



2026:AHC-LKO:54233

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 7109 of 2026

Vinod Kumar Singh

.....Petitioner(s)

Versus

State of U.P. Thru. Secy. Secondary Edu. Lko. and 4 others

.....Respondent(s)

Along with :

1. Writ - A No. 14526 of 2021:

Vinod Kumar Singh

Versus

State of U.P. Thru. Secy. Secondary Education Lko. Andors.

Counsel for Petitioner(s) : Anju Raghuvanshi, Niranjana Singh,
Pratyush Mishra, Sanjay Misra

Counsel for Respondent(s) : C.S.C.

Court No. - 6

HON'BLE PANKAJ BHATIA, J.

1. Heard Sri Sanjay Mishra, the counsel for the petitioner and Sri S. K. Singh, who appears for the respondents.
2. The writ petition No.14526 of 2021 was filed by the petitioner challenging the order dated 22.10.2020, whereby claim of the petitioner for payment of salary and for regularisation was rejected.
3. The facts, in brief, are that the petitioner was appointed by the Committee of Management, the respondent no.5. At the time of appointment on 23.11.1999, the petitioner possess the degree of 'Shiksha Alankar'. It is stated that as, the petitioner was not being paid the salary, he approached this court by filing a Writ Petition No.708 (SS) of 2000 in which an interim order came to be passed on 19.04.2000 and for compliance of the said order, a contempt petition No.1237 of 2000 was filed. However, the State Government has filed a Special Appeal No.319 of 2001, against the said order dated 19.04.2000 which came to be dismissed on 27.10.2009.
4. It is recorded that after the dismissal of the Special Appeal, the letter dated 18.06.2010 was written wherein guidance was sought from the Director of

Education. It also transpires from the fact that subsequent to the appointment of the petitioner, one post of Assistant Teacher came to be vacant on 30.06.2010 on which, a requisition was sent by Committee of Management for appointment of a teacher in Hindi Subject, however, no appointment could be made in pursuance to the requisition, as such, an order came to be passed for payment of salary to the petitioner from July, 2010 till the regularly appointed candidate in the Hindi Subject, as requisitioned by the Management, is made. It is claimed by the petitioner that the petitioner was paid salary in furtherance of the said order from July 2010 up to 14.08.2013 and thereafter salary was stopped.

5. The contention of the counsel for the petitioner is that the State Government has introduced subjects 'Science' and 'Mathematics' to be taught in the schools and as, there was no sanctioned posts for the said, the Committee of Management had appointed the petitioner, who possess the degree of B.Sc. Mathematics along-with 'Shiksha Alankar', which according to the petitioner is equivalent to the required degree namely Bachelor of Education.

6. The said claim of the petitioner was rejected vide order dated 22.10.2020 mainly on the ground that without sanction of the post, no salary can be paid to the petitioner in terms of the mandate of Rule 9 of Uttar Pradesh High Schools and Inter Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 and that the petitioner did not did not possess the requisite qualification, as is prescribed in the Appendix-A, Chapter-II of the UP Education Manual, wherein the requisite qualification prescribed is graduation in the subjects plus the person should be trained. The word 'trained' itself has been defined in Appendix-A of Regulation 1 of Chapter II to be post-graduate training qualification of any university or institution as specified in the earlier para or any equivalent degree. The order impugned was passed on two grounds - firstly, there was no sanctioned post and the petitioner did not have the requisite qualification and the qualification of the petitioner is certificate issued by Rashtriya Patrachar Sansthan Kanpur is not a degree which is prescribed and is not equivalent thereto. Challenging the order dated 22.10.2020, the writ petition was filed.

7. The contention of the counsel for the petitioner is that the State Government itself has held the degree of 'Shiksha Alankar' to be equivalent to B.Ed. in its communication dated 06.09.2000, contained as Annexure no.4

as well as in a letter written by the Samaj Kalyan Vibhag on 25.06.2002, contained in Annexure no.5. It is further argued by the counsel for the petitioner that the petitioner is working since appointment in the year 1999 till date, although he was paid the salary only for a term of three years by the State Government and thus, considering the experience gained by the petitioner, direction should be issued for payment of salary to the petitioner and for regularisation.

