ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.04.2010

BEFORE
THE HON'BLE SUNIL AMBWANI, J.
THE HON'BLE K.N.PANDAY, J.

Civil Misc. Writ Petition No.52252 of 2007

Dr. Madhu Rana ...Petitioner
Versus
State of U.P. and others ...Respondent

Counsel for the Petitioner:
Sri Ashok Khare
Sri V.D. Shukla
Shri Anand Kumar Singh

Counsel for the Respondent:
Sri V.P. Varshney
Sri Pushpendra Singh
CSC.

Constitution of India Act-226-Cost certificate issued by Jharkhand State-not admissible in another-state Jharkhand as well as in U.P. 'Kohri' cost recognized as Backward Cost-Cost certificate issued by with name of his father-valid-rejection of candidature by commission-illegal Quashed.

Held: Para 7

In U.P. Public Service Commission Vs. Sanjay Kumar Singh (Supra), it was held by the Supreme Court that person certified as SC/ST in relation to one State, if migrates to another State, would not be entitled to benefits available to SCs/STs in the State in which he migrated unless he/she belongs to SC/ST in that State also. In the present case sub caste 'koheri' falls under the category of Other Backward Class both in the States of U.P. and Jharkhand. The Government Order dated 17.5.1984 providing for admissibility of caste certificate in the name of a father also does not prohibit the petitioner to be as Backward Class as she belongs to the same caste even after her marriage. The certificate issued in the name of her father is a valid certificate for the purpose of admissibility of the caste of the petitioner.

Case Law discussed:
[2003 SCC (L&S) 1081], Writ Petition No.297 of 2008 (S/B) decided on 16.12.2008.

(Delivered by Hon'ble Sunil Ambwani, J.)

1. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri V.D. Shukla for the petitioner. Learned standing counsel appears for respondent Nos. 1 and 2. Sri V.P. Varshney, learned counsel appears for the U.P. Public Service Commission - respondent No.3.

2. The petitioner has applied for the post of Medical Officer (Ayurved & Unani) in pursuance to the advertisement No. 1/2003-04 issued by the U.P. Public Service Commission, published in Employment News dated 21 - 27 June 2003. Her candidature, as Other Backward Class (OBC), has not been accepted by the Commission by its communication dated 31.8.2007 on the ground that her caste certificate has been issued from the State of Jharkhand.

3. The petitioner belongs to 'koheri' sub caste, which is mentioned at Sl. No. 7 of Schedule 1 of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act 1994. Her father was permanently residing at Village Arsande, Post Khanke, District Ranchi in the State of Jharkhand. She was issued a caste certificate dated 19.9.1997 by the competent authority, giving the name of her father Sri Nand Kishore Rana,

belonging to sub caste 'koheri' and falls under the category of Backward Class. She got married to Dr Bhola Nath Maurya at Varanasi on 27.4.2003. The marriage was registered at Allahabad as per certificate dated 1.7.2003. She claims that at present she is residing at village Chanderpur, Basmahua, Tehsil Phoolpur, District Allahabad, and has been issued a caste certificate by the Tehsildar, Phoolpur on 11.7.2003 also belonging to OBC, through her husband, giving the name of her husband as Sri Bhola Nath Maurya.

4. In the counter affidavit of Dr. Jai Shankar Shukla, Incharge Medical Officer, Government Ayurvedic Hospital, Allahabad filed on behalf of respondent Nos. 1 and 2, it is stated that the Public Service Commission has rejected her application and that proper answer will be given by the Commission.

5. Sri V.P. Varshney, counsel for the Public Service Commission, on the basis of instruction received by him from the Commission after seeking clarification from the State Government, would submit that under Government Order dated 17.5.1984 it is clear that caste certificate is to be issued on the basis of birth, and it should have been issued in the name of father and further that caste certificates issued by other State are not applicable in the State of U.P.

6. Learned counsel for the petitioner relied upon a Supreme Court decision in the case of **U.P. Public Service Commission Allahabad Versus Sanjay Kumar Singh** [2003 SCC (L&S) 1081] and a judgement of Uttrakhand High Court in **Jyoti Bala Versus State of Uttarakhand and another** in writ petition No. 297 of 2008 (S/B) decided on 16.12.2008 - Special Leave Petition arising out of the said judgement was dismissed on merits by the Supreme Court.

7. In U.P. Public Service Commission Vs. Sanjay Kumar Singh (Supra), it was held by the Supreme Court that person certified as SC/ST in relation to one State, if migrates to another State, would not be entitled to benefits available to SCs/STs in the State in which he migrated unless he/she belongs to SC/ST in that State also. In the present case sub caste 'koheri' falls under the category of Other Backward Class both in the States of U.P. and Jharkhand. The Government Order dated 17.5.1984 providing for admissibility of caste certificate in the name of a father also does not prohibit the petitioner to be as Backward Class as she belongs to the same caste even after her marriage. The certificate issued in the name of her father is a valid certificate for the purpose of admissibility of the caste of the petitioner.

8. An interim order was passed in this case on 25.10.2007 whereby the petitioner was permitted to appear in the interview, but her result was not declared without leave of the court.

9. The writ petition is **allowed.** The letter of the U.P. Public Service Commission dated 31.8.2007 rejecting the petitioner's candidature for OBC category is quashed. The Commission will declare the result of the petitioner treating her to be OBC candidate.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.04.2010

BEFORE
THE HON'BLE AMITAVA LAHA, J.

Civil Misc. Writ Petition No. 35372 of 1998

Dr. Umesh Chandra Maheshwari ...Petitioner
Versus
Mathura/Vrindavan Development Authority and another ...Respondents

Counsel for the Petitioner:
Sri J.J. Munir
Sri Amit Daga
Sri M.K. Gupta

Counsel for the respondents :
Smt. Sunita Agarwal,
Sri R.N. Pandey and
Standing Counsel.

Uttar Pradesh Planning of Development Act 1973-Sanction of map-claim of betterment charges-without such betterment of locality as per section 35 and 36 of Act- no any regulation or by laws framed to that extant-held-levy of betterment charges-illegal.

Held: Para 11

Even under Section 57 of the Act the authority has power to make bye-laws. Therefore, it is crystal clear that either in the case of development fees or in the case of betterment charges the rules, regulations and bye-laws have to be framed to attract the same. A decision by the Board without sanction of the authority to claim the external development charge is without any sanction of law. More particularly, there are no words available in the Act by the name of "external development charges". The words "external development charges" are either synonyms or as far as closer to 'betterment fees' since it relates to the area external to the building concerned, which has been developed on the basis of the sanctioned plan upon payment of charges, being development charges amongst others. If such betterment charge is being claimed then the authority has to satisfy that there is a betterment of the locality in compliance with Sections 35 and 36 of the Act. But if no such development is done to claim the betterment charges and no rules, no regulations and no bye-laws are framed to that extent, obviously the claim in the name of external development happens to be external to the law and a claim to enrich the authority unjustly, therefore, such claim can not be held to be sustainable. Hence, the notices/orders impugned in this writ petition are liable to be quashed and are quashed. Thus, the writ petition is allowed, however, without imposing any cost.

(Delivered by Hon'ble Amitava Lala, ACJ)

1. The petitioner has filed this writ petition with the following prayers to issue:

"(i) a writ, order or direction, including a writ in the nature of certiorari, quashing the impugned order dated 8.9.1998 passed by the respondent no. 1 (annexure -4) and the order dated 23.9.1998 passed by the respondent No. 1 (annexure-7);
(ii) a writ, order or direction in the nature of mandamus, restraining the respondents from demanding from the petitioner an amount of Rs.4,71,995/- as development charge and the amount of Rs.2,35,997.50 as interest on the said amount, in any manner, whatsoever;
(iii) any other writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case; and
(iv) award costs of the petition to the petitioner."

2. The fact remains that the petitioner made an application in the prescribed proforma to the respondent Authority for sanction of a building plan for proposed nursing home at Mathura which the petitioner aspired to establish, being a medical doctor of eminence in his field. The petitioner, for the proposed nursing home, for which he applied on 15th October, 1994 under the scheme name and style of Maheshwari Hospital, held a site located at Delhi Byepass Road at village Jaisindhpura Dangar, Mathura and the land at the site consisted of agricultural land originally belonging to the petitioner. Although the area fell within the development area of the respondent authority, no development of any kind as per plan etc. has been undertaken in the area which lies outside the city limits. The petitioner's application for sanction of building plan was registered as application no. 172-N under Section 15(1) of the Uttar Pradesh Urban Planning and Development Act, 1973 (hereinafter referred to as the 'Act') and a demand was raised against the petitioner for levy of betterment charge to the tune of Rs.1,36,609/- plus stacking charge to the tune of Rs.16,916/-, thus totalling to an amount of Rs.1,53,525/-. In response to the aforesaid demand of betterment charges plus stacking charges as conditions precedent to sanction of petitioner's building plan, the petitioner deposited an amount of Rs.1,53,525/- with the respondent-Development Authority. After deposit of the necessary betterment charges plus stacking charges as demanded, the respondent authority vide its memo dated 10th May, 1995 granted sanction to the petitioner's building plan and a memo to that effect was issued by the secretary of the respondent Development Authority approving the building plan submitted by the petitioner. After obtaining the sanction from the respondent Authority, the petitioner proceeded to construct the proposed nursing home at the proposed site strictly in accordance with the building plan sanctioned by the Development Authority and the construction was completed in the month of April, 1997. Thereafter the hospital was inaugurated on 6th September, 1997. It has been specifically stated that the hospital in question is situated on the petitioner's ancestral agricultural land, which is now banjar land and that in the dire vicinity of the hospital, no development work or provisions of any facilities for improvement of the surrounding areas has been carried out by the respondent Development Authority in any manner, whatsoever. However, the petitioner received a memo dated 8th September, 1998, exactly one year after the inauguration, in which it was mentioned that the respondent Authority has found upon scrutiny of the said application that the petitioner had not paid betterment charge to the tune of Rs.4,71,995/- and that on the said unpaid amount, he was further held liable to pay an interest of Rs.2,35,997.50, thus, totalling to an amount of Rs.7,07,992.50.

3. The petitioner has further stated that the impugned memo dated 08th September, 1998 has been issued by the Development Authority unilaterally without affording any opportunity of hearing under show cause against the proposed levy or assessment.

4. Against this background, the petitioner filed various representations inclusive of the representation dated 23rd September, 1998 and 26th September,1998

addressed to the Vice-Chairman, Mathura/Vrindavan Development Authority raising various objections about the levy. The petitioner received a cryptic reply on 23rd September, 1998 with reference to an earlier representation dated 17th September, 1998 filed by the petitioner on the same ground, reiterating the demand raised by means of the impugned memo dated 08th September, 1998. The petitioner sought allusion at this juncture to the provisions of Sections 35 and 36 of the Act, which refer to the levy and assessment of betterment charge. Such sections are quoted hereunder:

"35. Power of Authority to levy betterment charges.--(1) Where in the opinion of the Authority, as a consequence of any development scheme having been executed by the Authority in any development area, the value of any property in that area which has benefited by the development, has increased or will increase, the Authority shall be entitled to levy upon the owner of the property or any person having an interest therein a betterment charge in respect of the increase in value of the property resulting from the execution of the development;

Provided that no betterment charge shall be levied in respect of lands owned by Government:

Provided further that where any land belonging to Government has been granted by way of lease or licence by Government to any person, then that land and any building situate thereon shall be subject to a betterment charge under this section.

(2) Such betterment charge shall be an amount—

(i) in respect of any property situate in the township or colony, if any, developed or in other area developed or redeveloped equal to one-third of the amount; and

(ii) in respect of property situated outside such township, colony or other areas, as aforesaid, not exceeding one-third of the amount, by which the value of the property on the completion of the execution of the development scheme, estimated as if the property were clear of buildings, exceeds the value of the property prior to such execution, estimated in like manner.

36. **Assessment of betterment charge by Authority.--**(1) When it appears to the [Vice-Chairman] that any particular development scheme is sufficiently advanced to enable the amount of the betterment charge to be determined, the [Vice-Chairman] may, by an order made in that behalf, declare that for the purpose of determining the betterment charge the execution of the scheme shall be deemed to have been completed and shall thereupon give notice in writing to the owner of the property or any person having an interest therein that the [Vice-Chairman] proposes to assess the amount of the betterment charge in respect of the property under Section 34.

