/लगत संलग्नक कहकर दिग्भ्रमित करने का प्रयास किया है। ऐसा क्यों?	चुप रहे। कोई उत्तर नहीं दिया।
12	संलग्नक 7 एवं 8 (माननीय उच्च न्यायालय में योजित याचिका सं० 14198/2013) के सम्बन्ध में आप अपने कथन तथा जि.वि.नि. इलाहाबाद का पत्रांक 1442/2012-13 दिनांक 01.05.2013 के अनुसार कथन तथा विद्यालय के सहायक लिपिक श्री सुधाकर तिवारी का प्रधानाचार्य को सम्बोधित पत्र दिनांक 22.04.2013 के अनुसार कथन से आप द्वारा की गयी कूट रचना का पर्दाफास हो रहा है। आप क्या कहना चाहेंगे?	सब हमें फंसा रहे हैं। सब की मेरे खिलाफ मिली भगत है।
13	सब आपको फंसा रहे हैं जि०वि०नि० इलाहाबाद एवं विद्यालय के सहायक लिपिक श्री सुधाकर तिवारी की मिली भगत है। अथवा आप द्वारा किया गया फ्राड स्पष्ट हो रहा है। आप क्या कहेंगे?	मैं क्या कहूँ। मैंने वही कहा है, जिसमें मैं बच सकूँगा। बस और कुछ भी नहीं कहना है।

44. During the hearing, on 12.08.2013, one more question that was put to the petitioner and the way he answered it, is also shown in tabular form, quoted *verbatim* from the inquiry report :

प्रश्न नं०	प्रश्नावली	श्री ननकूराम माली (निलम्बित) का उत्तर
14	संलग्नक 7 एवं 8 के सम्बन्ध में आप अपने लिखित अभिकथन को बार-बार बदल रहे हैं। आपके ही कथनों में भिन्नता है। ऐसा क्यों?	मैं कोई बयान नहीं बदल रहा हूँ। सब एक ही हैं।

45. Now, it is a salutary principle of the law that before the imposition of a major penalty, the Inquiry Officer has to follow a specific procedure. This requires the Inquiry Officer to presume that the charges are not at all proved and the burden initially rests upon the Establishment to prove these by evidence, both documentary and oral, through a Presenting Officer. The evidence, that has to be produced, must include witnesses, apart from documents, who would prove the document and testify to other relevant facts. The witnesses, once they speak and give testimony in support of the charges for the Establishment, are to be made over to the delinquent to cross-examine. In case of the documents subject

matter of the second charge, that is to say, the letters dated 17.09.2010, 17.08.2012, 07.09.2012, 05.02.2011 and 30.05.2011, that were filed before this Court as Annexure No. 8 to Writ - A No. 14198 of 2013 on behalf of the petitioner, the Clerk in the Office of the Principal, Sudhakar Tiwari, who was shown to have received papers, was present at the inquiry. However, he was not called upon to testify on behalf of the Establishment as a witness in the petitioner's presence, after placing before him the letters or copies of these shown to have been received by him. All that was said was in the form of a question (Question No. 9), where the fact was put to the petitioner that in response to the letter dated 08.04.2013 addressed by the Principal to the Assistant Clerk, Sudhakar Tiwari, he had denied receiving the letters, annexed as Annexure Nos. 7 and 8 to the writ petition and also disowned his signatures thereon. It was asked of the petitioner what had he to say in this regard. The petitioner's answer was that the fact would be known to Sudhakar Tiwari. In the next Question No. 10, the Inquiry Officer asked the petitioner if he wanted to cross-examine Sudhakar Tiwari, who was present, in answer to which, petitioner said that he did not want to cross-examine him or ask questions. In contrast, in answer to the question if he had forged the signatures of Sudhakar Tiwari on the copies of letters that were filed as Annexure Nos. 7 and 8 to Writ - A No. 14198 of 2013, subject matter of Question No. 8, the petitioner came up with the answer that he had not done any fraud and it is up to the Inquiry Officer to think whatever he wanted. So far as Charge No. 1 is concerned, that is to say, about forging the signatures of the Assistant in the Office of the DIOS, the proof of the charge depended upon a memorandum dated 01.05.2013 received from the Office of the DIOS, in response to the information sought by the Principal of the Institution under the Right to