8. The counsel for the petitioner places reliance on the judgment of this court in ***Civil Misc. Writ Petition No.47873 of 1999 (Ram Chandra Dwivedi vs. Director of Education decided on 19.03.2004)*** wherein, the nature of the appointment prescribed under section 16-E was considered and in the facts of the case, a show cause notice was issued to the petitioner therein after twenty three years, this court had held that job experience gained by the petitioner there of about thirteen years, would not be cancelled after long delay. The counsel for the petitioner also places reliance on the orders passed by the Hon'ble Supreme Court in ***Special Leave to Appeal (C) No.14907 of 2009 vide its judgment dated 14.07.2017*** wherein it was observed that the petitioners have been in service for a long period, a view was formed that their appointments ought not to be disturbed only on the ground of alleged lack of qualification, which is contested by the petitioners therein. In the light of the said, it is argued that the appointment of the petitioner should be regularised and direction be issued for payment of salary.

9. The counsel for the State, on the other hand, opposes the said prayer on the ground that the petitioner since the very inception did not have the requisite qualification as prescribed in the statute and the post was also not sanctioned as is the mandate of Section 9 of the Payment of Salaries Act. It is further argued by the State that this Court in ***Writ Petition No.29888 of 2011 decided on 19.07.2011*** has held that the degree of Shiksha Alankar, which is possessed by the petitioner, is un-recognized and is not equivalent to B.Ed. Qualification as was decided by this court in the case of ***Gulam Rasul Warsi vs. State of U.P.; Writ Petition No.26807 of 2004***. The Standing Counsel also places reliances on amended Section 33-G of the UP Secondary Education (Services Selection Boards) Act, 1982 which prescribed that the case of regularisation can be considered only if the person possess the requisite qualification as prescribed under the Intermediate Education Act. 1921.

10. The counsel for the respondents further places reliance upon the Full Bench Judgment of this Court in *Special Appeal Defective No.673 of 2014 decided on 12.05.2015* to argue that in the event there is no sanctioned post, the appointments cannot be made.

11. In the light of the arguments as made by the parties and referred to above, it is essential to notice the scheme of the Act namely, the Intermediate Education Act, the mandate of Payment of Salaries Act and its consequences. The Intermediate Education Act was enacted for establishment of a Board of High School and Intermediate Education and for regulating and supervising the system of High School and Intermediate Education in the State of U.P. In terms of the mandate of the said Act, Appendix-A defines 'trained' under Clause II, which is as under :

"2. Under it in reference to prescribed qualifications the word "trained" means post-graduate training qualification such as, L.T., B.T., B.Ed. S.C. or M.Ed of any university or institution as specified in earlier para or any equivalent (Degree or Diploma). It also includes departmental A.T.C. and C.T. with minimum teaching experience of five years. J.T.C./B.T.C. grade teacher shall also be considered to be. C.T. if he has worked in C.T. grade at least for five years."

The eligibility for appointment of teacher for intermediate classes, is prescribed in same Appendix-A, which is as under :

3.	<i>Mathematics Teacher for Intermediates (Classes 11-12)</i>	<i>MA or M.Sc. in Mathematics</i> or <i>BA (Hons) with three years course in Mathematics or B.Sc. (Hons)</i>	"Trained"
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Section 33-G of UP Secondary Education (Services Selection Boards) Act, as amended in the State of U.P., enacted for regularisation of the teachers, is as under :

"33-छ अल्पकालिक रिक्तियों के सापेक्ष कतिपय और नियुक्तियों का विनियमितीकरण-

(1) प्रधानाचार्य या प्रधानाध्यापक से भिन्न ऐसे किसी अध्यापक को प्रबन्धक द्वारा मौलिक नियुक्ति दी जायेगी जो, -