(2) The [Vice-Chairman] shall then assess the amount of betterment charge payable by the person concerned after giving such person an opportunity to be heard and such person shall, within three months from the date of receipt of the notice in writing of such assessment from the [Vice-Chairman] inform the [Vice-Chairman] by a declaration in writing that he accepts the assessment or dissents from it.

(3) When the assessment proposed by the [Vice-Chairman] is accepted by the person concerned within the period

specified in sub-section (2) such assessment shall be final.

(4) If the person concerned dissents from the assessment or fails to give the [Vice-Chairman] the information required by sub-section (2) within the period specified therein the matter shall be determined by the [Chairman] [and such determination shall not be questioned in any Court]."

5. The petitioner has submitted that a perusal of the aforesaid provisions indicates that a betterment charge can only be levied by the Development Authority as a consequence of any development having been executed by the Authority in an area, as a result of which any property in the area is benefited by the development, and has been increased or will increase in value. It is further submitted by the petitioner that the assessment of betterment charge by the Authority is a sine quo non with the scheme which has sufficiently advanced and assessed the amount of charges from the persons concerned after giving them opportunity of hearing within a period of three months from the receipt of such notice, which is required to be served mandatorily. It is further provided vide sub-section 4 of Section 36 of the Act that if the assessee dissents from the proposed assessment, the matter shall be finally determined by the Chairman of the Development Authority. According to the petitioner, a bare perusal of the statutory scheme of Sections 35 and 36 of the Act patently reveals that the respondent Authority has violated the terms of the above provisions and has levied the charges in complete violation of the provisions and the period stipulated by the aforesaid statutory provisions. Moreover, the respondent Authority once demanded and accepted the betterment charges from the petitioner is not entitled to raise fresh demand for the betterment charges once again with higher value and the interest upon the said charge without ever demanding the said charges in the past.

To resolve the dispute, we have firstly gone through the appropriate Act in this respect i.e. the Uttar Pradesh Urban Planning and Development Act, 1973. From the preface of the Act, we find that the Act is made to provide for the development of certain areas of Uttar Pradesh according to plan and for matters ancillary thereto. Section 2(ggg) of the Act, as introduced by 1997 amendment, prescribes development fee, which is as follows:

"**2 (ggg)** "development fee" means the fee levied upon a person or body under Section 15 for construction of road, drain, sewer line, electric supply and water-supply lines in the development area by the Development Authority."

Section 2 (ii) of the Act has been inserted by way of 1997 amendment which speaks for mutation charges, as follows:

"**2(ii)** "mutation charges" means the charges levied under Section 15 upon the person seeking mutation in his name of a property allotted by the Authority to another person."

Section 2 (kk) of the Act was also included by amendment of 1997, which speaks about stacking fees, as follows:

"**2(kk)** "stacking fees" means the fees levied under Section 15 upon the person or body who keeps building materials on the land of the Authority or on a public street or public place."

Section 2(II) of the Act speaks for water fees. This Section was also inserted by way of amendment in the year 1997, which is as follows:

"2(ll) "water fees" means the fees levied under Section 15 upon a person or body for using water supplied by the Authority for building operation or construction of building."

Therefore, all the clauses were inserted by 1997 amendment for the purpose of recovery of appropriate fees or charges as per Section 15 of the Act. Section 15 of the Act is quoted hereunder:

"15. Application for permission-- (1) Every person or body (other than any department of Government or any local authority) desiring to obtain the permission referred to in Section 14 shall make an application in writing to the Vice Chairman in such form and containing such particulars in respect of the development to which the application relates as may be prescribed by bye-laws.

(2) Every application under sub-section (1) shall be accompanied by such fees as may be prescribed by rules.

(2-A) The Authority shall be entitled to levy development fees, mutation charges, stacking fees and water fees in such manner and at such rates as may be prescribed:

Provided that the amount of stacking fees levied in respect of an area which is not being developed or has not been developed, by the Authority, shall be transferred to the local authority within whose local limits such area is situated.

(3) On the receipt of an application for permission under sub-section (1), the Vice-Chairman after making such inquiry as it considers necessary in relation to any matter specified in clause (d) of sub-section (2) of Section 9 or in relation to any other matter, shall, by order in writing either grant the permission, subject to such conditions, if any, as may be specified in the order or refuse to grant such permission:

Provided that before making an order refusing such permission, the applicant shall be given a reasonable opportunity to show cause why the permission should not be refused:

Provided further that the Vice-Chairman may before passing any order of such application give an opportunity to the applicant to make any correction therein or to supply any further particulars of documents or to make good any deficiency in the requisite fee with a view to bringing it in conformity with the relevant rules or regulations:

Provided also that before granting permission, referred to in Section 14, the Vice-Chairman may get the fees and the charges levied under sub-section (2-A) deposited;

(4) Where permission is refused, the grounds of such refusal shall be recorded in writing and communicated to the applicant.

(5) Any person aggrieved by an order under sub-section (4) may appeal to the Chairman against that order within thirty days from the communication thereof and may after giving an opportunity of hearing to the appellant, and if necessary also to the representative of the Vice-Chairman either dismiss the appeal or direct the Chairman to grant the permission applied for with such modifications, or subject to such conditions, if any, as may be specified.

(6) The Vice-Chairman shall keep in such form as may be prescribed by regulations a register of applications for permission under this section.
(7) The said register shall contain such particulars, including information as to the manner in which applications for permission have been dealt with, as may be prescribed by regulations, and shall be available for inspection by any member of the public at all reasonable hours on payment of such fee not exceeding rupees five as may be prescribed by regulations.
(8) Where permission is refused under this section, the applicant or any person claiming through him shall not be entitled to get refund of the fee paid on the application for permission but the Vice-Chairman may, on an application for refund being made within three months of the communication of the grounds of the refusal under sub-section (4) direct refund of such portion of the fee as it may deem proper in the circumstances of the case.
(9) If at any time after the permission has been granted under sub-section (3), the Vice-Chairman is satisfied that such permission was granted in consequence of any material misrepresentation made or any fraudulent statement or information furnished, he may cancel such permission, for reasons to be recorded in writing and any work done thereunder shall be deemed to have been done without such permission:

Provided that a permission shall not be cancelled without affording to the person or body concerned a reasonable opportunity of being heard."

6. We also find from such section that sub-section (2-A) has also been inserted by selfsame amendment of the year 1997. It has provided only the aforesaid four charges.

7. From the paragraph 13 of the counter affidavit, we find that the respondent-development authority has relied upon a judgment reported in **(1996) 10 SCC 425 (State of U.P. and others Vs. Malti Kaul (Smt.) And Another)**, which has also been referred by the petitioner. The said judgment requires a discussion with the facts of the present case. The specific case of the respondent authority is as follows:

"In this connection it may be pertinent to state here that under the provisions of the Act and the Regulations the petitioner was in law required to deposit the external development charges prior to the sanction of the plan and even though the Development Authority vide its letter dated 22nd October, 1994 had intimated the petitioner about this fact, yet at the time of sanction of the plan this fact escaped attention of the Development Authority as a result of which the external development charges were not demanded from the petitioner at the time of sanction of the plan. This mistake could always be rectified and when it came to the knowledge of the Development Authority that the petitioner had not deposited the external development charges, it immediately called upon the petitioner by means of the notice dated 8th September, 1998 to deposit the same. The Development Authority, as stated above, had clearly resolved in its meeting held on 3rd September, 1993 to levy the external development charges at the rate of Rs.90/- per square metre and, as such, the petitioner was required to deposit a sum of 6762x90 = Rs.608598.00 towards external development charges. It may be mentioned that 6762.20 sq. metres is the total area of the plot of the petitioner. However, as the petitioner had already

deposited an amount of Rs.1,36,603/- towards betterment charges at the time of sanction of the plan, this amount was deducted from the amount of Rs.608598.00. Thus, the petitioner was required to deposit only an amount of Rs.4,71,995.00 plus interest."

8. In support of the respondents' contention, a supplementary counter affidavit has been filed showing the resolution of the Board of development authority in this regard being dated 03rd September, 1993.

9. According to us, the development fees under Section 15 (2-A) of the Act, as inserted by U.P. Act 3 of 1997, is different from betterment charges as under Section 35 and/or Section 36 of the Act. Both belong to different chapters. When development belongs to Chapter V of the Act, betterment charges under Sections 35 and 36 belong to Chapter VIII. Hence, when the charges were levied by the respondent authority for giving sanction of plan of development of the building in question within the developed area, it is obviously called as development fees but not the betterment charge, which is a mistaken approach on the part of the authority. In other words, betterment charge as indicated by the authority in the real sense is the development fees. On acceptance of such development fees amongst others, the plan for development of the building was sanctioned and following the same the construction was made by the petitioner. So far as betterment charges are concerned, that can be assessed by the authority, provided the State Government by notification in the gazette makes rule for carrying out the purposes of the Act. Section 55 of the Act gives such rule making power to the State Government. Section 55 of the Act is quoted hereunder:

"**55. Power to make rules**.--(1) The State Government may by notification in the Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(a) the levy of fee on a memorandum of appeal under sub-section (5) of Section 15 or under sub-section (3) of Section 27;
(b) the procedure to be followed by the Chairman in the determination of betterment charge, and the powers that it shall have for that purpose;
(c) any other matter which has to be or may be, prescribed by rules.

(3) All rules made under this Act shall, as soon as may be after they are made, be laid before each House of the State Legislature, while it is in session for a total period of not less than thirty days, extending in its one session or more than one successive session, and shall, unless some later date is appointed, take effect from the date of their publication in the Gazette subject to such modifications or annulments as the two Houses of the Legislature may, during the said period, agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder."

10. So far as power to make regulations under Section 56 of the Act is concerned, under its sub-section 2 (g), as added by U.P. Act 13 of 1975, the authority can make the regulations for the

fee to be paid on an application for permission under sub-section (1) of Section 15. Section 15 (1) of the Act relates to development of the land in the development area, thereby development fees can be charged for the purpose of construction of the building and sanction of the plan. Section 56 of the Act being relevant is also quoted hereunder:

"**56. Power to make regulations.**-- (1) An Authority may, with the previous approval of the State Government, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Authority.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely—

(a) the summoning and holding of meetings of the Authority, the time and place where such meetings are to be held, the conduct of business at such meetings and the number of members necessary to form a quorum thereat;
(b) the powers and duties of the Secretary and Chief Accounts Officer of the Authority;
(c) the salaries, allowance and conditions of service of the Secretary, Chief Accounts Officer and other officers and employees;
(d) the procedure for carrying out the functions of the Authority under Chapters III and IV;
(e) the form of register of application for permission and the particulars to be contained in such register;
(f) the management of the properties of the Authority;
(g) the fee to be paid on an application for permission under sub-section (1) of Section 15;
(h) the fee to be paid for inspection or obtaining copies of documents and maps;
(i) any other matter which has to be or may be prescribed by regulations.

(3) Until an Authority is established for an area under this Act any regulation which may be made under sub-section (1) may be made by the State Government and any regulation so made may be altered or rescinded by the Authority concerned in exercise of its powers under sub-section (1)."

11. Even under Section 57 of the Act the authority has power to make bye-laws. Therefore, it is crystal clear that either in the case of development fees or in the case of betterment charges the rules, regulations and bye-laws have to be framed to attract the same. A decision by the Board without sanction of the authority to claim the external development charge is without any sanction of law. More particularly, there are no words available in the Act by the name of "external development charges". The words "external development charges" are either synonyms or as far as closer to 'betterment fees' since it relates to the area external to the building concerned, which has been developed on the basis of the sanctioned plan upon payment of charges, being development charges amongst others. If such betterment charge is being claimed then the authority has to satisfy that there is a betterment of the locality in compliance with Sections 35 and 36 of the Act. But if no such development is done to claim the

betterment charges and no rules, no regulations and no bye-laws are framed to that extent, obviously the claim in the name of external development happens to be external to the law and a claim to enrich the authority unjustly, therefore, such claim can not be held to be sustainable. Hence, the notices/orders impugned in this writ petition are liable to be quashed and are quashed. Thus, the writ petition is allowed, however, without imposing any cost.

12. In any event, passing of this order will not affect the right of the respondent authority from claiming betterment charges if the area is really improved to attract so and appropriate rules and/or regulations and/or bye-laws are framed in connection thereto.

ORIGINAL JURISDCITION
CIVIL SIDE
DATED: ALLAHABAD 14.04.2010

BEFORE
THE HON'BLE ARUN TANDON, J.

