

Neutral Citation No. - 2024:AHC-LKO:36779

AFR

Reserved on 9.4.2024

Delivered on 17.5.2024

Court No. - 20

- (1) **Case :-** WRIT - A No. - 8517 of 2023
Petitioner :- Tirthraj
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko. And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (2) **Case :-** WRIT - A No. - 8516 of 2023
Petitioner :- Nisha Rani
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko. And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (3) **Case :-** WRIT - A No. - 8518 of 2023
Petitioner :- Paras Nath Gupta
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (4) **Case :-** WRIT - A No. - 8519 of 2023
Petitioner :- Mahendra Pratap Singh
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (5) **Case :-** WRIT - A No. - 8520 of 2023
Petitioner :- Paras Nath Mishra
Respondent :- State Of U.P. Thru. Secy. Secondary Education And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (6) **Case :-** WRIT - A No. - 8521 of 2023
Petitioner :- Chhavi Nath Maurya
Respondent :- State Of U.P. Thru. Secy. Secondary Edu. Lko And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (7) **Case :-** WRIT - A No. - 8523 of 2023
Petitioner :- Bal Krishna
Respondent :- State Of U.P. Thru. Secy., Secondary Education Lucknow And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (8) **Case :-** WRIT - A No. - 8524 of 2023
Petitioner :- Makferak Ahmad
Respondent :- State Of U.P. Thru. Secy. Secondary Edu. Lko And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (9) **Case :-** WRIT - A No. - 8537 of 2023
Petitioner :- Jagadish Narayan Mishra
Respondent :- State Of U.P. Thru. Secy. Secondary Edu. Lko And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (10) **Case :-** WRIT - A No. - 8538 of 2023
Petitioner :- Nagendra Bahadur Singh
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (11) **Case :-** WRIT - A No. - 8539 of 2023
Petitioner :- Yogendra Bahadur Singh
Respondent :- State Of U.P. Thru. Secy. Secondary Education And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (12) **Case :-** WRIT - A No. - 8542 of 2023
Petitioner :- Arvind Kumar Singh
Respondent :- State Of U.P. Thru. Secy. Secondary Edu. Lko And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (13) **Case :-** WRIT - A No. - 8544 of 2023
Petitioner :- Jai Prakash
Respondent :- State Of U.P. Thru. Secy. Secondary Education And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (14) **Case :-** WRIT - A No. - 8546 of 2023
Petitioner :- Hari Prasad Mishra
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko. And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (15) **Case :-** WRIT - A No. - 8547 of 2023
Petitioner :- Manoj Kumar Singh
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko. And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (16) **Case :-** WRIT - A No. - 8790 of 2023
Petitioner :- Phool Chandra @ Phool Chandra Pandey
Respondent :- State Of U.P. Thru. Secy. Secondary Edu. Lko And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (17) **Case :-** WRIT - A No. - 8820 of 2023
Petitioner :- Chandra Prakash Gupta
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko. And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (18) **Case :-** WRIT - A No. - 8829 of 2023
Petitioner :- Vijay Pratap Singh
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko. And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (19) **Case :-** WRIT - A No. - 8830 of 2023
Petitioner :- Vimal Kumar Tiwari
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko. And 4 Others
Counsel for Petitioner :- Harsha Yadav, Alok Kumar Pandey
Counsel for Respondent :- C.S.C.

With

- (20) **Case :-** WRIT - A No. - 8832 of 2023
Petitioner :- Mohan Lal Gupta
Respondent :- State Of U.P. Thru. Secy. Secondary Edu. Lko And 4 Others

Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (21) **Case :- WRIT - A No. - 8833 of 2023**
Petitioner :- Nagendra Singh
Respondent :- State Of U.P. Thru. Secy. Secondary. Edu. Lko And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (22) **Case :- WRIT - A No. - 8836 of 2023**
Petitioner :- Brijesh Kumar Srivastava
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko. And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (23) **Case :- WRIT - A No. - 8838 of 2023**
Petitioner :- Ambrish Kumar Jaiswal
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (24) **Case :- WRIT - A No. - 8843 of 2023**
Petitioner :- Umesh Singh
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (25) **Case :- WRIT - A No. - 8849 of 2023**
Petitioner :- Arvind Kumar Singh
Respondent :- State Of U.P. Thru. Secy. Seondary Education, Lucknow And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (26) **Case :- WRIT - A No. - 8850 of 2023**
Petitioner :- Subhash Chandra Singh
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko. And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (27) **Case :-** WRIT - A No. - 8860 of 2023
Petitioner :- Narendra Kumar Singh
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko. And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (28) **Case :-** WRIT - A No. - 8861 of 2023
Petitioner :- Babu Lal Gupta
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko. And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (29) **Case :-** WRIT - A No. - 8864 of 2023
Petitioner :- Virendra Kumar Singh
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (30) **Case :-** WRIT - A No. - 9778 of 2023
Petitioner :- Anita Shukla
Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko And 3 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (31) **Case :-** WRIT - A No. - 1689 of 2024
Petitioner :- Man Bodh Tiwari
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Education Lko. And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (32) **Case :-** WRIT - A No. - 1691 of 2024
Petitioner :- Umakant Mishra
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Education Lko. And 4 Others
Counsel for Petitioner :- Harsha Yadav
Counsel for Respondent :- C.S.C.