Information Act, 2005, where, signatures on the copy of the letter dated 03.10.2012 were denied in terms that the 'subject signatures' were not those of any Assistant in his office, nor was there any entry made in the receipts register regarding this letter, maintained with the Office of the DIOS. This fact too was put to the petitioner, as would appear from the questions in tabular form set out as hereinabove, as Question No. 7, in response to which, the petitioner remained quiet.

46. This Court is constrained to say that in keeping with the salutary principle, this is certainly not the procedure countenanced by the law to prove a charge against an employee, which may lead to the imposition of a major penalty. There cannot be questions put to the employee with reference to written documents, even by a witness, who is present, and findings recorded based on the charge-sheeted employee's answers. The findings have to be recorded on the basis of documentary evidence led during the hearing before the Inquiry Officer by the Establishment through a Presenting Officer, and then producing witnesses to prove the charge as regards other matters. The queer kind of offer made to the petitioner, after referring to the letter of the Clerk in the Principal's office, who was present, denying his signatures on the copies of letters annexed as Annexure Nos. 7 and 8 to the writ petition to cross-examine him, would not suffice. After all, before Inquiry Officer, the witness has not spoken. A mute letter written by the witness was there. What prevented the Inquiry Officer from asking the witness, even if there was no Presenting Officer, to introduce the letter and say before the charge-sheeted employee whatever he had to about the letter. Relevant facts could have been spoken by way of examination-in-chief by Sudhakar Tiwari, who was present before the Inquiry Officer. Nothing was spoken by

Sudhakar Tiwari before the Inquiry Officer by way of examination-in-chief or testimony. Of course, he was never cross-examined by the petitioner about his testimony that was not there.

47. In this case, more than the breach of salutary procedure is a further facet of denial of natural justice. If one looks to the question-answer mode of inquiry, it becomes apparent that whatever might be the educational qualifications of the petitioner, Nanku Ram, the way he answered the questions put to him by the Inquiry Officer, convinces this Court that he is not a man of refined learning; not even a man of average educational skills. After all, he is a Gardener by profession - not for a hobby, but a whole-timer. A charge-sheeted employee of the kind that Nanku Ram is, it was imperative for the Inquiry Officer to have offered him the services of a defence assistant, who might have been an employee of the same institution, better versed with the procedure of defending departmental inquiries. Neither Nanku Ram had the assistance of a domestic defence assistant like another employee, may be a co-employee, of better learning and understanding, nor was the salutary procedure at all followed to hold the inquiry, by requiring witnesses to testify on behalf of the Establishment. The nature of the charge in this case, particularly required witnesses, both from the Establishment of the DIOS and the Principal, to testify *viva voce* on behalf of the Establishment in support of the charges by way of examination-in-chief. Cross-examination was an opportunity then to be given to the petitioner, which, in the hands of a defence assistant, better skilled than the petitioner, would have made his defence meaningful. All these issues of procedural fairness have been observed in utter breach in the matter of holding the departmental inquiry against the petitioner. The salutary principles spoken of about the manner of holding a departmental inquiry in a

major penalty matter are well-acknowledged by the Supreme Court in **State of Uttar Pradesh and others v. Saroj Kumar Sinha, (2010) 2 SCC 772, Roop Singh Negi v. Punjab National Bank and others, (2009) 2 SCC 570, State of Uttaranchal and others v. Kharak Singh, (2008) 8 SCC 236** and the Bench decisions of this Court in **State of U.P. and another v. Kishori Lal and another, 2018 (9) ADJ 397 (DB) (LB), Smt. Karuna Jaiswal v. State of U.P., 2018 (9) ADJ 107 (DB) (LB) and State of U.P. v. Aditya Prasad Srivastava and another, 2017 (2) ADJ 554 (DB) (LB).**