(क) समय-समय पर यथासंशोधित उत्तर प्रदेश माध्यमिक शिक्षा सेवा आयोग (कठिनाइयों को दूर करना) (द्वितीय) आदेश, 1981 के पैरा-2 के अनुसार अल्पकालिक रिक्ति के सापेक्ष प्रवक्ता श्रेणी या प्रशिक्षित स्नातक श्रेणी में 07 अगस्त, 1993 को या उसके पश्चात् किन्तु 25 जनवरी, 1999 के पश्चात् नहीं, पदोन्नति द्वारा या सीधी भर्ती द्वारा नियुक्त किया गया था और ऐसी रिक्ति को बाद में मौलिक रिक्ति में परिवर्तित कर दिया गया था;

(ख) प्रवक्ता श्रेणी या प्रशिक्षित स्नातक श्रेणी में, धारा 18 के अनुसार मौलिक रिक्ति के सापेक्ष पदोन्नति द्वारा अथवा सीधी भर्ती द्वारा 07 अगस्त, 1993 को या उसके पश्चात् किन्तु 30 दिसम्बर, 2000 के पश्चात् नहीं, तदर्थ आधार पर नियुक्त किया गया था;

(ग) इण्टरमीडिएट शिक्षा अधिनियम, 1921 के उपबन्धों के अधीन विहित अर्हताएं रखता हो या उनके अनुसार ऐसी अर्हताओं से छूट प्राप्त हो;

(घ) ऐसी नियुक्ति के दिनांक से उत्तर प्रदेश माध्यमिक शिक्षा सेवा चयन बोर्ड (संशोधन) अधिनियम, 2016 के प्रारम्भ होने के दिनांक तक संस्था में निरन्तर कार्य कर रहा हो;

(ङ) उक्त उपधारा के खण्ड (ख) के अधीन विहित प्रक्रियानुसार धारा 33-ग की उपधारा (2) के खण्ड (क) में निर्दिष्ट चयन समिति द्वारा मौलिक रूप से नियुक्ति के लिए उपयुक्त पाया गया है।

(2) (क) मौलिक नियुक्ति के लिए अध्यापकों के नामों की संस्तुति उनकी नियुक्ति के दिनांक से यथा अवधारित ज्येष्ठता क्रम में की जायेगी:

(ख) यदि दो या अधिक ऐसे अध्यापक एक ही दिनांक को नियुक्त किये गये हों तो आयु में ज्येष्ठ अध्यापक की संस्तुति पहले की जायेगी।

(3) उपधारा (1) के अधीन मौलिक रूप से नियुक्त प्रत्येक अध्यापक को ऐसी मौलिक नियुक्ति के दिनांक से परीक्षा पर समझा जायेगा।

(4) ऐसा अध्यापक, जो उपधारा (1) के अधीन उपयुक्त न पाया जाय और ऐसा अध्यापक जो उक्त उपधारा के अधीन मौलिक नियुक्ति पाने के लिए पात्र न हो, ऐसे दिनांक को, जैसा राज्य सरकार आदेश द्वारा विनिर्दिष्ट करे, नियुक्ति पर नहीं रह जायेगा।

(5) इस धारा की किसी बात से यह नहीं समझा जायेगा कि कोई अध्यापक मौलिक नियुक्ति के लिए हकदार है, यदि उत्तर प्रदेश माध्यमिक शिक्षा सेवा चयन बोर्ड (संशोधन) अधिनियम, 2016 के प्रारम्भ के दिनांक को ऐसी रिक्ति पहले से ही भरी हुयी थी या ऐसी रिक्ति के लिए

चयन इस अधिनियम के अनुसार पहले से ही कर लिया गया है।

(6) तदर्थ अध्यापकों और अल्पकालिक रिक्ति के सापेक्ष नियुक्त अध्यापकों की सेवा उत्तर प्रदेश माध्यमिक शिक्षा सेवा चयन बोर्ड (संशोधन) अधिनियम, 2016 के प्रारम्भ होने के दिनांक से विनियमित की जायेगी।