With

- (33) **Case :-** WRIT - A No. - 2860 of 2024
Petitioner :- Shiv Kumar Pathak
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Education And

7 Others

Counsel for Petitioner :- Pawan Kumar Pandey, Shashank Singh

Counsel for Respondent :- C.S.C., Raj Kr Singh Suryvanshi

With

(34) **Case :-** WRIT - A No. - 2422 of 2024

Petitioner :- Randheer Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Edu. Lko And 7 Others

Counsel for Petitioner :- Pawan Kumar Pandey

Counsel for Respondent :- C.S.C., Rishabh Tripathi

With

(35) **Case :-** WRIT - A No. - 2462 of 2024

Petitioner :- Ramesh Kumar

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Education Lko. And 7 Others

Counsel for Petitioner :- Pawan Kumar Pandey

Counsel for Respondent :- C.S.C., Raj Kr Singh Suryvanshi

With

(36) **Case :-** WRIT - A No. - 2478 of 2024

Petitioner :- Om Prakash Mishra

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Education Lko. And 7 Others

Counsel for Petitioner :- Pawan Kumar Pandey, Ajay Kumar

Counsel for Respondent :- C.S.C., Raj Kr Singh Suryvanshi, Rishabh Tripathi

With

(37) **Case :-** WRIT - A No. - 1215 of 2024

Petitioner :- Ravi Shankar Upadhyaya

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Edu. Deptt. Civil Sectt. Lko And 5 Others

Counsel for Petitioner :- Mahendra Pratap Singh, Ranjit Singh

Counsel for Respondent :- C.S.C., Pallavi Vatsala

Hon'ble Shree Prakash Singh, J.

1. Heard learned counsels for the petitioners and Sri Shailendra Kumar Singh, learned Chief Standing Counsel and Sri Vivek Shukla, learned Additional Chief Standing Counsel for the State.

2. Notices to the concerned respondents other than the State are hereby dispensed with.

3. Core legal issues are common in all bunch of the writ petitions, hence, the members of Bar were invited to address and all these writ petitions are decided by common Judgment and order.

4. Chronic cases are brought before this Court by way of the bunch of the writ petitions wherein the petitioners have assailed their respective orders of rejection of regularisation, which were passed by the Committee headed by the Joint Director of Education of respective regions.

5. The crux of the issue is that the petitioners were appointed either under the Second Removal of Difficulties Order framed under the Act No.5 of 1982 or under unamended Section 18 of Uttar Pradesh Secondary Education (Service Selection Boards) Act, 1982 (hereinafter referred to as 'the Act 1982'. Subsequently, vide the UP Act No.7 of 2016, a new Section 33-G is inserted with effect from 22.3.2016, thus, it was incumbent upon the Regional Level Committee to thoroughly examine the case of the petitioners but it's contended that the Regional Level Committees, ignoring the provisions of law and without ensuring the records of each and every petitioners from the committee of management concerned, passed the orders.

6. Section 33-G is extracted as under:-

"33-G (1) Any teacher, other than the Principal or the Head Master, who-

(a) was appointed by promotion or by direct recruitment in the lecturer's grade or trained graduate grade on or after August 7, 1993 but not later than January 25, 1999 against a short term vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) order, 1981 as amended from time to time, and such vacancy was subsequently converted into a substantive vacancy;

(b) was appointed by promotion or by direct recruitment on or after August 7, 1993, but not later than December 30, 2000 on adhoc basis against substantive vacancy in accordance with Section 18, in the Lecturer grade or Trained Graduate grade;

(c) possesses the qualifications prescribed under, or is exempted from such qualification in accordance with, the provisions of the Intermediate Education Act, 1921;

(d) has been continuously serving the institution from the date of such appointment up to the date of the commencement of the Uttar Pradesh Secondary Education Services Selection Board (Amendment) Act, 2016:

(e) has been found suitable for appointment in a substantive capacity by the Selection Committee referred to in clause (a) of sub-section (2) of Section 33-C in accordance with the procedure prescribed under clause (b) of the said sub-section;

Shall be given substantive appointments by the Management.