48. The position of the law in this regard, that has withstood the test of time, has recently been endorsed by the Supreme Court in **Satyendra Singh v. State of U.P. and another, 2024 SCC OnLine SC 3325**, where it is held:

“12. Learned counsel for the State was ad idem to the submissions of the appellant's counsel that no witness whatsoever was examined during the course of the inquiry proceedings. On a minute appraisal of the Inquiry Report, it is evident that other than referring to the documents pursuant to the so-called irregular transactions constituting the basis of the inquiry, the Inquiry Officer failed to record the evidence of even a single witness in order to establish the charges against the appellant.

13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to **Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570** and **Nirmala J. Jhala v. State of Gujarat, (2013) 4 SCC 301.**”

49. The third charge against the petitioner is that in breach of his fidelity to the Institution and its records, the petitioner handed over a copy of the letter of approval of appointment dated 20.07.2025 relating to Brijesh Kumar Shukla in the Institution known as Adarsh Inter College, Gheenpur, Mau Aima, Allahabad, as well as another letter dated 20.07.2005, relating to the mutual transfer of Brijesh

Kumar Shukla and Janardan Singh from Adarsh Inter College, Allahabad to the Institution and *vice versa*, to one Kamlesh Kumar, for annexing the same in Public Interest Litigation No. 15464 of 2013, which amounted to an action against the interest of the Institution, constituting misconduct. The only evidence in support of the said charge is a copy of Annexure Nos. 7 and 8 annexed to the PIL petition.

50. The fourth charge against the petitioner here is that he addressed a letter dated 25.04.2013 to the Principal of the Institution, that was received by him on 29.04.2013. The letter was not signed by him and written out of malice. The said act shows gross insubordination. It is charged that the petitioner has deliberately and fraudulently neglected the rightful purpose of his duties. In support of the charge, the unsigned letter dated 25.04.2013, along with a photostat copy of the registered postal cover, attributed to the petitioner's authorship and addressed to the Principal, was annexed to the charge-sheet. To prove the charges, the Inquiry Officer put Question Nos. 15 to 25 to the petitioner on 12.08.2013. These read :

प्रश्न नं०	प्रश्नावली	श्री ननकूराम माली (निलम्बित) का उत्तर
15	आप पर तीसरा आरोप है "आपने अपने पदीय दायित्व का दुरुपयोग कर, विश्वास घात करते हुए विद्यालयीय अभिलेखों/कागजातों (श्री बृजेश कुमार शुक्ल पूर्व परिचारक वि०दि० सिंह इण्टर कालेज गोरपुर, इलाहाबाद का जि०वि०नि०) इलाहाबाद का पर्वानुमोदन के सम्बन्ध में पत्रांक अनु/9678-80/2005-06 दिनांक 20.07.2005 तथा श्री बृजेश कुमार शुक्ल एवं श्री जनार्दन सिंह परिचारक वि०दि० सिंह इण्टर कालेज का गोरपुर, इलाहाबाद के पारस्परिक स्थानान्तरण के सम्बन्ध में संयुक्त शिक्षा निदेशक चतुर्थ मण्डल इलाहाबाद का आदेश सं०/एस०/स्थाना०/53/2008-09 दिनांक 21.05.2008) को चुराकर श्री कमलेश कुमार, ग्राम खोजापुर, पोस्ट बरना, जिला इलाहाबाद को सुलभ कराया। आप एवं उक्त श्री कमलेश कुमार ने षडयन्त्रपूर्ण कार्य करते हुए माननीय उच्च न्यायालय में जनहित याचिका सं०	मैंने कोई कागजात न तो चुराया है और न ही मैं किसी कमलेश कुमार को जानता हूँ।