Civil Misc. Writ Petition No.14773 of 2010

Dr. Ali Ahmad ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri Kashif Zaidi
Sri S.M.A. Abdy

Counsel for the Respondents:
Sri R.C. Dwivedi
Sri R.N. Yadav
C.S.C.

Intermediate Education Act-1921, Section 9-Sanction of two additional post for class 4 and 5th primary section-attached with Inter Section-instead of competent authority the Joint Regional Director-no authority to create new post-in the circumstances the action of Joint Director against the verdict of full Bench decision of Gopal Dubey case-not proper-direction issued to pay salary from his own fund by the joint director-govt. to take action against erring officer.

Held: Para 5

Since the Joint Director is insisting upon payment of salary of such appointees even in absence of sanctioned posts, the Court directs that the salary of the appointees i.e. respondents no. 8 and 9 shall be paid by Regional Director of Education from his own salary. For this purpose he shall transmit the necessary amount through Bank Draft from his own salary account, by 7th of each month for payment to respondents no. 8 & 9.

Case law discussed:
[(1999) 1 UPLBEC.

(Delivered by Hon'ble Arun Tandon, J.)

1. On record it is an order of the Regional Inspectorix of Girls School, Varanasi Region, Varanasi dated 1.5.1989 sanctioning two additional sections for classes 4 and 5 (primary section attached to Sajida Girls Inter College). There is no order of the competent authority sanctioning any additional posts of teachers for the new sections so permitted.

2. Counsel for the petitioner submits that in view of the Full Bench of this Court in the case of ***Gopal Dubey Vs. District Inspector of Schools, Maharajganj and another reported in [(1999) 1 UPLBEC*** and in absence of any order of the competent authority i.e. Director under the provisions of Section 9 of Act no. 24/1971 creating any new posts after permission to start of new section

the payment of salary could not be made to appointees working against non sanctioned posts through State Exchequer.

3. The Regional Joint Director of Education, Varanasi who is present in the Court with the original records, contends that with reference to a letter and the Regional Inspectoress of Girls School dated 1.5.1989, which records that in view of the permission to start new sections in classes 4 and 5, the total number of primary sections in the institution will increase to 15 read with the Manak as provided under the Government Order dated 21.5.1979 (which according to him provides that for each Section, there shall be a separate teacher) it has to be presumed that 15 posts were duly created for primary teachers. Such ignorance on the part of the Regional Director of Education to the legal position as explained by full Bench of this Court in the case of Gopal Dubey (supra) speaks volumes about the manner in which public money is being utilized. The Full Bench of this Court in the case of **Gopal Dubey** (supra) has held as follows:

"In Section 9 of the Act it is mandated that no institution shall create a new post of teacher or other employee except with the prior approval of the Director or such other officer as may be empowered in that behalf by the Director."

"The result is that for the purpose of creating a new post of teacher or other employee for/in connection with a new subject, which it has been permitted to open, the management has to obtain prior approval of the Director as required under Section 9 of the payment of salaries Act. This statutory mandate cannot be said to have been satisfied by raising a presumption on the basis of recognition granted for that subject."

4. This court has no hesitation to record that the stand taken by the Regional Director of Education, Varanasi is nothing but an eye wash for illegal payments/approval granted against non sanctioned posts. No posts can be said to be created for the institution merely because additional sections are permitted to open or merely because under the Manak two additional posts of teachers can be said to be permissible. Manak is only a prescription of the minimum required for teaching but the same cannot tantamount to creation of posts. The full Bench in the case of ***Gopal Dubey*** (supra) has held that a separate order under Section 9 has to be passed by the competent authority creating the post before payment can be released through State Exchequer. It appears that the Joint Director is unaware of the statutory provisions and the law as explained by the Full Bench or either he has deliberately created a situation wherein unauthorised payment is sought to be made to the persons appointed against non-existing posts.

5. Since the Joint Director is insisting upon payment of salary of such appointees even in absence of sanctioned posts, the Court directs that the salary of the appointees i.e. respondents no. 8 and 9 shall be paid by Regional Director of Education from his own salary. For this purpose he shall transmit the necessary amount through Bank Draft from his own salary account, by 7th of each month for payment to respondents no. 8 & 9.

6. Parties are at liberty to exchange further affidavits by the next date.

7. List on 10.5.2010.

8. Copy of this order be forwarded to the Secretary, Secondary Education, Govt. of U.P., Lucknow for necessary action against the Joint Director of Education, Varanasi.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.04.2010

BEFORE
THE HON'BLE R.K. AGRAWAL, J.

Special Appeal No.972 of 2007

U.P.S.R.T.C. and others ...Appellants
Versus
Mohd. Rais Khan ...Respondent

Counsel for the Petitioner:
Samir Sharma

Counsel for the Respondents:
Sri W.H. Khan,
Sri J.H. Khan

Payment of Gratuity Act, 1972- Delay in Payment-Interest claimed on delayed amount-objection that if not claimed-earliest possible opportunity can not be allowed-held amount of gratuity not given immediate of retired- which forced the petitioner to approach again and again-direction of 12% interest by Single Judge Justified.

Held Para-3
Sri Samir Sharma, learned counsel submitted that the claim of interest is hit by the principles of constructive resjudicata as in Writ Petition No. 55594 of 2000, the contesting respondents had not claimed payment of interest which should have been claimed in the earlier writ petition. We find that even though the contesting respondents had not claimed payment of interest in the year 2000 in the writ petition filed in the year 2000 but, this court had not adjudicated the claim regarding payment of gratuity relating to the contesting respondent. Moreover, it is not denied that the contesting respondent retired on 31.1.1999 and the amount of gratuity was not paid immediately in accordance with the scheme of Payment of Gratuity Act, 1972, thus, forcing the contesting respondent to approach this Court on a number of occasions to get the retiral dues

(Delivered by Hon'ble R.K. Agrawal, J.)

1. The present special appeal has been filed against the judgment and order dated 4.4.2007 passed by the learned single Judge wherein, while allowing the writ petition preferred by the contesting respondent, a direction was issued to the present appellants to pay 12% simple interest to the respondent on the delayed payment of gratuity from a date of one month after his retirement till the amounts were actually paid. Interest would be payable on each of the three instalments of gratuity paid.

2. We have heard Sri Samir Sharma, learned counsel for the appellant and Sri Gulrej Khan appearing for the respondents and have perused the impugned judgment and order dated 4.4.2007 passed by the learned single Judge giving rise to the present appeal as also the documents filed along with the memo of appeal.

3. Sri Samir Sharma, learned counsel submitted that the claim of interest is hit by the principles of constructive *resjudicata* as in Writ Petition No. 55594 of 2000, the contesting

respondents had not claimed payment of interest which should have been claimed in the earlier writ petition. We find that even though the contesting respondents had not claimed payment of interest in the year 2000 in the writ petition filed in the year 2000 but, this court had not adjudicated the claim regarding payment of gratuity relating to the contesting respondent. Moreover, it is not denied that the contesting respondent retired on 31.1.1999 and the amount of gratuity was not paid immediately in accordance with the scheme of Payment of Gratuity Act, 1972, thus, forcing the contesting respondent to approach this Court on a number of occasions to get the retiral dues.

4. That being the position, the award of interest @ 12% on the amount of gratuity can not be said to be illegal. The order passed by the learned single Judge does not suffer from any legal infirmity. The amount of interest, if not paid, shall be paid within one month from the date on which a certified copy of this order is present before the authority concerned.

5. The appeal fails and is dismissed.

ORIGINAL JURISDICTIION
CIVIL SIDE
DATED:ALLAHABAD 28.04.2010

BEFORE
THE HON'BE RAJES KUMAR, J.
THE HON'BLE PANKAJ MITHAL, J.

Civil Misc. Writ Petition No. 373 of 2010
and
Civil Misc. Writ Petition No. 511 of 2010

Taj Advertising, Agra and others
...Petitioners
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri B.D. Mandhyan
Sri Satish Mandhyan
Sri Sanjeev Kumar

Counsel for the Respondents:
Sri Somvir
Sri K. Zaidi
Sri Mohd Ali
Sri C.K.Parekh
C.S.C.

U.P. Municipal Corporation Act, 1959, Section 173-readwith with U.P. Municipal Corporation (Assessment and Collection of Tax on advertisement) Rules, 2009-Demand of Tax on advertisement on exhibition, display any advertisement over any land wall, hoarding or structure on public or private place-objection the licence for advertisement-should not to given through public auction misconceived.

Held: Para 10

The purpose of public auction is to fetch maximum revenue as public interest is paramount. Awarding a contract of sale or leasing out property of a Government or a public authority for a considering less than the highest competitive amount is not in public interest. Therefore, obviously, the procedure provided under the Rules for granting permission for advertising through public auction or by inviting tenders cannot be said to be suffering from any vice of unreasonableness.

Case law discussed-
AIR 1985 SC 1147, AIR 1986 SC 1158, 2002(3) SCC 496, (1989)4 SCC 155.

(Delivered by Hon'ble Rajes Kumar, J.)

1. All the petitioner in both the writ petitions are advertising companies/ firms engaged in the business of advertising by placing and erecting hoardings on the public land either of the municipal

corporation or the development authority or of the public works department as well as on certain private properties. They have challenged the notification dated 24.12. 2009 which is said to have been published in the extra-ordinary Gazette notifying the Uttar Pradesh Municipal Corporation (Assessment and Collection of Tax on Advertisement) Rules, 2009 which have been enforced w.e.f. 1.4.2010.

2. We have heard Sri B.D. Madhyan, Senior Advocate, Sri Sanjeev Kumar, learned counsel for the petitioners in one of the writ petitions, Sri C.K. Parekh, learned counsel for the Municipal Corporation and Sri K. Zaidi, for the Agra Development Authority Learned Standing counsel has appeared for the State of U.P.

3. The contention of learned counsel for the petitioners is that they have a fundamental right to carry business of advertising. The impugned Rules infring their above right and as such are *ultra vires*, Secondly, the procedure prescribed under Section 199 to 203 of the U.P. Municipal Corporation Act, 1959 (hereinafter referred to as an 'Act') has not been followed in enacting the aforesaid Rules.

4. The respondents have defended the aforesaid Rules on the ground that they are only restrictive in nature and does not completely oust the petitioners from carrying on the business of advertisement. The Rules have been framed in due exercise of powers conferred upon the State Government under section 540 read with sections 550, 219, 227 of the Act after considering the objections received.

5. A wholistic reading of the said Act reveals that municipal corporations are empowered to impose taxes as provided under section 172 of the Act and tax on advertisement (not being advertisement published in the newspaper) is one of them. Section 192 of the Act provides that where such tax on advertisement is imposed, every person who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding or structure any advertisement or who displays any advertisement to public view in any place whether public or private, shall be liable to pay advertisement tax calculated at such rates and in such manner and as may be prescribed under the Rules subject to exemptions provided therein. The procedure of imposing such tax by corporations has been laid in section 199 to 206 of the Act. Further section 227 authorises the State Government to make Rules for the purposes of carrying out the effect of the provisions of Chapter IX dealing with the taxes of the Corporation and particularly, the matters referred to in Section 219 which permits framing of Rules as to assessment, collection, composition, prevention of evasion, refund of taxes and other matters relating to taxes. The procedure for framing such Rules has been provided in Section 540 of the Act.

6. It is tiride to state that a subordinate legislation like the Rules in question are open to challenge primarily on the following grounds:-

(i) legislative incompetence;
(ii) being *ultra vires* to the provisions of the Act under which they have been framed or the Constitution of India.
(iii) being in conflict with any other statutes; and
(iv) being arbitrary and violative of

Article 14 and 16 of the constitution.

7. The legislative competence of the State Government to frame the aforesaid Rules is not disputed nor it is alleged that the said Rules are in conflict or repugnant to any other statute. The validity of the aforesaid Rules is being questioned only on the ground that they are *ultra vires* to Article 19 (1) (g) of the Constitution of India.

8. A quick glance at the offending Rules demonstrates that they provide for obtaining permission of the Corporation for erecting, exhibiting, displaying, sticking, posting, writing, drawing or handing an advertisement or hoarding on any site which is to be granted on the application submitted in a prescribed form with fee on the recommendation of the allotment Committee either by public auction or by inviting tenders and to levy tax thereon. This is in consonance with section 193 of the Act which prohibits advertisement without written permission of the Municipal Commissioner and section 196 which empowers the Municipal Corporation to remove unauthorised advertisement.

