



2026:AHC:94774

**RESERVED
A.F.R.**

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 4474 of 2016

Luxmi Shankar Tiwari and another

.....Petitioner(s)

Versus

State of U.P. and 4 others

.....Respondent(s)

Counsel for Petitioner(s)	: Kailash Singh Kushwaha, Kalpna Upadhyay, P.k. Upadhyay
Counsel for Respondent(s)	: C.S.C., Jitendra Singh, Nisheeth Yadav, Raj Kumar Dhama

Court No. - 52

HON'BLE MRS. MANJU RANI CHAUHAN, J.

1. Heard Mr. Kamlesh Kumar Yadav, learned counsel for the petitioners and Mr. Shailendra Singh, learned Standing Counsel for the State.
2. The present writ petition has been instituted by the petitioners praying for issuance of a writ, order or direction in the nature of certiorari for quashing the impugned order dated 20.12.2014 passed by the Director of Education (Basic), Uttar Pradesh, respondent no.2. A further prayer has been made for issuance of a writ in the nature of mandamus commanding the respondents not to interfere in the functioning and discharge of

duties of the petitioners pursuant to the aforesaid impugned order, and to ensure payment of their salary regularly, including arrears from the date the same became due, within a stipulated period.

3. Placing the brief facts of the case, learned counsel for the petitioners submits that petitioner no. 1 is working as a Class IV employee and petitioner no. 2 as a Class III employee in a Junior High School, namely Shiv Durgeshwar Mahabir Poorva Madhyamik Vidyalaya, Ashwari, District Varanasi. It is further submitted that the said institution was brought on the grant-in-aid list vide order dated 02.12.2006.

4. It is contended that the petitioners were initially appointed on 1.7.1980 and their appointments came to be duly approved by the District Basic Education Officer vide order dated 31.08.1987. In the said approval order, the name of petitioner no. 1 finds place at serial no. 7, whereas the name of petitioner no. 2 is reflected at serial no. 4.

5. It is further submitted that subsequently, when the relevant papers were forwarded on 21.07.2005 under the three-language formula, the names of the petitioners were duly reflected therein, showing petitioner no. 1 as a Class IV employee and petitioner no. 2 as a Class III employee. It is contended that the said documents lend further corroboration to the status and continuance of the petitioners in service.

6. Learned counsel has also drawn attention of the Court to the attendance register placed on record, which prima facie demonstrates that the petitioners have been continuously working as non-teaching staff in the institution in question.

7. It is further submitted by learned counsel for the petitioners that at the time when the institution was brought on the grant-in-aid list, the then Manager, in collusion with certain persons appointed on account of kith and kin, manipulated and fabricated the relevant records pertaining to the petitioners, so as to falsely project them as Assistant Teachers, despite the fact that they were, in reality, serving as non-teaching staff in the institution.

8. It is submitted that since the posts of the petitioners were altered in the official records by the then Manager with a view to extend undue benefit to his kith and kin, the petitioners were constrained to approach this Court by filing Civil Miscellaneous Writ Petition No.25487 of 2008 (Parshu Ram and others vs. State of U.P. and others).

9. The said writ petition was disposed of by this Court vide judgment and order dated 23.04.2012, whereby the Director of Education (Basic), U.P., Lucknow was directed to examine the matter and take an appropriate decision with regard to the grant-in-aid status of the institution, and to communicate the decision so taken to the petitioners as well as to the Committee of Management.

10. It is submitted that in purported compliance of the aforesaid order, the impugned order has been passed by the authority concerned, placing reliance upon the aforesaid fabricated documents.

11. It is submitted that the impugned order is wholly arbitrary, illegal and unsustainable in the eyes of law, being in clear violation of the directions issued by this Court in Civil Miscellaneous Writ Petition No. 25487 of 2008.

12. It is further submitted that the petitioners were initially appointed as Peon and Clerk, respectively, in the institution in question. Learned counsel contends that the provisions of the Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984 are not applicable to the appointments of the petitioners, inasmuch as the said Rules are prospective in nature and came into force subsequent to the date of their initial appointments.

13. It is submitted that the petitioners were initially appointed on 01.07.1980 on the posts of Peon and Clerk, respectively, in the institution in question. However, it is alleged that the then Manager, with a view to extend undue benefit to his kith and kin, manipulated and interpolated the records relating to the appointments of the petitioners after the institution was brought on the grant-in-aid list, with the intent to displace the petitioners and accommodate his own nominees in their place.

14. It is further submitted that the impugned order has been passed in complete disregard of the inquiry report submitted by respondent no. 3, which has not been duly considered by the authority while arriving at the impugned decision.

15. It is submitted that the Manager of the institution prepared forged and manipulated records by altering the designation of the petitioners from Peon and Clerk to that of Assistant Teachers. In such circumstances, respondent no. 2 ought not to have placed reliance upon such disputed documents while passing the impugned order, particularly when the authenticity of those records was itself under serious challenge.