	15644/2013 योजित कराया है, जो आप द्वारा किया गया संस्था विरोधी कार्य है।”	
16	आपको क्रमांक 15 में उल्लिखित पत्र जात कैसे प्राप्त हुए। आपको क्या यह ज्ञात है कि उक्त पत्र जात अनुमोदन/स्थानान्तरण विद्यालय कर्मचारी के आवश्यक अभिलेख है?	मुझे पता है। विद्यालय से मिला है।
17	आपने उक्त पत्र जातों को योजित याचिका सं० 14198/2013 में संलग्नक के रूप में लगाया है। इस सम्बन्ध में आप क्या कहना चाहेंगे।	हाँ मैंने रिट में लगाया है।
18	उक्त क्रमांक 15 में आपने चुराये हुए पत्रजातों को कमलेश कुमार को सुलभ कराया एवं उन्होंने योजित जनहित याचिका सं० 15644/2013 में संलग्नक के रूप में लगाया है। विद्यालय के अभिलेख उन्हें कैसे प्राप्त हुए?	मैंने अपने लिखित उत्तर में कह दिया है और मैं कुछ नहीं जानता।
19	आपने पत्रांक दिनांक 25.04.2013 (अनहस्ताक्षरित) एवं आरोप पत्र के उत्तर दिनांक 14.05.2013 में क्रमशः "इस तरह का पत्र देकर स्पष्टीकरण/जवाब मांगना मुझ जैसे अनुसूचित जाति के चतुर्थ श्रेणी कर्मचारी की मानसिक प्रताड़ना है।" "मेरा अनुसूचित जाति चमार होने के कारण जबरदस्ती लगाया जा रहा है, जो विधि विरुद्ध है।" कोई साक्ष्य हो तो प्रस्तुत करें।	मेरे पास कोई साक्ष्य नहीं है।
20	क्या प्रधानाचार्य द्वारा मौखिक या लिखित पत्रों से कोई जातिपूरक कथन आपको कभी परिलक्षित हुई है?	नहीं, कभी नहीं।
21	फिर आप क्यों अपने मातहत धर्म के विपरीत कार्य कर रहे हैं।	अपने को बचाने के लिए।
22	आप पर चौथा आरोप है कि "आप द्वारा प्रेषित अनाहस्ताक्षरित पंजीकृत पत्र दिनांक 25.04.2013 जिसकी पंजीकृत सं० RL.644/27.04.2013 मुझे दिनांक 29.04.2013 को प्राप्त हुआ। उक्त आप द्वारा प्रेषित पत्र पर बिना हस्ताक्षर किये हुए किस दूषित मानसिकता से आपने मुझे प्रेषित किया। यह आपकी घोर अनधीनता को परिलक्षित करती है।" प्रधानाचार्य के इस कथन पर क्या कहना चाहेंगे?	उनके माँगने पर दुबारा दिया।
23	आप अपने नियोक्ता के पत्र का उत्तर दे रहे हैं पंजीकृत डाक से और पत्र में अपना हस्ताक्षर नहीं किये है। क्या यह उचित है?	नहीं।
24	फिर आपने ऐसा कार्य क्यों किया? क्रमशः 23 के संदर्भ में अपना स्पष्ट उत्तर दें।	मेरी मानसिक स्थिति ठीक नहीं थी।
25	उक्त समस्थ के अतिरिक्त आपको अपने बचाव पक्ष में यदि कुछ मौखिक/लिखित कथन प्रस्तुत करना है तो आप स्वतः प्रस्तुत कर सकते हैं।	कुछ भी नहीं कहना है। मैंने लिखित रूप से सब कुछ भेज दिया है।

51. Again, as regards these two charges here, the salutary procedure to produce evidence, both oral and documentary, has been observed in breach. Since the disciplinary proceedings here involved the imposition of a major penalty, it was the burden of the

Establishment to produce evidence through a Presenting Officer, which would include witnesses, to prove the charges. It is not on the basis of *viva voce* questions and answers that conclusions could be drawn regarding charges, that might lead to the imposition of a major penalty. The law in this regard has been consistent and reference to the same has been made hereinabove.