9. The first submission that the lecense for advertising cannot be given by public auction, is being mentioned only to be rejected. The Apex court in **Ram and Shyam company Vs. State of Harayana and others AIR 1985 SC 1147** as well as in **Chenchu Rami Reddy and another Vs. Government of Andhra Pradesh and others AIR 1986 SC 1158** has held that public officer entrusted with the care of public properties are required to show exemplary vigilance and public properties are only be disposed of by adopting the best method that may be public auction and not private negotiation. Similar view has also been expressed by the Supreme court in **Haryana Financial Corporation and another Vs. Jagdamba Oil Mills and another 2002 (3) SCC 496.** The Courts have thus accepted public auction as the most transparent means of disposal of public property. It also avoids favouritism.

10. The purpose of public auction is to fetch maximum revenue as public interest is paramount. Awarding a contract of sale or leasing out property of a Government or a public authority for a considering less than the highest competitive amount is not in public interest. Therefore, obviously, the procedure provided under the Rules for granting permission for advertising through public auction or by inviting tenders cannot be said to be suffering from any vice of unreasonableness.

11. No case for any socio economic need to deviate from the above settled position has been canvassed.

12. The submission that the Rules tends to create monopoly in favour of big advertising companies and would result in driving out small advertisers like the petitioners from the business is also of no substance inasmuch as the Rules framed in no way prohibits or restricts the participation of any advertising company/ firm, big or small, for the purpose of seeking license from the municipal corporation.

13. Another submission that the requirement of giving undertaking of the owner of the premises or building where the advertisement is to be displayed to the effect that in default on part of the

advertising company/ firm to pay the tax he himself would be liable for the same in unfair and unreasonable as no person would be ready to give such an undertaking also has no force and is devoid of any merit. The said Rule is to ensure recovery of tax dues. It imposes primary liability upon the advertising company/firm to pay advertisement tax and thereafter on its failure to pay the liability shifts upon the owner of the building who is supposed to have allowed it to be used for advertising purposes. We fail to comprehend how such a Rule which tends to protect the revenue of the corporation can be said to be arbitrary. The procedure prescribed or the restriction so placed under the Rules as such is neither arbitrary nor unreasonable.

14. No specific Rule has been placed before us which tantamounts to infringe the right of the petitioners to carry their business of advertisement.

15. None of the aforesaid Rules to our mind offends the fundamental right of the petitioners to carry business of advertisement. The said Rules Ex facie are only procedural and restrictive in nature which we do not consider to be violative of the fundamental rights guaranteed under the Constitution of India.

16. As far as the second aspect that the procedure laid down in Sections 199 to 203 of the Act has not been followed and as such the Rules are invalid, is also misconceived and is of no substance. Admittedly, the aforesaid Rules have been framed by the State Government in exercise of powers under section 540 of the Act read with Section 227 of the Act. Both the above provisions confer upon the State Government a right to frame Rules for the purposes of the Act specially with regard to collection of taxes. The aforesaid Rules have not been framed by any individual corporation. The procedure prescribed under Section 199 to 203 of the Act is the procedure which has to be followed by the corporation in imposing tax and as such is not applicable where the Rules are framed by the State Government.

17. It is not the case of petitioners that the State Government has not followed the procedure laid down in section 540 of the Act in framing and publishing the aforesaid Rules rather the notification itself recites that the Rules were previously published by the Government notification dated 27.02.2008. and it is only after considering the objections and the suggestions received that the Government is pleased to make the present Rule. In this view of the matter, the second argument advanced on behalf of the petitioners also has no force at all and fails.

18. Various authorities cited viz.(1989) 4 SCC 155 Sodan Singh Vs. N.D. Municipal Corporation and the like are of no avail as there is no second opinion on the preposition of law that footpaths or payments are for public convenience and the hawkers have no fundamental right to hawk at a particular place. Thus, they need no elaborate discussion.

19. No other point was pressed before us.

20. In view of the aforesaid facts and circumstances, we do not find any

merit in the petitions. The accordingly, fail and are dismissed. No order as to costs.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.04.2010

BEFORE
THE HON'BLE RAN VIJAI SINGH, J.

Civil Misc. Writ Petition No. 64129 of 2006

Km. Himani Saxena ...Petitioner
Versus
State of U.P. and another ...Respondents

Counsel for the Petitioner:
Sri Pradeep Saxena

Counsel for the Respondents:
C.S.C.

U.P. Recruitment of Dependants of Government Servant Dying in harness Rules 1974-Rule 5 (1)(ii)-compassionate appointment-made after expiry of 5 years-petitioner who had lost her mother and father-cancellation on ground after expiry of 5 years-No appointment could be made without exemption from Govt.-held-once appointment on compassionate ground-can not be canceled without affording opportunity-seeking exemption-sole task given of appointing authority-mere irregularly-can be cured-cancellation of appointment-held illegal quashed.

Held: Para 9 & 12

Here in the present case it is apparent on the face of record that no opportunity was given to the petitioner before passing the impugned order, therefore, the impugned order is unsustainable in the eye of law.

I am of the view that once an appointment has been considered on merit and appointment letter has been issued, the power of relaxation of period of limitation shall fall under the category of procedural irregularity, which may be cured at any point of time after issuance of appointment letter.

Case law discussed:
1999 (3) U.P.L.B.E.C. 2263, 2006 (8) ADJ 453, 1952 SCR 284; (1978) 1 SCC 248; (1978) 1 SCC 405, 1993,SCC 259.

(Delivered by Hon'ble Ran Vijai Singh, J.)

1. The unfortunate petitioner who has lost her father and mother both has approached this Court under Article 226 of the Constitution of India, challenging the impugned order dated 9th November, 2006 passed by District Panchayat Raj Aadhikari Bareilly, by which, her appointment made under the ***U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules 1974*** (herein after referred to as Rules of 1974) has been cancelled. It appears the petitioner's father was Gram Panchayat Aadhikari and while working he died in harness on 28.8.1996. The mother of the petitioner has died prior to the death of her father. The petitioner who was the only daughter of her parents, was minor at the time of death of her father. When she became major, she has applied for compassionate appointment under the Rules of 1974. Pursuant thereto, the petitioner has been appointed vide appointment letter dated 25th July, 2006 on the post of clerk. Thereafter the petitioner has joined and started working. But all of sudden, the impugned order (dated 9.11.2006) of cancellation of appointment has been passed on the ground that the Rules of 1974 has been amended in the year 1993 and in view of Proviso to Rule 5 if the application for compassionate appointment is made after

expiry of five years then it is the State Government which is competent to relax the period of limitation whereas in this case no such relaxation has been granted by the State Government.

2. Sri Pradeep Saxena, learned counsel appearing for the petitioner has submitted that the appointment made under Dying in Harness Rules is permanent in nature in view of the Division Bench decision of the Court in the case of ***Ravi Karan Singh Vs. State of U.P and others reported in 1999 (3) U.P.L.B.E.C. 2263*** and once the appointment has been made, this cannot be cancelled without affording an opportunity of hearing. He has further contended that there was no fault of the petitioner as she has been throughout fair and nothing has been concealed by the petitioner when she was appointed, therefore the impugned order should not have been passed. In support of his submissions, he has also placed reliance upon the judgment of this Court reported in ***2006 (8) ADJ 453 Smt. Sadhna Kumari Vs. State of U.P. and others***. In his submissions, the impugned order deserves to be quashed.

3. Refuting the submissions of learned counsel for the petitioner, learned standing counsel has submitted that in view of the Proviso to Sub-rule 1 (iii) of Rule 5 of the Rules 1974 if an application for appointment under dying in harness rules is made after expiry of five years then it is the State Government which can relax the period of limitation and in this case, since the appointment has been made without there being any order of the State government with respect to relaxation of period of limitation therefore infirmity cannot be attached to the impugned order dated 9.11.2006 and the writ petition be dismissed.

4. I have heard learned counsel for the parties and perused the record.

5. It is not in dispute that the petitioner was offered an appointment on 25th July, 2006 and pursuant thereto the petitioner has joined her duties and worked for sometime. Since the initial stage of making an application for obtaining appointment on compassionate ground to the date of joining there had been no concealment of fact at any point of time, on the part of petitioner therefore, the question would arise whether the petitioner's appointment could be cancelled in this manner.

In the case of ***Ravi Karan Singh*** (supra) the Division Bench of this Court has observed as under.

"In our opinion, an appointment under the Dying in Harness Rules has to be treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment then it will follow that soon after the appointment the service can be terminated and this will nullify the very purpose of the Dying in Harness Rule because such appointment is intended to provide immediate relief to the family on the sudden death of the bread-earner. We therefore hold that the temporary appointment and hence the provisions of U.P. Temporary Government Servant (Termination of Services) Rules, 1975 will not apply to such appointments."

6. In view of the Division Bench decision in the case of ***Ravi Karan Singh*** (supra), an appointment offered under the

Rules of 1974 is permanent in nature. In such view of the matter, I am of the opinion that once an appointment letter is issued, without attaching any condition, the service of such person cannot be terminated without any notice and opportunity.

7. It is well settled that an order which involves civil consequences must be just, fair, reasonable, unarbitrary and impartial with the principles of natural justice. The main aim of the principle of natural justice is to secure justice or to put it negatively to prevent miscarriage of the justice vide ***State of W.B. Vs. Anwar Ali Sarkar, 1952 SCR 284; Maneka Gandhi Vs. Union of India (1978) 1 SCC 248; Mohinder Singh Gill Vs. Chief Election Commissioner, (1978) 1 SCC 405 and D.K. Yadav Vs. J.M.A. Industries Ltd. reported in 1993, SCC 259;***

8. These decisions have been followed in numerous cases decided thereafter which need not be detailed as this is the established principle of law that even an administrative order which leads to civil consequences must be passed in conformity with the rules of natural justice.

9. Here in the present case it is apparent on the face of record that no opportunity was given to the petitioner before passing the impugned order, therefore, the impugned order is unsustainable in the eye of law.

10. Otherwise also Rule 5 (1) (iii) of the Rules of 1974 provides that if an application seeking compassionate appointment, is made after expiry of five years, the power with respect to the relaxation of period of limitation is vested with the State government. The proviso further provides that the State Government has to consider the relaxation of the prescribed period of limitation looking into the undue hardship which is going to be caused to an applicant who is seeking appointment. Here the duty is casted upon the authority concerned to forward the matter with respect to the relaxation of the period of limitation to the state government before issuing an appointment letter and once the matter was not forwarded and the appointment letter has been issued the same cannot be cancelled by the appointing authority himself without having version of the petitioner that too in the circumstances where there is no such objection by the State Government.

11. On facts also this is a very hard case where the petitioner has lost her father and mother both, therefore, even if there is any irregularity in issuing the appointment letter that can be cured even without cancelling the appointment letter of the petitioner as the purpose of the Rules of 1974 is to save out the member of the aggrieved family from the financial crunch which has fallen on the family after the death of an employee. Further once an appointment has been offered it will mean that the entitlement of the petitioner on merit under the rules has been considered by the competent authority, in other words after considering entitlement under the Rules of 1974 the appointment letter has been issued and merely because the period of limitation has not been relaxed by the State government, it cannot be presumed that the order is totally illegal.

12. I am of the view that once an appointment has been considered on merit

and appointment letter has been issued, the power of relaxation of period of limitation shall fall under the category of procedural irregularity, which may be cured at any point of time after issuance of appointment letter.

13. In view of that, the writ petition succeeds and is allowed. The impugned order dated 9.11.2006 is hereby quashed.

14. The respondent no. 2 is directed to permit the petitioner to join her service and pay salary in accordance with law.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.04.2010

BEFORE
THE HON'BLE ARUN TANDON, J.

Civil Misc. Writ Petition No. 20127 of 2010

Vishwanath Katiyar ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri Yogish Kumar Saxena

Counsel for the Respondents:
S.C.

U.P. Secondary Education Service Selection Board Rules, 1998, Rule 12- Selection/appointment of Principal- challenged on ground that R-5 neither given preference for the institution in question-nor participated in interview in concern board-held-misconceived-a better qualified candidate can superset- provision of participation of interview in same institution-held-not mandatory.