(7) तदर्थ एवं अल्पकालिक रिक्तियों के सापेक्ष नियुक्त अध्यापकों के विनियमितीकरण में आरक्षण नियमों का पालन किया जाएगा।

(8) ऐसे तदर्थ शिक्षक, जो उत्तर प्रदेश माध्यमिक शिक्षा सेवा आयोग (कठिनाईयों का निवारण) आदेश, 1981 के अनुसार या उत्तर प्रदेश माध्यमिक शिक्षा सेवा चयन बोर्ड अधिनियम, 1982 की धारा 18 के अनुसार नियुक्त नहीं किये गये हैं और अन्यथा जो केवल मा. न्यायालय के अन्तरिम/अन्तिम आदेश के आधार पर वेतन प्राप्त कर रहे हैं, विनियमितीकरण के हकदार नहीं होंगे।"

The mandate of the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 enacted by the State and in particular Section -9 thereof, is extracted hereinbelow :

"9. Approval for post - No institution shall create a new post of teacher or other employee except with the previous approval of the Director, or such other officer as may be empowered in that behalf by the Director.

12. In the light of the said statutory provisions as extracted above, it is essential to notice that for any person to be appointed for teaching intermediate classes, the requisite qualification must be fulfilled. It is essential that the approval of the post, for teaching in an institution is to be created with the approval of the Director or any other officer as may be empowered in that behalf by the Director.

13. In the present case, there was no approval for the post on which the petitioner was appointed by the Committee of Management. The petitioner did not possess the requisite qualifications as prescribed in Appendix-A. The argument of the counsel for the petitioner, based upon equivalence to the degree of 'Shiksha Alankar', is liable to be rejected as in the communication dated 06.09.2000, as relied upon by the counsel for the petitioner, does not prescribe for equivalence as is being argued, even the letter dated 25.06.2002, written by the Samaj Kalyan Vibhag, does not

prescribe for equivalence of the degree of 'Shiksha Alankar' to that of Bachelor of Education, as is required in Appendix A. Thus, this court has no hesitation in holding that the appointment of the petitioner was made without any approval of the post and without the petitioner having the requisite qualification.

14. As regards the submission of the counsel for the petitioner that he has gained experience, the said argument is liable to be rejected once again, the same would not create any equity in favour of the petitioner in view of the Full Bench judgment of this court in *Special Appeal Defective No.673 of 2014 decided on 12.05.2015* and the judgment of the Hon'ble Apex Court in the case of *Shesh Mani Shukla vs. District Inspector of Schools, Deoria and others; (2009) 15 SCC 436* wherein, the Supreme Court had held as under in para 19 :

"19. It is true that the appellant has worked for a long time. His appointment, however, being in contravention of the statutory provision was illegal, and, thus, void ab initio. If his appointment has not been granted approval by the statutory authority, no exception can be taken only because the appellant had worked for a long time. The same by itself, in our opinion, cannot form the basis for obtaining a writ of or in the nature of mandamus; as it is well known that for the said purpose, the writ petitioner must establish a legal right in himself and a corresponding legal duty in the State. (See Food Corpn. of India v. Ashis Kumar Ganguly.) Sympathy or sentiments alone, it is well settled, cannot form the basis for issuing a writ of or in the nature of mandamus. (See State of M.P. v. Sanjay Kumar Pathak.)"

15. In the absence of there being a sanctioned post and the petitioner not having the requisite qualification, no interference is called for in the order dated 22.10.2020.

16. The writ petition no.14526 of 2021 is **dismissed**. However, the petitioner would be entitled to claim salary from the Committee of Management.

17. Writ Petition No.7109 of 2026 has been filed by the petitioner aggrieved against the action of the respondents in sending the requisition or making appointment on the post of Assistant Teacher, L.T. Grade Mathematics till

the claim of regularisation is considered in favour of the petitioner.

18. As, the petitioner has been found to be ineligible to be appointed from the first day itself, such a relief, as claimed, cannot be granted.

19. The writ petition No.7109 of 2026 is also **dismissed**.

(Pankaj Bhatia,J.)

August 6, 2026
VNP/-