52. Therefore, the conclusions of the Inquiry Officer on Charge Nos. 3 and 4 would be procedurally bad like those in case of Charges Nos. 1 and 2. But, there is more to these charges than that. The third charge against the petitioner is substantially the same as Charge Nos. 1, 2, 2(b) and 2(c) carried in the charge-sheet dated 31.08.2013 against Jai Prakash, subject matter of Writ - A No. 15765 of 2014. Those charges have already been held by us to be absolutely without material or evidence to sustain and the conclusions of the Inquiry Officer, holding them proved, perverse. Here too, as regards Charge No. 3, apart from the procedural irregularities, the same inference is inescapable, because there is no material to show that the petitioner stole the two documents from the Institution's office. After all, he is a Gardener and there is no evidence *aliunde*, oral or documentary, to show that it was he who stole the documents or procured copies of the same or provided it to the PIL petitioner. Both the documents in question are, after all, part of public record and the original or copies of the same would be available in the Office of the DIOS as well. There is absolutely no material to conclude against the petitioner on the third charge by application of any standard of a plausible inference. The inference drawn by the Inquiry Officer on the basis that the Institution would not give away documents against itself for the purpose of enabling the petitioner to file his own Writ Petition No. 14198 of 2013 and providing it to the petitioner of PIL No. 15464 of

2013, is perverse, because, between the Institution not itself giving away these documents and the petitioner stealing it, there is a wide range of possibilities for a lawful or unlawful source of acquisition of these documents, as these are public documents available in the Office of the DIOS, which cannot lead to establishment of the allegation of theft against the petitioner by any plausible standard. The conclusions on this charge are sans material and perverse. This is quite apart from the question of procedural irregularity, that vitiates findings on all charges.

53. So far as the fourth charge is concerned, the Inquiry Officer has concluded that the petitioner, with a hostile animus and displaying fraudulent behaviour, had addressed to the Principal a letter dated 25.04.2013 in reply to the Principal's letter dated 17.04.2013, without signing it. In reply, the petitioner has said, as noted by the Inquiry Officer, that his letter dated 25.04.2013 had been lost by the Principal, and therefore, he sent another, which was unsigned. From the said reply alone, the Inquiry Officer has drawn the conclusion that the fact is proved that the petitioner addressed an unsigned letter to the Principal, proving the charge. This charge, to our mind, quite apart from the procedural illegality in holding the inquiry, is not, at all, a charge. Even if one were to assume that the petitioner addressed a letter to the Principal, which he forgot to sign, no misconduct of any kind can be inferred on that basis. The fourth charge against the petitioner and the findings of the Inquiry Officer, holding him guilty of the said charge, are downrightly perverse and *non est*.

54. The Disciplinary Authority, that it to say, the Principal of the College, has accepted the inquiry report *vide* order dated 07.10.2013 and punished the petitioner with removal from service,

without much application of mind. As regards findings on Charge Nos. 1 and 2, the impugned order is procedurally flawed from the stage of the charge-sheet, and, as regards Charges Nos. 3 and 4, the conclusions are absolutely sans material and perverse, on the foot of which, the order of punishment could never be sustained. Nevertheless, the petitioner's appeal from the order of removal too has been dismissed by the Committee of Management *vide* order dated 19.07.2015. The Committee of Management have dismissed the petitioner's appeal, adopting the same reasoning, more or less as the Disciplinary Authority, which suffers from the same flaws, as the findings of the Inquiry Officer and the conclusions of the Disciplinary Authority. The flaws remain procedural as regards Charge Nos. 1 and 2, where the respondents would have liberty to proceed afresh from the stage of the charge-sheet, but as regards Charge Nos. 3 and 4, there is absolutely no material to sustain the same or permit any kind of fresh proceedings to inquire into the validity of these two charges. The fourth charge, as already remarked, is a non-charge, on the basis of which, no inquiry could, at all, proceed.