Held: Para 18

In view of the aforesaid, this Court holds that merely because respondent no. 5 has not appeared before the Board, which was constituted for the institution, or he had not mentioned the institution in question as one of his choice, it cannot be said that his selection for the institution on overall merit is illegal in any manner. Interim orders relied are not precedent, more so when this writ petition is being finally decided.

Case law discussed:
Special Appeal No. 1454 of 2006, 2006 (1) UPLBEC page 334.

(Delivered by Hon'ble Arun Tandon, J.)

1. Heard learned counsel for the parties.

2. Petitioner before this Court is working as adhoc Principal in Jan Kalyan Inter College, Ursan, Kanpur Dehat, which is a recognized and aided Intermediate College. He seeks quashing of the select panel dated 16.03.2010 notified by the U.P. Secondary Education Services Selection Board qua the post of Principal of the institution.

3. The select list dated 16.03.2010 is being challenged on three grounds (a) name of the petitioner was not forwarded by the institution as amongst two senior most teachers for participation in the process of selection under Rule 11(b) of the U.P. Secondary Education Services Selection Board Rules, 1998 (hereinafter referred to as '1998 Rules'), (b) the respondent no. 5 had not opted for the post of Principal of the institution concerned and therefore he cannot be selected and (c) He was not interviewed by the Selection Board constituted for the post of Principal of the College under Rule 12.

4. For the second and third proposition reliance has been placed upon

the interim order granted by the Hon'ble Single Judge in Writ Petition No. of 2009 and that by the Division Bench of this Court in Special Appeal Nos. 323 of 2010 and Special Appeal No. 73 of 2010.

5. Counsel for the petitioner submits that since under Rule 12 (1) of 1998 Rules a candidate is required to exercise options for three institutions at the maximum and further that under Rule 12(2) Selection Board are constituted institution-wise for the post of Principal, a candidate, who has not exercised his option for a particular institution under Rule 12(1), he cannot be considered for the vacancy in the institution for which he has not exercised his option. He further submits that since the Selection Board is to be constituted for every institution separately, a candidate, who is interviewed by the Board for the institution alone, is to be considered for empanelment against the vacancy in a particular institution. In case he does not participate in the interview before the said Selection Board, he cannot be considered for the said institution.

6. This Court may record that the petitioner has already attained the age of superannuation i. e. 62 years on 3.01.2010. In view of the Division Bench judgment of this Court in **Special Appeal No. 1454 of 2006 (Hari Om Tatsat Brahm Shukla Vs. State of U.P. and others**), he cannot continue as adhoc Principal subsequent to attaining the age of superannuation nor he can be appointed as Principal after attaining the age of superannuation. Thus, no order can know be granted for consideration of the case of the petitioner on the strength of the allegation that he was amongst the two senior most teachers entitled to be considered for appointment as Principal without his having applied.

7. So far as the non-consideration of the claim of the petitioner in the process of selection is concerned, this Court may only record that fault if any in that regard lies upon the management only. The petitioner, who is working as Ad-hoc Principal of the institution, must have been aware of the letter of the Board calling upon the institution to send name of two senior most teachers of the institution. Counsel for the petitioner admits that a letter was received calling for the senior two teachers to participate in the selections yet, as the letter was received 10 days prior to the selection, the name of two teachers were not forwarded.

8. I am of the considered opinion that the period of 21 days prescribed under Rule 8(6) of the U.P. Secondary Education Services Selection Board Rules, 1998 is only directory in nature. Although calling of the two senior most teachers and their records is mandatory but the period of notice i.e. 21 days before the date of interview is only directory in nature. More over the petitioner should have appeared before the Board and should have raised his objections, if any, qua the notice period being shorted at that stage itself. Now, when he has reached the age of superannuation, no relief for being considered in the selection can be granted.

9. The second and third grounds raised are seriously opposed by the counsel for the U.P. Secondary Education Services Selection Board. It is stated that the options, which is asked for from the candidates at the time of submission of application forms are only directory in

nature and they are not binding upon the Board. The Board is in fact obliged to offer appointment to the candidates having regard to the over all merit secured in the region. He submits that any other criterion if adopted would result in a situation where more meritorious candidates selected by the Board from open market would not be offered appointment against the advertised vacancy available in the institution, while a candidate much below in merit would be offered such appointment merely because he had opted for the said institution in his application form.

10. For appreciating the controversy raised, it is worthwhile to reproduce Rule 12(1), 12(2), 12(6), 12(8), 12(9) and 12(10), which read as follows:

"12. Procedure for direct recruitment.*-(1)The Board shall, in respect of the vacancies to be filed by direct recruitment, advertise the vacancies including those reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes and other reserved categories as applicable to Government service from time to time, in at least two daily newspapers, having wide circulation in the State and call for the applications for being considered for selection in the pro forma published in the advertisement. For the post of Principal of an Intermediate College or the Headmaster of a High School, the name and place of the institution shall also be mentioned in the advertisement and the candidates shall be required to give the choice of not more than three institutions in order of preference and if he wishes to be considered for any particular institution or institutions and for no other institution, he may mention the fact in his application.*

(2) *The Board shall scrutinize the applications and in respect of the post of teacher in lecturers and trained graduates grade, shall conduct written examination. The written examination shall consist of one paper of general aptitude test of two hours, duration based on the, subject. The centers for conducting written examination shall be fixed in district headquarters only and the invigilators shall be paid honorarium at such rate as the Board may like to fix.*

(6) *The Board, having regard to the need for securing due representation of candidates belonging to the Scheduled Castes/Scheduled Tribes and Other Backward Classes of citizens in respect of the post of teacher in lecturers and trained graduates grade, shall call for interview such candidates who have secured the maximum marks under sub-clause (4) above/and for the post of Principal/Headmaster, shall call for interview such candidates who have secured maximum marks under sub-clause (5) above in such manner that the number of candidates shall not be less than three and not more than five times of the number of vacancies:*

Provided that in respect of the post of the Principal or Headmaster of an institution the Board shall also in addition call for interview two seniormost teachers of the institution whose names are forwarded by the management through Inspector under clause (b) of sub-rule (2) of rule 11.

(8) *The Board then, for each category of post, prepare panel of those found most suitable for appointment in order of merit as disclosed by the marks obtained by them after adding the marks obtained under sub-clause (4) or sub-clause (5)*

above, as the case may be, with the marks obtained in the interview. The panel for the post of Principal or Headmaster shall be prepared institution-wise after giving due regard to the preference given by a candidate, if any, for appointment in a particular institution whereas for the posts in the lecturers and trained graduates grade, it shall be prepared subject-wise and group-wise respectively. If two or more candidates obtain equal marks, the name of the candidate who has higher quality points shall be placed higher in the panel and if the marks obtained in the quality points are also equal, then the name of the candidate who is older in age shall be placed higher. In the panel for the post of Principal or Headmaster, the number of names shall be three-times of the number of the vacancy and for the post of teachers in the lecturers and trained graduates grade, it shall be larger (but not larger than twenty-five per cent) than the number of vacancies.

(9) *At the time of interview of candidates, for the post of teachers in lecturers and trained graduates grade, the Board shall, after showing the list of the institutions which have notified the vacancy to it, require the candidates to give, if he so desires, the choice of not more than five such institutions in order of preference, where, if selected, he may wish to be appointed.*

(10) *The Board shall after preparing the panel in accordance with sub-rule (8), allocate the institutions to the selected candidates in respect of the posts of teachers in lecturers and trained graduates grade in such manner that the candidate whose name appears at the top of the panel shall be allocated the institution of his first preference given in accordance with sub-rule (9). Where a selected candidate cannot be allocated any of the institutions of his preference on the ground that the candidates placed higher in the panel have already been allocated such institutions and there remains no vacancy in them, the Board may allocate any institution to him as it may deem fit."*

11. From a simple reading of the aforesaid rules it would be apparently clear that a candidate is asked to exercise his option in his application form, in respect of three institutions at the maximum and in case the candidate does not desire to be considered for any other institution (except the three for which he has exercised his choice), he shall make a note thereto in the application itself in writing. Meaning thereby, if a candidate does not add the note qua his candidature being not considered for the institutions other than for which he has exercised his option, the Board is under legal obligation to consider his candidature for other institutions also, which are subject matter of advertisement and qua which the option has not been exercised.

12. So far as the constitution of the Selection Board is concerned, it is no doubt true that Rule 12 requires establishment of Selection Board institution-wise but if the contention raised on behalf of the petitioner is accepted, then a candidate will be required to face at least three Board constituted in respect of three institutions for which he has opted. Such can never be the intention of the Legislature. In the same process of selection a candidate cannot be asked to face three Board qua three institutions, which are subject matter of common selection by a statutory Commission.

13. The logical meaning to be attached to Rule 12(2) is that although separate Board are to be constituted institution-wise but the candidate applying from open market is to be interviewed only once and his claim be considered on the basis of overall merit i. e. quality point marks and interview marks, which are to be awarded by the Board he faced. The purpose of constituting separate Board for each institution is to ensure that two senior teachers of the institution concerned, who are entitled to be considered without they having applied under Rule 11(2), are interviewed by the Board of that institution only. The intention is not that an open market candidate shall face separate interview Boards constituted for the various institutions, vacancy whereof has been advertised.

14. It has to be kept in mind that the power to select a candidate for the post of Principal in recognized and aided Intermediate Colleges situate throughout the State of Uttar Pradesh has been conferred upon a common statutory body namely U.P. Secondary Education Services Selection Board. The purpose being that the best candidate may be made available to the institutions. Any interpretation of the Rules, which lead to the situation where a person with lower merit gets appointed, would be defeating the very purpose for which the U.P. Secondary Education Services Selection Board has been constituted. Therefore, 1998 Rule, specifically Rule 12, has to be read in a manner which leads to furtherance of object for which U.P. Secondary Education Services Selection Board itself has been constituted and does not defeat the same on technicalities.

15. I am of the opinion that there cannot be a compromise with the merit on technicalities and a person who is more meritorious has a right to be appointed in preference to a person who is lower in merit.

16. This Court has no hesitation to hold that preference exercised by the candidate in his application form is only directory in nature and does not in any way defeat his right for being selected against any other vacancy of an institution which was subject matter of same advertisement and for the same region. From the procedure and preparation of the select list it is apparently clear that the same has to be drawn on the over all merit secured by the candidate and his choice is to be considered only with reference to his merit. The choice cannot be made tool to defeat the merit, as suggested by the counsel for the petitioner.

17. In respect of identical provisions under the U.P. Higher Education Services Selection Board Act, 1980, the full Bench of this Court in the case of **Vinay Kumar (Dr.) Vs. Director of Education (Higher) Allahabad** reported in 2006 (1) UPLBEC page 334 approved the law laid down in Alka Rani's case and in paragraphs 34 to 40 and 43 has laid down as follows:-

"34. We are of the opinion that the Director cannot give any weight at all to the preference of the management in the selection of a particular candidate as their Principal or their Teacher.
35. The Education Act of U.P. and the Rules and Regulations thereunder have been framed for various purposes, one of which is to see it that the management does not staff its college only in the

manner it likes, that the staff is selected with a view to proper education of the students and the children and the best possible available candidates are put in the teaching jobs. The tendency of the management to favour its own candidates for extraneous reasons is negatived by the manner and procedure of the selection, which is given in these educational schemes and Acts. We find that in Section 13 there are only two factors for grading or selecting a candidate for a particular college. The first gradation is made as per Section 13 (1), on the basis of interview with or without examination and this gradation is called the merit list.

36. This merit list is not the only list. Though the management has no say in the matter, the employee, i.e. the prospective Principal or the prospective Teacher has a say of his own. He can make a preference for a College.

37. In our opinion, the Director at the time of making intimation is to take into account only two things, in regard to every candidate, namely, the candidate's merit position as determined under Section 13 (1), and the preferential list of colleges or institutions given by the candidate himself.

38. How the Director is to allot the candidates to the different colleges on the basis of these two items and these two items only are, with respect, correctly laid down by the Division Bench in paragraph 9 in Alka Rani's case (Supra) and we agree with that paragraph in toto.

39. In our opinion the Director does not use a discretionary power in making intimations under sub-section 8 (3) of Section 13. Instead of the Director, any other person with an equally logical mind as the Director will also be able to perform the same act but the Director has been given the authority, so as to carry conviction and to make it safe for the colleges to follow the recommendations and intimations coming under his signature.