16. It is further submitted that respondent no. 3, after conducting a spot inspection, submitted an inquiry report categorically recording that the petitioners were in fact working in the institution in question. However, the said inquiry report, being a material piece of evidence, has not been duly considered by the authority while passing the impugned order, rendering the same vitiated for non-consideration of relevant material.

17. Learned counsel appearing for respondent no. 4, on the other hand, submits that after the institution was brought on the grant-in-aid list in the year 2006, a managerial return was forwarded by the Manager of the institution for approval of the list of teachers who were allegedly working in the institution on the date it was taken on grant-in-aid.

18. It is contended that the said managerial return was subjected to scrutiny by a three-member District Level Committee comprising the Finance and Accounts Officer, the Basic Shiksha Adhikari, and the Senior Block Education Officer. Upon due examination, the Committee found the same to be not in accordance with law and rejected it. Consequently, the said proposal was not forwarded to the Regional Level Committee for financial approval.

19. It is further submitted that no financial sanction or approval was ever granted by the competent authority with respect to the said managerial return, and the same stood rejected by the District Level Committee vide order dated 28.09.2006.

20. Challenging the aforesaid list teachers of the institution, namely Parshu Ram and others, filed Civil Miscellaneous Writ Petition No. 25487 of 2008 before this Court. The said writ

petition was disposed of vide order dated 23.04.2012, whereby a direction was issued to the competent authority to examine the claim of the petitioners therein and to take an appropriate decision in accordance with law.

21. It is further submitted that in compliance of the aforesaid order, the Director of Basic Education undertook a detailed scrutiny of the appointments of all such teachers whose names were included in the managerial return. Upon such examination, it was found that the appointments had been made de hors the applicable rules and were not in consonance with the prescribed procedure. Consequently, the impugned order dated 20.12.2014 came to be passed.

22. In view thereof, it is contended that since the appointments were found to be illegal and not duly approved, no liability could be fastened upon the State to release salary to such persons from the State exchequer.

23. A perusal of the records placed on behalf of the Management indicates that the teachers concerned have submitted separate representations seeking to establish that approval was granted vide order dated 31.03.1987. However, it is noteworthy that two different documents bearing the same reference number have been brought on record, each purporting to grant approval, but containing materially different lists of teachers and ministerial staff.

24. This apparent discrepancy gives rise to serious doubt regarding the genuineness and authenticity of the documents relied upon, and prima facie suggests interpolation or fabrication at some stage. In such circumstances, the matter warrants

cautious scrutiny, as the possibility of forgery or manipulation of records by interested parties cannot be ruled out.

25. It is further submitted that pursuant to the directions issued by this Hon'ble Court, a fresh inquiry was conducted by the Assistant Basic Shiksha Adhikari, and a detailed report dated 05.12.2016 has been brought on record. The said report records that upon spot inspection of the institution, the petitioners were not found to be working on the posts of Clerk and Peon.

26. It is further noted in the report that the attendance register of the institution does not reflect the presence of the petitioners for the period from July, 2016 to December, 2016, which was also placed before the inspecting authority. The report further refers to written resignations allegedly tendered by Parmeshwar Singh on 25.06.1987 and by Lakshmi Shankar Tiwari on 25.05.1987.

27. On the strength of the aforesaid material, it is sought to be contended that the petitioners were not working in the institution as Clerk and Peon.

28. It was further brought to the notice of the authority that subsequent to the alleged resignation of the petitioners, fresh appointments had already been made on the said posts.

29. Learned counsel for the respondents further submits that the petitioners have sought to set up a case that they were appointed as Peon and Clerk, respectively, on 01.07.1980, at a time when the institution was unaided. It is contended that the institution was granted temporary recognition on 04.03.1981, and thereafter, permanent recognition was accorded on 02.09.1985.

30. It is further submitted that petitioner no. 2 claims to have been appointed as Clerk on 01.07.1980, whereas his date of birth is recorded as 08.06.1967. As such, he would have been only about 13 years of age at the time of the alleged appointment. This glaring inconsistency, according to the learned counsel, renders the claim set up by petitioner no. 2 inherently improbable and legally untenable, thereby casting serious doubt on the veracity of his appointment.

31. Learned counsel for the respondents further submits that the Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984 prescribe the qualifications and eligibility conditions for appointment to the post of Clerk. In particular, Rule 6 provides that a candidate seeking recruitment to any of the posts under the said Rules must have attained the age of 18 years and must not exceed 30 years of age as on the first day of July following the year in which the vacancy is notified.

32. It is further provided that the upper age limit is relaxable by five years in the case of candidates belonging to Scheduled Castes, Scheduled Tribes, and Dependants of Freedom Fighters, or as may be provided by the State Government from time to time.