(2)(a) The names of the teachers shall be recommended for substantive appointment in order of seniority as determined from the date of their appointment;

(b) if two or more such teachers are appointed on the same date, the teacher who is elder in age shall be recommended first.

(3) Every teacher appointed in a substantive capacity under sub-section (1) shall be deemed to be on probation from the date of such substantive appointment.

(4) A teacher who is not found suitable under sub-section (1) and a teacher who is not eligible to get a substantive appointment under the said sub-section shall cease to hold the appointment on such date as the State Government may by order specify.

(5) Nothing in this section shall be construed to entitle any teacher to substantive appointment if on the date of the commencement of the Uttar Pradesh Secondary Education Services Selection Board (Amendment Act), 2016 such vacancy had already been filled or selection for such vacancy has already been made in accordance with this Act.

(6) The services of the adhoc teachers and the teachers who have been appointed against short term vacancies shall be regularised from the date of commencement of the Uttar Pradesh Secondary Education Services Selection Board (Amendment Act), 2016.

(7) Reservation Rules shall be followed in regularization of adhoc teachers and teachers who are appointed against short term vacancies.

(8) Adhoc teachers, who have not been appointed either in accordance with the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981 or in

accordance with Section 18 of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 and are otherwise getting salary only on the basis of interim/Final orders of the court shall not be entitled for regularization."

7. While promulgating the aforesaid provisions, two important conditions were provided for regularisation; firstly that any teacher, other than the principal or headmaster appointed by promotion or by direct recruitment in the lecturers grade or trained graduate grade, on or after 7.8.1993, but not later than 25.1.1999, and secondly, appointed on a short term Vacancy in accordance with paragraph 2 of Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, which was subsequently converted into a substantive vacancy. The various committees of management all over the Uttar Pradesh, looking into the shortage of teachers for imparting education, appointed teachers in their institutes and once the financial concurrence was not granted by the District Inspector of Schools concerned, time and again, such appointed teachers approached the Hon'ble High Court, wherein, interim orders were passed while directing the District Inspector of Schools to pay salary and as a result, they were getting the salary since almost last more than two decades.

8. It is worth to notice that the provisions contained under section 33-G of the Act 1982, is a beneficiary scheme launched by the State Government looking into the plight of the teachers who were serving for more than two decades and their service conditions were not regulated as there was no statutory provisions. It has long been held that in our constitutional scheme, the State is a welfare State and action of State must transpire that decision taken by the State be fair, reasonable, transparent and justifiable. So far as the present case is concerned, it is the pious duty of the respondent authorities to examine that the teachers, who are serving for a long period of time, whether falls under the mandate of section 33-G of the Act 1982, and for such consideration, two sources have pivotal role to get it decided as those are having factual

information; firstly, the committee of management of the institution concerned and secondly, the District Inspector of Schools.

9. When this Court examines the impugned orders in the bunch of writ petitions, it is apparent that it has been noted by the Regional Level Committee in all the impugned orders that '*उपरोक्त वर्णित विन्दुओं से सम्बन्धित वांछित पत्रजात न तो जिला विद्यालय निरीक्षक, प्रतापगढ़ द्वारा दिया गया और न ही प्रबन्धतंत्र द्वारा ही प्रस्तुत किया गया।*

10. From perusal of the aforesaid observations, it is crystal clear that the records with respect to the appointment of the petitioners were not placed before the Regional Level Committee. This Court does not enter into the reasons that who is responsible for not furnishing the documents but the fact remains that the Regional Level Committee has taken decision without the records. Further the Regional Level Committee has also not given any reason that as to when and how the District Inspector of Schools and the committee of management concerned were directed to produce the record in the connected writ petitions whereas the aforesaid observations has been made in a cyclostyle manner, in all the connected writ petitions, which in fact indicates that the Regional Level Committee was ignorant to the importance of the records which could only be availed from the authority abovesaid.

11. This Court has also taken note of the fact that the opportunity of personal hearing to the concerned petitioners/ affected teachers have also not been accorded so as to sub-serve the compliance of the rules of principles of natural justice. The matter, which is in hand to decide, is not on the premises that there is no regularisation rules prevailing but petitioners have been deprived of their valuable rights without ensuring the due opportunity of hearing and further prior coming to the conclusion, the records were not procured from the committee of management as well as the District Inspector of Schools concerned.

12. The State counsel during the course of his argument has also failed to substantiate that with what manner the Regional Level Committee sought for the records from the committee of management and from the District Inspector of Schools, however, the District Inspector of Schools himself is the member of the Regional Level Committee.