40. The wording of sub-section (3) of Section 13 show that Director's action is compulsory prescribed by the said sub-section. Although the said sub-section does not refer to the merit list at all yet as laid down in paragraph 9 of Dr. Alka Rani's case (supra) the merit list must be considered by the Director and in this regard the Director cannot disregard sub-section (1) of Section 13 and the exercise performed under that sub-section. The exercised by the Director is performed thereafter and must be preformed thereon.

43. In this view of the matter we abide by what was said in paragraphs 9 and 10 (first sentence only) of Dr. Alka Rani's case (Supra) and respectfully disapprove what was said in that case in paragraphs 10 (rest) and 11. We make it clear that we approve of the first sentence in paragraph 10 of Dr. Alka Rani's case (Supra) but disapprove only of the latter part of that paragraph where the exception is said to be spelt out."

18. In view of the aforesaid, this Court holds that merely because respondent no. 5 has not appeared before the Board, which was constituted for the institution, or he had not mentioned the institution in question as one of his choice, it cannot be said that his selection for the institution on overall merit is illegal in any manner. Interim orders relied are not precedent, more so when this writ petition is being finally decided.

19. Writ petition is dismissed.

APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.04.2010

BEFORE
THE HON'BLE VIJAY MANOHAR SAHAI, J.
THE HON'BLE RAJ MANI CHAUHAN, J.

Special Appeal No. 982 of 2003

Director Institute of Mental Health & Hospital, Agra ...Appellant
Versus
Santosh Kumar Gautam and others ...Respondents

Counsel for the Petitioner:
Sri G.K. Singh
Sri V.K. Singh
Sri A.P. Sahi

Counsel for the Respondents:
Sri Ashok Khare
Sri K.M. Saxena
Sri K.N. Saxena
Sri N.S. Chahar
C.S.C.

Constitution of India, Art. 226-Petitioner working as class 4th employee in mental Hospital, Agra-under central of Director Medical Health and Family Welfare-after conversion of Govt. Hospital in to society all concerned were required give option-refused by the petitioner-held-for all purpose they are govt. employee-can not be forced to work on deputation without giving the period of deputation-can not be treated the employee of new hospital.

Held: Para 30
Since the petitioners opted to remain government servants and they did not opt to be posted on deputation in the new institution. Therefore, they were sent back to their parental department i.e. Health Department of U.P. Government. The petitioners who did not opt to be posted in the new institution on deputation cannot be posted there on deputation against their option. The society of the new institution too cannot be forced to retain those petitioners who were the government servants and did not opt to be posted on deputation in the new institution.

(Delivered by Hon'ble Raj Mani Chauhan, J.)

1. Heard Sri G.K. Singh, learned counsel for the petitioner and Sri K.N. Saxena, learned counsel for the respondent.

2. This Intra Court Appeal has been filed by the Respondent No. 5, the Director, Mansik Arogyashala/Mental Hospital, Agra, District Agra in Civil Misc. Writ Petition No. 48859 of 2002 (Santosh Kumar Gautam & 22 Others Versus State of U.P. and 4 Others) against the judgment and order dated 23.09.2003 passed by the learned Single Judge in the above writ petition whereby he had allowed the writ petition filed by the petitioners.

3. The relevant facts giving rise to the present appeal may be summarized as under:

4. The petitioners-respondents no. 1 to 22 were initially appointed as class IVth employee on different posts like Attendants, Rajmistri, Cook, Game Ardali and Sweeper by the appellant in Mansik Arogyashala/Mental Hospital, Agra which was under the control of Medical, Health and Family Welfare, Department of U.P. Government. A similar hospital known as Ranchi Mansik Arogyashala was being run by the Bihar Government. A writ petition no. 448/1994 was filed by one Aman Hingorani against Union of India and Others before the Hon'ble Supreme Court in which the Hon'ble Supreme

Court directed that the Mansik Arogyashala be converted into autonomous institution which will be managed by a committee of management. In view of the direction of the Hon'ble Supreme Court in the above writ petition, the government of U.P. too decided to convert the Mansik Arogyashala/Mental Hospital, Agra as autonomous institution. Consequently, the government of U.P. got a society registered and converted the Mansik Arogyashala into "Mansik Swasthya Sansthan Evam Chikitsalaya, Agra". The society was registered on 14.11.1996 under the Societies Registration Act. The certificate of registration was thereafter renewed on 14.11.2001. The Mental Hospital, Agra which was being run by the government was thereafter taken over by the society. The committee of management and the new institution became the autonomous body.

5. All the officers and employees who were previously working in Mental Hospital were government employees and they were treated to be on deputation in the new institution. The state government thereafter invited options of the officers and employees who wanted to remain as government servant or to work in the new institution on deputation. The petitioners did not opt to work in the institution on deputation; rather they wanted to continue as government servants. Since none of the petitioners opted to be posted in the new institution on deputation, therefore the Commissioner, Agra Division as Chairman of the Society wrote a letter to the government to relieve the petitioners and others from the institution and send them to their parent department. The government accepted the request of the Commissioner, Agra Division and issued an order dated 23rd September 2002 directing the Director of Medical Health Services, U.P. government, Lucknow to see that all the employees who did not opt to continue in the institution on deputation run by the society be relieved and be absorbed in medical and health department of the government. Consequently, respondent no. 5 (appellant) vide order dated 29.10.2002 relieved all such employees including the petitioners-respondents. Thereafter, Additional Director, Medical Health and Family Welfare, Agra (Respondent No. 4) issued an order dated 31.10.2002 posting all such employees against various posts in government health department. The respondents-petitioners no. 1 to 22 and one another aggrieved by the aforesaid order dated 29.10.2002 and 31.10.2002 filed the aforesaid writ petition challenging the validity and correctness of the aforesaid orders passed by the respondents no. 5 and 4 respectively.

6. The writ petition was opposed by the respondents. Parties exchanged their affidavits.

7. The main question for consideration before the learned Single Judge was that whether the petitioners could be treated on deputation in the new institution run by the society or they could be sent back to their parent department? The learned Single Judge was of the view that two ingredients were essential for posting an employee on deputation: -

(1) The deputation period should be for a definite period.
(2) The employee can be sent on deputation only with his consent.

8. The learned Single Judge found that in this case neither definite period for deputation had been given by the respondents to the petitioners nor their consent was obtained before they were treated to be posted on deputation. Therefore the petitioners could not be treated as posted on deputation in the new institution of the society. Consequently, the learned Single Judge held that the order dated 29.10.2002 passed by respondent no. 5 relieving the petitioners from the institution and order dated 31.10.2002 passed by the respondent no. 4 posting them against different posts in the Health Department were illegal. The learned Single Judge, therefore, by the impugned judgment and order allowed the writ petition and quashed the impugned orders dated 29.10.2002 and 31.10.2002.

9. The respondent no. 5 (appellant) being aggrieved by the impugned order has filed this Intra Court Appeal.

10. The facts of the case are almost undisputed. Undisputedly, the Mental Hospital, Agra was a government hospital which was under the control of Director of Health and Family Welfare of Government of U.P.

11. Undisputedly, it was converted into autonomous body and re-named as "Mansik Swasthya Sansthan Evam Chikitsalaya (Institute of Mental Health and Hospital) Agra" under the control of Society and it ceased to be under the direct control of U.P. government.

12. Undisputedly, the petitioners were appointed by the appellant in the Mental Hospital, Agra on different dates as class IVth employee as Attendants, Rajmistri, Cook, Game Ardali and Sweeper, etc.

13. After the conversion of Mental Hospital, Agra into new institution under management of society, the petitioners appointed by the Director continued to be government servants. They were treated on deputation in the new institution.

14. The question to be considered by this Court in the present appeal is, whether the petitioners (respondents no. 1 to 22) continued to be employees of new institution named as Mansik Swasthya Sansthan Evam Chikitsalaya, Agra as government servant?

15. The submission of learned counsel for the appellant is that the Mansik Arogyashala/Mental Hospital, Agra was a government hospital, petitioners were appointed by the appellant (respondent no. 5), the Director of the Institute of Mental Health and Hospital, Agra as such they were government servants.

16. The government of Uttar Pradesh on the pattern of Ranchi Mental Hospital decided to convert the hospital into autonomous body to be managed by a society constituted by it. Consequently, the government formed a society to run the institution consisting of the following members:

(i) Divisional Commissioner, Agra- Chairman
(ii) District Magistrate, Agra - Member
(iii) Sr. Superintendent of Police, Agra - Member
(iv) Health Secretary, Govt. of U.P. or his representative - Member

(v) Two non-officials at one of them shall be a woman - Members nominated by the Government of U.P.
(vi) Principal, King George Medical College, Lucknow - Member
(vii) Director of AMA - Member Secretary

17. The government got the society registered under the Societies Registration, Act on 14.11.1996. The Mansik Arogyashala/Mental Hospital, Agra was taken over by the society and it was re-named as "Mansik Swasthya Sansthan Evam Chikitsalaya, Agra". As a result of conversion of the hospital into Mansik Swasthya Sansthan Evam Chikitsalaya, Agra, the officers and employees of the Mental Hospital, Agra did not automatically become the officers and employees of the new institution; rather they continued to be government servant. For the time being, the officers and other employees of the hospital were treated to be on deputation in the new institution as it is clear from the letter dated 18th February 1997 written by Dr. Bachhi Lal, the Special Secretary, Government of U.P. to Director General, Chikitsa Evam Swasthya Sevaye, Uttar Pradesh, Lucknow (Annexure 4). In this letter, it had clearly been mentioned that the officers and employees of the hospital will be treated to be on deputation in the new institution and only those officers and employees will be treated to be officers and employees of the new institution who will be directly appointed by the society running the new institution. The appellant thereafter passed an order (Annexure 5) calling option from the petitioners and other employees of the Mental Hospital, Agra to give their option as to whether they wanted to continue as government servant in their parental department or they wanted to continue in the new institution on deputation basis. Santosh Kumar Gautam one of the petitioners thereafter filed a written declaration (Annexure 6) that he did not want to continue in the new institution; rather he would like to remain in the government service. Likewise Santosh Kumar Gautam, the other petitioners too opted to continue as government servants. Thereafter, Sri B.K. Sharma, the then Commissioner, Agra Division/Chairman of the Society running Mansik Swasthya Sansthan Evam Chikitsalaya, Agra wrote a letter (Annexure 7) to the Secretary, Chikitsa Evam Swasthya Anubhag 7, U.P. government, Lucknow to post the petitioners somewhere in their parental department as they were not cooperating in smooth functioning of the institution.

18. On the above letter the government of U.P. vide letter dated 23rd September 2002 (Annexure 8) took a decision that the petitioners and others who were reported by the Commissioner, Agra Division/Chairman of the Society running the new institution, be adjusted in their parental department. The Additional Director, Medical, Health and Family Welfare, Agra Division, Agra thereafter vide letter dated 31.10.2002 (Annexure 10) sent the petitioners and others back to their parental department.

19. Learned Counsel argued that the learned Single Judge had not treated the petitioners on deputation; even then he treated them to continue in the new institution which is inconsistent. The learned Single Judge had found that the applicants had not opted to be posted on deputation in the new institution. Therefore, they could not be treated as

posted on deputation in the new institution.

20. Learned counsel argued that the new institution formed and re-named as Mansik Swasthya Sansthan Evam Chiktislaya, Agra run by the society is not the same as Mansik Arogyashala/Mental Hospital, Agra. The new institution is under the control of the society while the Mansik Arogyashala/Mental Hospital, Agra was purely governmental hospital run by the government. The status of the officers and employees of the new institution did not remain the same which was in the Mansik Arogyashala/Mental Hospital, Agra. The officers and employees of the hospital ceased to be government servant after conversion of hospital into new institution. The officers and employees of the Mansik Arogyashala/Mental Hospital, Agra were treated to be on deputation in the new institution for the time being and options were called for from them whether they wanted to be posted in the new institution on deputation or they wanted to continue in the government service. The petitioner opted to remain as government servant. Therefore, they were rightly relieved by the appellant after they were posted by respondent no. 4 (Additional Director, Medical Health and Family Welfare, Agra Region) at different places.

21. Since the petitioners were government servants and they did not opt to be posted in the new institution on deputation, therefore, neither they could be forced to remain in the same institution as government servants nor they could be legally allowed to work in the institution run by the society. Moreover, the appellant could not be compelled to retain the petitioners against his will who did not opt to remain in the institution on deputation.

22. The learned Single Judge did not take into consideration of this aspect of the matter. The impugned judgment and order had been passed without appreciation of correct legal position, therefore, the impugned judgment and order dated 23.09.2003 is liable to be set aside and the appeal deserves to be succeed.