55. For all these reasons alone, the impugned orders dated 07.12.2013 passed by the Disciplinary Authority and the appellate order dated 19.07.2015 passed by the Committee of Management of the Institution are both vitiated. But, this does not end the matter, because there are, to all this in the background, certain facts, that must be taken note of.

56. There is a case common to both the writ petitions, which is more eloquently pleaded in paragraph Nos.44 to 54 of Writ-A No.15765 of 2014. The substance of the allegations carried in these paragraphs relate to the appointments of Brijesh Kumar

Shukla and Janardan Singh, Class-IV employees in the Institution and the Adarsh Inter College, Gheenpur, Mau Aima, Prayagraj, which strongly urge a case of *mala fides* in the matter of appointment of these two men as Class-IV employees in both the institutions. The appointments are shown to be manipulated by the Managers of the Adarsh Inter College and the Institution in order to accommodate relatives of their bloodline in their own institutions, something forbidden by the law. The case to the above effect has been urged in the writ petition in order to show that a relative of the Manager of the Institution here, having been appointed to the post of a Class-IV employee through the mechanism of a insidious transfer from the Adarsh Inter College to his own Institution, the services of the petitioner have been terminated through a sham disciplinary proceedings, when the petitioners claim for promotion to a Class-III post was pressed, which the Manager of the Institution coveted for his relative, Janardan Singh.

57. Though the allegations in paragraph Nos.44 to 54 of Writ-A No.15765 of 2014 have not been specifically denied by the Manager of the Institution, Bankey Bihari Singh, in his counter affidavit *vide* paragraph Nos. 13 to 19, nor by the DIOS in paragraph Nos.27 of 32 of the counter affidavit, we do not propose to go into these allegations in the present writ petitions for more than one reason. The first is that these writ petitions are liable to be allowed on other points, entirely in the case of Writ-A No.15765 of 2014, and, partly, in Writ-A No.51031 of 2015, rendering an examination of the issue here unnecessary. The other is that the two Class-IV employees, around whose appointment the allegations of *mala fides*, manipulation and bias revolve, have not been impleaded as party respondents to either of the two writ petitions. Still more, the issue is already the subject matter of PIL

No.15464 of 2013, which is pending before a Division Bench of this Court at the instance of one Kamlesh Kumar, and, above all, this question ought be gone into in Writ-A No.20351 of 2022, after impleadment of all necessary parties, a petition though heard along with the present writ petitions, but not proposed to be decided by this judgment for reasons to be shortly indicated.

58. This takes us to the last of the third connected matters, to wit, Writ-A No.20351 of 2022 filed by Nanku Ram and Jai Prakash together, joining as co-petitioners. We have already introduced the relief claimed in the said petition. It is true that Writ-A No.15765 of 2014 and Writ-A No.51031 of 2015 would meet with different measures of success by the order that we propose to pass in those writ petitions, shortly. But, the wholesome or partial success of Writ-A No.15765 of 2014 and Writ-A No.51031 of 2015 would not lead to the conferment of immediate, indefeasible and final reinstatement in service to the petitioners in the sense that it is not a state of things that would not be subject to any question or possible change. It is true that Writ-A No.15765 of 2014, we propose to allow, granting final reinstatement in service to the petitioner, Jai Prakash, as a Class-IV employee with the Institution, and to the writ petitioner of Writ-A No.51031 of 2015, we propose to quash his removal from service and grant reinstatement, but with election to the Management to proceed against him afresh on two of the four charges and pass fresh orders in accordance with law. Jai Prakash, whom we propose to reinstate in service finally without the peril of facing any further inquiry, still faces the prospect of our judgment being questioned in appeal. This is not normally a consideration for this Court at all to take into account in passing judgment in a matter before us. But, so far as this petition is concerned, we have to take it into account, because the relief that

the petitioners seek is one about undoing the seventh respondent's promotion to the post of Assistant Clerk, staking their own claim to the promotion post.