13. From perusal of the orders of Regional Level Committee, it is evident that the District Inspector of Schools concerned is one of the members and further there is provision under the UP Intermediate Education Act, 1921 (hereinafter referred to as 'Act 1921') that if a committee of management is violating any instruction or direction of the educational authority, the same can be forced by invoking the provisions prescribed under the Act, 1921, but it is nowhere mentioned in the orders that either the District Inspector of Schools or the committee of management concerned have ever called upon or forced to submit the relevant documents with respect to the appointments or whatsoever the records were required for the purpose of considering the regularisation of such teachers/petitioners.

14. This Court is also of the considered opinion that an employee should not be deprived of any benefit or the provisions of law only because of the fact that some error has been committed by the employer including the State and if it is so, the same must be rectified. So far as the present petitioners are concerned, their appointments were made under certain exigencies and the grave requirements for imparting education, wherein the State machinery was totally failed to make appointment of teachers, which is the paramount duty of a welfare State. The petitioners were appointed in the educational institutions, which are in the remote areas of the Province and those are fulfilling the aim and object of the constitutional scheme, thereby imparting education, which is the fundamental right.

15. In fact, the State, while looking into the aforesaid Act No.7 of 1982 while inserting provision 33-G, provided that those teachers other

than principal or headmaster, appointed by promotion or direct recruitment, after 7.8.1993, but not later than 30.12.2000, shall be given substantive appointment, but the impugned orders clearly show that Regional Level Committee without the reports of the Committee of Management and District Inspector of Schools, has passed the orders, which in fact failed the very purpose of prescribing the scheme under section 33-G of the Act 1982. The orders passed by the Regional Level Committee are in a very cursory manner and without ensuring the records from the committee of management and the District Inspector of Schools concerned, which cannot be approved of.

16. Earlier also, the matter came up for consideration before this Court in Special Appeal (Defective) No. 103 of 2023 wherein the controversy is settled while providing that it is the duty and responsibility of the State authorities to consider and adjudge the suitability of the teachers for substantive appointment under Section 33-G of the Act 1982 and their continuation in the ad hoc capacity in the institution concerned is subject to only such consideration. Further, the order passed in the aforesaid special appeal has also been affirmed in Special Leave to Appeal (C) No.13023 of 2023, vide order dated 17.7.2023. Thus, there remains no dispute so far as the consideration of the petitioners/ teachers under section 33-G of the Act 1982, is concerned.

17. So for as the issue with respect to ignoring the opportunity to the committee of management and calling for the record are concerned, this Court is not unmindful to the rules of principles of natural justice which is not a mere legal formality but the same constitutes substantive obligation which should reflect in the decision making process of an adjudicating authority. This rule is guaranteed against arbitrary action in all the proceedings, namely, judicial, quasi-judicial and administrative. The fundamental principle enshrined in the Indian jurisprudence; audi alteram partem, which means a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken

and, thus, in this view of the matter, the issue involved in all these petitions, have become more relevant and needs to be rectified in the light of the abovesaid principle.

18. I have also gone through the master counter affidavit filed in leading writ petition from which it is evident that there is no specific reason assigned regarding non-availability of the record which was incumbent upon the committee of management to furnish before the Regional Level Committee, however, the same could have been ensured by the Regional Level Committee.

19. It's so long settled that every order either administrative or judicial must stand on its own legs. The constitutional Bench of Hon'ble Apex Court in the case of Mohindhr Singh Gill and another Vs. Chief Election Commissioner, New Delhi and ohters, (1978) 1 SCC 405, has very categorically held as under.

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji?:"

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

20. In view of the above submissions and discussions, it emerges that the orders impugned in all the writ petitions have been passed in a cyclostyle manner and without ensuring the records from the committee

of management and the District Inspector of Schools and, therefore, those assail infirmity and erroneousness.

21. Thus, all the writ petitions succeeds and are **allowed**.

22. Resultantly, the impugned orders passed by the Regional Level Committee headed by the Chairman, namely, Regional Joint Director of Education concerned, in all the respective writ petitions are hereby quashed.

23. All the matters are relegated back to the Regional Level Committees concerned to pass order afresh within a period of three months, after calling the records from the committee of management as well as the District Inspectors of Schools concerned and subsequently verifying those records and consulting with the committee of management, and while affording opportunity of hearing to the teachers concerned, if so required. The scheme provided under Section 33-G of the Act, 1982 shall strictly be adhered to.

24. In addition, it is further provided that the petitioners of all the writ petitions are entitled to continue in service and shall be paid salary without any further break. It is further directed that the petitioner as well as the manager of the committee of management shall ensure their presence and would co-operate with the Regional Level Committee, as and when required.

Order Date :- 17.5.2024

Ram Murti