23. Learned counsel for the respondents supported the impugned judgment passed by the learned Single Judge and argued that the respondents No. 1 to 22 were employees of erstwhile Mansik Arogyashal/Mental Hospital, Agra. They were government servant after conversion of Mansik Arogyashal/Mental Hospital, Agra into new institution known as Mansik Swasthya Sansthan Evam Chiktsalaya, Agra, the officers and employees became the officers and employees of the new institution. They had no other parental department except the Mansik Arogyashal/Mental Hospital, Agra. Therefore, they could not be posted somewhere-else other than the new institution. The learned Single Judge had rightly treated them the employees of the new institution and allowed them to continue in the new institution which does not suffer from any infirmity or illegality.

24. We have given anxious consideration to the arguments advanced by the learned counsel for the parties. The 'Mansik Arogyashala/Mental Hospital, Agra' was purely a government Hospital run by the Director, Medical, Health and Family Welfare, Govt. of U.P. The petitioners were employed there as class IVth employee on different posts like

Attendants, Rajmistri, Cook, Game Ardali & Sweeper and they were purely government servants. The Mansik Arogyashal/Mental Hospital, Agra was converted into new institution and re-named as "Mansik Swasthya Sansthan Evam Chikitsalaya, Agra" which was under the control and management of a Society registered under the Societies Registration Act. The status of new institution became autonomous which is purely different form the status of Mansik Arogyashala/Mental Hospital, Agra. The officers and employees of the new institution were the officers and employees of the society not the employees of the government. The officers and employees of the Mansik Arogyashala/Mental Hospital, Agra were treated to be on deputation in the new institution for the time being.

25. From a perusal of letter dated 18th February 1997 (Annexure 4), it appears that the Special Secretary, U.P. Government had wrote a letter to Director General, Medical and Health Services, U.P. Government that the officers and employees of the Mansik Arogyashala/Mental Hospital, Agra would be treated to be officers and employees in the new institution on deputation. The Director of Medical and Health was requested to issue order accordingly treating them on deputation. Thereafter, the Director of Mansik Swasthya Sansthan Evam Chikitsalaya, Agra passed an order that the officers and employees of the Mansik Arogyashala/Mental Hospital, Agra were the officers and employees of the government their parental department was government department they will be posted in the new institution on deputation. The Director by the same order had asked every officer and employee to give a declaration to the effect that whether he wanted to be posted on deputation in the new institution or wanted to remain as government servant Santosh Kumar Gautam one of the petitioners gave a declaration (Annexure 6) that he did not want to be posted on deputation in the new institution; rather he would continue to be government servant. The other petitioners too opted to remain in government service.

26. From a perusal of letter dated 10.06.2002 written by the Commissioner, Agra Division/Chairman, Mental Health Institute and Hospital, Agra (Annexure 7), it appears that he had written a letter to Secretary, Medical, Health and Family Welfare, U.P. Government informing him that as many as 26 employees of erstwhile Mental Hospital, Agra were not cooperating in the smooth functioning of the institution they be returned to their parental department.

27. From a perusal of letter dated 23rd September 2002 (Annexure 8), it appears that the government on the basis of letter written by the Divisional Commissioner, Agra ordered for sending back the employees mentioned in the letter including the petitioners to their parental department.

28. From a perusal of letter dated 29.10.2002 written by Director, Mental Health Institute and Hospital, Agra(Annexure 9), it appears that the petitioners and others as mentioned above were ordered to be sent back to their parental department.

29. From a perusal of letter dated 31.10.2002, it appears that the Additional

Director, Medical and Health Services, Agra Division (Respondent No. 4) placed the petitioners and others on different posts in different districts of Agra Division.

30. Since the petitioners opted to remain government servants and they did not opt to be posted on deputation in the new institution. Therefore, they were sent back to their parental department i.e. Health Department of U.P. Government. The petitioners who did not opt to be posted in the new institution on deputation cannot be posted there on deputation against their option. The society of the new institution too cannot be forced to retain those petitioners who were the government servants and did not opt to be posted on deputation in the new institution.

31. In view of the discussions hereinabove mentioned we are of the considered opinion that the petitioners cannot be treated to be employees of the new institution namely Mansik Swasthya Sansthan Evam Chiktsalaya, Agra. Therefore, they cannot be thrushted on the new institution against the wishes of the society.

32. The learned Single Judge did not take into consideration of this fact while allowing the writ petition of the petitioners. Therefore, the impugned judgment and order dated 23.09.2003 is liable to be set aside and the writ petition is liable to be dismissed.

33. Consequently, the special appeal is allowed and the judgment and order dated 23.09.2003 passed by the learned Single Judge in Civil Misc. Writ Petition No. 48859 of 2002 is set aside and the writ petition filed by the respondents is dismissed.

APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.04.2010

BEFORE
THE HON'BLE VIJAY MANOHAR SAHAI, J.
THE HON'BLE RAJ MANI CHAUHAN, J.

Special Appeal No. 519 of 2004

Union of India, through the Secretary Ministry of Home New, Delhi and others ...Appellants/Applicants
Versus
Bhim Yadav ...Opposite Party

Counsel for the Applicants:
Sri Subodh Kumar
Sri Udit Chandra
S.C.

Counsel for the Opposite Party:
Sri Brijesh Chandra Naik
Sri Jokhan Prasad
Sri P.K. Misra
Sri V.B. Shukla
Sri I.R. Singh

Central Reserved Police Force Act 1949-Section 11 (1)-read with Central Reserved Police Force Rules, 1955-Rule 27-dismissal order passed in State of West Bengal-service of impugned order or mere residing of petitioner in U.P.-validity of such order can not be adjudicated by High Court Allahabad-judgment by Single Judge without jurisdiction-objection if writ not maintainable appeal should also goes to same fate-misconceived-petition dismissed.

Held: Para 4

Having given our anxious consideration to the question, we are of the considered opinion that since the removal order and

appellate orders were passed in the State of West Bengal, Allahabad High Court does not have territorial jurisdiction to hear and decide the writ petition filed by the respondent or even to entertain it. In this view of the matter, the order of learned Single Judge cannot be maintained.

Case law discussed:

1999(4) AWC 2908, 2010(2) AWC 1293, 2010(3) ADJ 433 DB, 2004 (4) ESC 2312 FB (Allahabad).

(Delivered by Hon'ble V.M. Sahai, J.)

1. We have heard Sri Udit Chandra, Advocate holding brief of Sri Subodh Kumar, learned counsel for the appellants and Sri I.R.Singh, learned counsel appearing for the respondent.

2. A departmental enquiry was initiated against the writ petitioner under section 11(1) of The Central Reserve Police Force Act, 1949 read with Rule 27 of The Central Reserve Police Force Rules, 1955. After departmental proceedings the writ petitioner was removed from service. The removal order was passed on 7.4.1999 at Durgapur, West Bengal. He challenged the removal order in appeal before the appellate authority at Kolkata, West Bengal. The appellate authority dismissed the appeal of the writ petitioner on 10.6.1999. The removal order as well as the appellate order had been challenged before this court and the learned Single Judge had allowed the writ petition no.29492 of 1999 vide judgment dated 21.8.2000 and quashed the removal as well as appellate order with all consequential benefits of service to the writ petitioner.

3. In this intra court appeal, learned counsel for the appellant has urged that the writ petition before this court was not maintainable and it was maintainable only in the State of West Bengal. He has placed reliance on a Full Bench decision of this court in **Madan Tiwari, constable v. Deputy Inspector General of Police and another 1999(4) AWC 2908,** a division bench decision in **Vipin Kumar v. State of U.P. and others 2010(2) AWC 1293**, **Director General, C.R.P.F., New Delhi v. Lalji Pandey 2010(3) ADJ 433 DB** and **Rajendra Kumar Mishra v. Union of India and others 2004 (4) ESC 2312 FB (Allahabad)**. We have gone through these decisions. In **Rajendra Kumar Mishra** (supra) it has been held by the Full Bench that mere permanently residing in the State of Uttar Pradesh would not confer any right on the respondent to challenge the orders passed in the State of West Bengal and the respondent does not get any right on the ground of being resident of Uttar Pradesh to challenge the orders passed in the State of West Bengal before this court, as no part of cause of action has accrued within the territorial jurisdiction of this court or Uttar Pradesh.

4. Having given our anxious consideration to the question, we are of the considered opinion that since the removal order and appellate orders were passed in the State of West Bengal, Allahabad High Court does not have territorial jurisdiction to hear and decide the writ petition filed by the respondent or even to entertain it. In this view of the matter, the order of learned Single Judge cannot be maintained.

5. Learned counsel for the respondent Sri I.R. Singh has vehemently urged that the respondent was selected and recruited at Allahabad, but he was in

service at Kolkata when he was removed in service. Therefore, he can challenge the removal order and the appellate order in the State of West Bengal. Even the place of recruitment will not confer any right to challenge the removal order in Allahabad High Court. The cause of action will accrue where the removal order or appellate order had been passed. Sri I.R. Singh has further urged that if the writ petition filed by the respondent was not maintainable, then the Special Appeal filed by Union of India is also not maintainable. This question has been decided by the division bench of this court in Lalji Pandey (supra). Therefore, this argument is devoid of any merits

6. For the aforesaid reasons, this special appeal succeeds and is allowed. The order dated 21.8.2000 passed by learned Single Judge in Civil Misc. Writ Petition No.29492 of 1999 is set aside. The writ petition is dismissed as being not maintainable. However, the writ petitioner shall be at liberty to approach the appropriate legal forum, in the State of West Bengal.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.04.2010

BEFORE
THE HON'BLE SHISHIR KUMAR, J.

Civil Misc. Writ Petition No. 25129 of 2008

Con. 618/946 Rajbeer Singh ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri V.P. Singh
Sri Kashyap
Sri Ajay Kumar Srivastava
Sri Vijay Gautam

Counsel for the Respondent:
C.S.C.

Constitution of India Art. 226- Cancellation of appointment-after 15 years of working on ground-the date of birth mentioned in High School certificate a forged document order passed without giving opportunity to produce original certificate-held-impugned order quashed with all consequential benefits including salary, seniority from the date dismissal till the date of reinstatement.

Held: Para 7

In my opinion, this submission made by the learned counsel for the petitioner have got substance and deserves to be accepted. I am of the considered view that the alleged conduct of the petitioner while entering into service cannot be alleged to be misconduct during service. In service law jurisprudence both the stages are quite distinct and distinguishable, therefore, they should not be intermixed otherwise it will cause serious repercussion in the service law jurisprudence. Further, I have a doubt in the mind that whether such illegal appointment as alleged by the respondent on the basis of alleged forged certificate could be cancelled after long lapse of 15 years from the date of appointment of the petitioner. Further it is admitted case of the parties that the petitioner has not been afforded any opportunity before passing the order impugned dismissing the petitioner from service.

Case law discussed:
1991 Supp. (1) SCC 330, 2002 (1) U.P.L.B.E.C. 705, (1999) 3 SCC 60, 2008 (7) ADJ 4.

(Delivered by Hon'ble Shishir Kumar, J.)

1. Heard learned counsel for the petitioner and learned Standing Counsel.

2. This writ petition has been filed for quashing the order dated 22.02.2008 (Annexure-2 to the writ petition), passed by respondent No.2, by which the services of the petitioner has been terminated on the ground that the certificate of High School submitted by the petitioner at the time of appointment was found forged.

3. The facts arising out of the present writ petition are that on the basis of advertisement made by the respondent in the year 1989 for the purposes of appointment on the post of Constable, as the petitioner was fully eligible to be considered and appointed, he submitted relevant documents and on the basis of aforesaid document, petitioner was considered treating his date of birth as 15th November 1969. The High School certificate issued by the Board of High School and Intermediate of the year 1983 was submitted at that time. Petitioner on the basis of aforesaid appointment was working and the conduct of the petitioner was always appreciated by the relevant authority from time to time. It appears that on the basis of some complaint regarding various persons who have obtained the appointment claiming themselves to be dependent of the employees working in the Department under the Dying in Harness Rules, some investigation was made without any notice to the petitioner and it was found as alleged by the respondent that in the certificate submitted by the petitioner of the High School the date of birth of the petitioner is entered as 15.11.1965. Though in the certificate which has been submitted by the petitioner, the date of birth is recorded as 15.11.1969.