59. Before the validity of promotion to the post of Assistant Clerk, already held by the seventh respondent is considered by the Court, the petitioners' rights to occupy their substantive Class-IV posts should be placed beyond all cavil and vagaries of challenge in appeal or, in case of the writ petitioner of Writ-A No.51031 of 2015, the risk of an adverse event in fresh proceedings for inquiry permitted to the Management to pursue, on two of the charges against Nanku Ram. We must also remark that it would be open to the petitioners in Writ-A No.20351 of 2022 to implead the other employee appointed to the Class-IV post, who has been transferred to the Adarsh Inter College, where his father is the Manager as well as the Manager of the said College, with the introduction of such pleadings and further relief questioning the appointment of Janardan Singh and Brijesh Kumar Shukla, as advised.

60. In the totality of these circumstances, it would not be appropriate for this Court to decide Writ-A No.20351 of 2022 by this judgment, which must await the settlement of rights of parties, that is to say, Jai Prakash and Nanku Ram, pursuant to the orders that we make in Writ-A No.15765 of 2014 and Writ-A No.51031 of 2015.

61. In the result, Writ-A No.15765 of 2014 succeeds and is **allowed**. The impugned order dated 01.02.2014 passed by the Principal of the Institution is hereby **quashed**. A *mandamus* is issued to the DIOS, the Manager and the Principal of the Institution, to ensure amongst themselves the immediate reinstatement of the petitioner, Jai Prakash, in service as Class-IV

employee with all consequential benefits of seniority and emoluments. The entire arrears of salary due to the petitioner for the period that he has remained out of service on account of the impugned order dated 01.02.2014, shall be paid to him within a period of three months of the date of receipt of a copy of this order by the respondents. The DIOS, in particular, shall ensure payment of arrears of salary to the petitioner. Current salary to the petitioner shall be paid forthwith.

62. Writ-A No.51031 of 2015 succeeds and is **allowed in part**. The impugned order dated 07.12.2013 passed by the Principal of the Institution and the order dated 19.07.2015 passed by the Committee of Management of the Institution are hereby **quashed**. The petitioner shall be reinstated in service as a Class-IV employee with the Institution forthwith, which shall be ensured amongst themselves by the DIOS, the Manager and the Principal, without any delay. He will be paid his current salary from the date of reinstatement. It will be open to the respondents to pursue fresh proceedings from the stage of the charge-sheet against the petitioner on Charges No.1 and 2 alone carried in the charge-sheet dated 04.05.2013, but not on the basis of Charges No.3 and 4, that figure there. The election to pursue fresh proceedings from the stage of charge-sheet is subject to the condition that such proceedings shall be taken, if elected to be pursued by the Principal of the Institution, strictly in the manner and by the procedure indicated in this judgment. The petitioner, Nanku Ram, shall be entitled to the arrears of his salary subject to the event in fresh proceedings, if elected to be pursued by the Institution. In the event, no fresh proceedings are elected to be taken against Nanku Ram, he will be entitled to 50% of the arrears of his emoluments for

the period that he has remained out of service on account of the orders impugned.

63. There shall be no order as to costs in both the writ petitions.

64. So far as Writ-A No.20351 of 2022 is concerned, the same shall be de-tagged and listed for hearing after three months before the appropriate Bench.

65. Let a copy of this order be communicated to the District Inspector of Schools, Prayagraj and the Manager and the Principal of the Vikramaditya Inter College, Sikandra, Prayagraj by the Registrar (Compliance).

Order Date :- July 07, 2025

Anoop/I. Batabyal

(J.J. Munir, J.)