33. Learned counsel for the respondents further submits that Rule 4 of the Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984 prescribes the minimum qualifications for appointment to the

post of Clerk, which require a candidate to have passed the Intermediate examination or its equivalent, along with a minimum typing speed of 30 words per minute in Hindi. Insofar as Group 'D' employees are concerned, the minimum qualification prescribed is passing Class V from an institution recognized by the State of Uttar Pradesh or an equivalent examination.

34. In view of the aforesaid statutory requirements, it is contended that a person aged about 13 years could neither possess the requisite educational qualifications nor satisfy the minimum age criteria, and therefore, could not have been legally appointed on the post of Clerk or even as a Class IV employee.

35. Learned counsel for the respondents further submits that the petitioners cannot be permitted to rely upon such documents, the authenticity whereof is itself under serious doubt. It is contended that the mandatory procedure prescribed for recruitment to the posts of Peon and Clerk has not been followed in the present case. No documentary evidence has been brought on record to establish issuance of any advertisement, intimation of vacancy to the Basic Shiksha Adhikari, participation of the nominee of the Basic Shiksha Adhikari in the selection committee, or compliance of other statutory preconditions as contemplated under the Rules of 1984.

36. In view thereof, it is argued that the records relied upon by the petitioners for claiming salary from the State exchequer are wholly unreliable and appear to be fabricated, and consequently, no right can be claimed on the basis of such documents.

37. Learned counsel for the respondents further submits that the petitioners had earlier claimed, in Civil Miscellaneous Writ Petition No. 25487 of 2008, that they had been working in the institution since the year 1977, as is evident from the pleadings and as noticed in the order dated 23.04.2012 passed by this Court.

38. However, in the present proceedings, the petitioners have set up an altogether different case by asserting that their appointments were made on 01.07.1980.

39. It is contended that this inconsistency in the stand taken by the petitioners clearly indicates that they have sought to improve upon their case by introducing a new version of facts, which, according to the learned counsel, demonstrates manipulation and undermines the credibility of their claim.

40. Learned counsel for the respondents further submits that after the institution was brought on the grant-in-aid list, the managerial return was forwarded for financial approval before the Regional Level Committee. However, the same was rejected, and consequently, no employee of the institution was held entitled to receive salary from the State exchequer.

41. It is further contended that the petitioners have claimed to have been appointed as Clerk and Peon in the institution on 01.07.1980 (as asserted), which is wholly contrary to law, inasmuch as the mandatory procedure prescribed for such appointments was not followed. The alleged appointments are, therefore, de hors the statutory rules, and no legal right accrues to the petitioners on the basis thereof. Accordingly, it is submitted that the petitioners are not entitled to any relief as claimed in the present writ petition.

42. It is submitted by learned counsel appearing for the respondent—Committee of Management that in Writ Petition No. 25487 of 2008, the petitioners themselves have categorically stated that petitioner no. 2 had joined the institution in the year 1977. In support thereof, a copy of the appointment schedule was annexed, wherein the date of birth of petitioner no. 2 has been recorded as 08.06.1967, and the date of initial appointment has been shown as 01.07.1977. Evidently, on the said date, petitioner no. 2 was merely about 10 years of age.

43. In the present writ petition, however, a different stand has been taken, and the date of appointment of petitioner no. 2 is now sought to be shown as 01.07.1980. Even if the said date is accepted, petitioner no. 2 would still be below 18 years of age at the time of alleged appointment.

44. Such inconsistent and contradictory pleadings, coupled with the fact that in both instances petitioner no. 2 was admittedly a minor and thus ineligible for appointment to any post in the institution, clearly indicate that the petitioners have misrepresented material facts and have attempted to mislead this Hon'ble Court as well as the respondent authorities. The conduct of the petitioners, therefore, prima facie amounts to playing fraud upon the Court.

45. Learned Standing Counsel, Mr. Shailendra Singh, has placed reliance upon the judgment rendered in **Ram Ashish Chaudhary and others vs. State of U.P. and others**, reported in 2003 (1) ESC 170 (All) wherein a Division Bench of this Court has categorically held that any appointment made in favour of a minor is per se illegal and void in the eyes of law.

46. Learned counsel appearing for the respondent–Committee of Management, while denying the averments made in paragraph 6 of the writ petition, submits that no such Tribhasha Anudaan was ever granted by the State Government to the institution in question on 21.07.2005, and the document relied upon by the petitioners is wholly fabricated and has been brought on record with a fraudulent intent.

47. It is further submitted that a bare perusal of the said document reveals that the date of birth of petitioner no. 2 has been shown as 08.06.1967, while his date of appointment is indicated as 01.07.1980. Even on the face of it, such an appointment would be impermissible in law, as the petitioner was admittedly below the legally permissible age for appointment at the relevant time.

48. Moreover, any document pertaining to the alleged selection and appointment of the petitioners is in clear contravention of the provisions of the applicable Rules of 1984, and therefore cannot be relied upon for any legal sanctity.

49. Learned counsel for the respondent–Committee of Management has further submitted that the alleged appointments of the petitioners, even if assumed to have been made, are in clear violation of the provisions of Rules 7, 9, 10 and 11 of the Rules, 1978, as well as Rules 13, 14, 15 and 16 of the Rules, 1984. Consequently, such appointments are wholly illegal and void ab initio in the eyes of law.

50. Heard learned counsel for the parties and perused the material available on record.

51. This Court is constrained to observe that the petitioners have failed to approach the Court with clean hands. The inconsistency in their pleadings with regard to the date of appointment, initially asserted to be the year 1977 and subsequently altered to 1980, is not a mere trivial or inadvertent discrepancy, but one that strikes at the very root of their claim. Such mutually destructive stands clearly betray a calculated attempt to improve upon the case and to mislead the Court. It is a well-settled principle of law that a litigant invoking the extraordinary and equitable jurisdiction of this Court is under a solemn obligation to disclose full, true, and correct facts. Any suppression, concealment, or distortion of material particulars disentitles such a litigant from seeking discretionary relief under Article 226 of the Constitution of India. The conduct of the petitioners, therefore, renders them undeserving of any indulgence from this Court.

52. Even if the version set up by the petitioners is accepted arguendo, it remains an admitted and incontrovertible position that petitioner no. 2 was below 18 years of age at the time of the alleged appointment. An appointment of a minor to a public post is per se illegal, void, and non est in the eyes of law. Such an appointment lacks legal sanctity from its very inception and is liable to be treated as nullity.

53. It is a settled principle of law that any appointment of a minor to a post in an institution is impermissible and void ab initio. The Division Bench judgment in **Ram Ashish Chaudhary (supra)** unequivocally affirms this legal position.

54. It is a settled principle that no right, whether equitable or legal, can flow from an act which is void ab initio. Consequently, any claim founded upon such an inherently illegal appointment is wholly unsustainable and cannot be countenanced by this Court.

55. Furthermore, the respondents have rightly contended that the alleged appointments are in flagrant violation of the statutory provisions governing recruitment, namely, the Rules of 1978 and the Rules of 1984. The said Rules prescribe a mandatory procedure for selection and appointment, including issuance of proper advertisement, constitution of a duly constituted selection committee, and approval by the competent authority. Non-compliance with such mandatory requirements vitiates the entire selection process and renders the appointments wholly illegal and unsustainable in the eyes of law.

56. The appointments in question are ex facie in clear violation of the mandatory statutory provisions governing recruitment. There is nothing on record to demonstrate compliance with the essential procedural requirements, such as issuance of a proper advertisement inviting applications, constitution of a duly constituted selection committee, participation of authorized nominees of the competent authority, or grant of approval by the competent authority.

57. Such fundamental lapses go to the root of the matter and render the entire selection process vitiated. It is well settled that any appointment made in contravention of statutory rules is illegal, void, and unenforceable in the eyes of law, and no legal right can be claimed on the basis thereof.

58. A perusal of the record reveals the existence of conflicting documents bearing identical reference numbers yet containing materially divergent particulars. Such inconsistencies give rise to grave and legitimate doubts regarding their authenticity and genuineness. The document dated 21.07.2005, heavily relied upon by the petitioners, does not inspire confidence and appears to have been introduced with the oblique intent of lending an artificial veneer of legitimacy to an otherwise untenable claim.

59. It is a well-settled principle of law that no claim for salary can be sustained against the State exchequer unless the appointment in question is lawful and duly approved by the competent authority. In the present case, the petitioners have failed to establish the legality of their appointments; no financial sanction or approval was ever accorded, and the managerial return itself stood rejected by the competent authority. In such circumstances, the claim for payment of salary is wholly misconceived and legally untenable.

60. The law is unequivocal that no right can accrue from an illegal appointment, and the Courts cannot be called upon to recognize or legitimize acts which are void ab initio. It is equally well settled that equitable considerations, howsoever compelling, cannot be permitted to override or dilute the mandate of statutory provisions.

61. In view of the foregoing discussion, this Court is of the considered opinion that the petitioners have miserably failed to establish the legality or validity of their alleged appointments. Their claims are fraught with material inconsistencies and suffer from a clear lack of credibility. The impugned order, upon careful

scrutiny, does not suffer from any illegality, perversity, or infirmity warranting interference by this Court in exercise of its writ jurisdiction.

62. Consequently, the petitioners are not entitled to any relief, including the claim for payment of salary from the State exchequer.

63. The writ petition, being devoid of merit, is accordingly **dismissed**.

(Mrs. Manju Rani Chauhan,J.)

April 28, 2026
Rahul Goswami