4. The contention of the petitioner to this effect is that in case on the basis of some complaint if the respondent was of the opinion that on the basis of some inquiry made thereunder the certificate submitted by the petitioner was having some discrepancy or wrong date of birth according to respondent is entered, the petitioner was entitled to have a show cause notice and opportunity. The appointment of the petitioner cannot be cancelled without any notice and opportunity that too after completion of about 17 years of service in the Police Department. In case the petitioner would have been given a liberty he would have submitted a certificate issued by the High School Board which was submitted at the time of entrance in service. Without any notice and opportunity to the petitioner, the order impugned dated 22.02.2008 cannot be passed. The petitioner has placed reliance upon a judgment of apex court reported in ***1991 Supp. (1) SCC 330 Shrawan Kumar Jha and others Vs. State of Bihar and others***. On the strength of the aforesaid decision, learned counsel for the petitioner submits that in case on the basis of some inquiry it was found by the respondents that certificate submitted by the petitioner is not correct or they have come to the conclusion that it is a forged certificate, the principle of natural justice has to be observed and no order can be passed without any opportunity to the petitioner. In ***2002 (1) U.P.L.B.E.C. 705 Pradeep Kumar Singh Vs. U.P. State Sugar Corporation and another***, the Division Bench of this Court has held that termination without any show cause notice or opportunity to defend has been held to be violative to the principle of natural justice and has quashed the order of termination. In ***Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others reported in (1999) 3***

SCC 60, the apex court has held that if finding has been arrived at an inquiry as to the misconduct behind the back of the Officer without a regular departmental inquiry, the same is not permissible on the allegation of fraud without any notice and opportunity the order passed by the respondent is in violation of Rule 8 and 14 of the U.P. Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991. Rule 14(1) of the Rules provides initiation of proceeding which has to be adhered to before passing the order of dismissal or cancellation of the appointment of the petitioner. Admittedly, no notice and opportunity was ever given to the petitioner before passing the order impugned. As such, the order impugned is liable to be quashed.

5. On the other hand, the respondent filed a counter affidavit stating therein that in a writ petition filed by one Awnish Kumar, this Court has directed that the respondent may enquire into the matter regarding the employees who have obtained the appointment under the Dying in Harness Rules on the ground that their father or mother were in service of the respondent and died in harness and on that basis some inquiry was conducted and it was found that the birth certificate submitted by the petitioner appears to be forged. Further allegation has been made that after inquiry it was found that only to get an appointment in the Police Department, the forged certificate of birth has been submitted by the petitioner, therefore, the appointment/selection of the petitioner is hereby cancelled.

6. I have considered the submissions made on behalf of the parties and perused the record. From the averments made by the parties in the writ petition as well as in the counter affidavit, it does not transpire that petitioner was ever given a notice and opportunity before passing the order impugned. Admittedly, the petitioner's appointment was of 1989. In case some inquiry as submitted by the respondent was made and a conclusion was arrived upon that petitioner only to get an appointment has filed a forged certificate claiming that his date of birth is 15.11.1969. Petitioner's case is that he has passed the High School in the year 1983 and certificate issued by the Board was submitted mentioning therein that the date of birth of the petitioner is 15th November 1969. The respondents have not disclosed the fact that from where they have enquired into the matter and what are the documents to show thereunder that the certificate submitted by the petitioner was forged. Therefore, in my opinion, it was incumbent on the part of the respondents to have a proceeding against the petitioner as provided under the Rules. The Regulation itself provides that in case of some misconduct or if on the basis of some inquiry it has been found that a person has obtained the appointment by playing fraud in that circumstance unless and until the procedure of inquiry as provided under the Rules is followed, no disciplinary action can be taken against an employee. It is also not the case of the respondent that after verification from the petitioner also it was established that the appointment has been obtained by playing fraud. Therefore, in view of settled principle of law it was not necessary to give a notice and opportunity and to have a disciplinary proceeding against the petitioner as it is settled in law that fraud vitiates everything unless and until it is established the procedure as provided cannot be bye passed. Article 311 (2) of

the Constitution of India provides for dispensation of inquiry in case a finding is recorded by the disciplinary authority that it is not possible and feasible to have an inquiry in the circumstances of the case. The similar provision is under the Police Regulation which provides dispensation of the inquiry against a person what satisfaction has to be recorded in the impugned order.

7. In ***2008 (7) ADJ 4 Ramveer Singh Vs. State of U.P. And Others***, this Court has taken a view in the similar fact and circumstances that in case at the time of appointment a caste certificate has been filed and subsequently it was found that the petitioner does not belong to said caste in that circumstances without holding a full fledged inquiry the appointment / selection of a person cannot be cancelled. In view of the matter the alleged act or conduct of the petitioner was of at the time of his appointment while entering into services, therefore, the same would not constitute misconduct during the service as such order of dismissal for alleged misconduct could not be passed against him. In my opinion, this submission made by the learned counsel for the petitioner have got substance and deserves to be accepted. I am of the considered view that the alleged conduct of the petitioner while entering into service cannot be alleged to be misconduct during service. In service law jurisprudence both the stages are quite distinct and distinguishable, therefore, they should not be intermixed otherwise it will cause serious repercussion in the service law jurisprudence. Further, I have a doubt in the mind that whether such illegal appointment as alleged by the respondent on the basis of alleged forged certificate could be cancelled after long lapse of 15 years from the date of appointment of the petitioner. Further it is admitted case of the parties that the petitioner has not been afforded any opportunity before passing the order impugned dismissing the petitioner from service.

8. In view of aforesaid fact, I am of the view that the order impugned dated 22.02.2008 cannot be sustained and the same is hereby quashed. In the result the writ petition is allowed, and the respondents are directed to reinstate the petitioner with all the benefits of service with full salary as well as seniority from the date of dismissal till the date of reinstatement. Further, it is provided that the respondents will pay arrears of salary to the petitioner within two months from the date of production of certified copy of the order.

No order as to costs.

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 26.04.2010

BEFORE
THE HON'BLE YOGENDRA KUMAR SANGAL, J.

Application U/S 482 No. 5734 of 2010

Anshu @ Dilip Kumar & others ...Applicants
Versus
State of U.P. and another ...Opposite Party

Counsel for the Applicant:
Sri S.P. Giri

Counsel for the Opposite Party:
G. A.

Code of Criminal Procedure-Section 482:-offence under Section 3/7 Essential Commodities Act-bags of wheat while

unloaded from Truck and loaded in Tractor-157 Bags showing marks of APL -indicates government goods-prayer for quashing charge-sheet rejected-those goods whether belongs to government or applicate shall be subject to trail-but by efflux of time considering permissibility Magistrate ought to have make arrangement in view of law laid down Sunder Bhai Ambalal's case-application disposed with consequential direction.

Held: Para 9

In these circumstances of the case, taking into consideration the arguments of parties counsel and facts of the case, if an application of the applicants to release the Wheat in their favour is rejected by the trial court, there is no illegality, invalidity and impropriety in the orders. However, it is correct that Wheat in the Bags is a perishable item and some arrangements should have been made by the trial court either by selling the same in the open market or by selling the same on the Government shops and the money collected may be deposited in the court concerned or with the authority concern, subject to the result of the case but no such arrangements was made neither by the trial court nor by the authorities who seized the Wheat and kept it in the Go-down of Mandi Samiti. Possibility cannot be ruled out that by lapse of time, it may perish. Learned counsel for the applicant cited law *2003 (46) ACC 223 Sundar Bhai Ambalal vs. State of Gujarat and 2008 (1) ADJ 321 Virendra Vs. State. Hon'ble Supreme Cour*t and this Court have given directions about the disposal of such type of items during pendency of the case. It will be appropriate for the trial court to pass necessary orders in the light of law laid down above by the courts referred above. Learned Magistrate may also direct the authorities of the district concerned for disposal of the seized Wheat according to law and the price received be deposited in the Court or with some Government authority subject to the result of the matter. Empty bags will be kept in safe custody so that they may be produced in the Court.

Case law discussed:

2003 (46) ACC 223, 2008 (1) ADJ 321.

(Delivered by Hon'ble Yogendra Kumar Sangal, J.)

1. This is an application under Section 482 Cr.P.C. to quash the order dated 27.01.2010 passed by ACJM, Anoopshahar, district Bulandsahar and charge-sheet submitted in the trial court in Case Crime No. 422 of 2009 under Section 3/7 Essential Commodities Act, P.S. Dibai, district Bulandsahar and also prayed to pass an appropriate order for releasing the Wheat seized by the authorities in favour of the applicants against the deposit the appropriate wheat amount subject to the decision of the case.

2. Heard learned counsel for the applicants learned AGA for the State and perused the record.

3. As per prosecution case, on the information of the informant a Raid was arranged by the authorities of the State Government in company of the Police Persons and they found that on the Road in front of the Bus Stand, two vehicles Tractor Trolly and Mini Truck loaded with Bags were standing there. Informant towards that and moved the place. Both the vehicles were checked. In the Mini Truck No. UP81 Y9804, two persons Shashi Kumar and Ompal were sitting and on inquiry they gave their names and address. On further inquiry, they stated that Bags containing Wheat are loaded in the Truck but they failed to give the detail, to whom these Bags belong. 11 Bags containing Wheat were there and on the Bags APL mark (above poverty line)

was affixed which was a Government property. On the other Vehicle i.e. Tractor Trolly, two other persons Manoj Kumar and Anshu were seated and they also given their names and addresses and on inquiry they stated that Wheat is there in the Bags loaded in the Trolly. These bags were in No. 157 and on the bags mark APL as above was affixed showing that those were also Government Property. All the four persons failed to give detail from where they bring the Wheat. They were taken into custody the vehicles and Wheat bags were seized and brought at Mandi, Dibai where the Wheat was given in the Supurdagi of Incharge of Mandi Samiti and memo was prepared accordingly. Accused and vehicle brought at police station and report was lodged against them. Accused persons get them released on bail. After investigation, charge-sheet was submitted against them for their trial.

4. Three separate applications were moved by Anshu alias Dilip Kumar, Dhan Singh and Mahendra Singh claiming that Wheat belongs to them and prayed to release the Wheat in their favour. Anshu claimed 16 bags his own and Dhan Singh claimed 67 Bags and rest bags were said by the applicant Mahendra Singh. After giving opportunity of hearing, all the three applicants' applications were rejected by trial court. Aggrieved by these orders, this application has been filed by all the three applicants.

5. Record shows that copy of the application of the applicant Anshu alias Dilip Kumar moved before the trial court is annexed at Page 15 and 16 while copy of the application of Dhan Singh is at Page 17 and 18. Copy of the application moved on behalf of Mahendra Singh was not filed to the reason best known to the applicants. Copy of the order passed on the application of Mahendra by the trial court is at Page 19 and 20 and 21A(certified copies) while copy of the order passed on the application of Anshu is at page No. 21 B and 21 C (certified copy) and photocopy at Page 21. Copy of the order rejecting the application of Dhan Singh has not been filed on behalf of the applicants. This shows that to the reason best known to the applicants required papers of decided case were not filed on the record.

6. How the investigation was completed and what were the statements of the witnesses under Sections 161 Cr.P.C. are also not made available on behalf of the applicants. It is also not clear from the record that when the applications for release of the case property were rejected by the trial court, why the Appeal/Revision was not filed before the appropriate authorities/court and why directly the applicants have approached this court by the present Application under Section 482 Cr.P.C.

7. Learned counsel for the applicants during the course of arguments has also not pressed the prayer to quash the charge-sheet. He argued that without giving sufficient reasons, arbitrarily, learned trial court has rejected the applications of the applicants to release the Wheat in their favour. It was further argued that Wheat was a perishable commidity and it was the duty of the trial court that if the court was not intending to release the Wheat in their favour at least, some arrangements should have been made so that seized commodity could not be damaged due to lapse of time. Learned AGA argued that Wheat recovered was seized taking that it was the Government

property and applicants were not authorized for its possession without any license or authority. They failed to give any sufficient explanation how and why this Government property was in their possession and under what authority, they were keeping it. However, learned AGA conceded that learned trial court should have made some order to avoid the damage of the commodity due to lapse of time.

8. Learned counsel for the applicants argued that the Wheat was not a Government property. They intending to sell it at market price in the Mandi so the Wheat was being transported on the hired vehicle Mini Truck but due to some mechanical defects, it was not possible that Truck may reach the Mandi. Tractor Trolly was arranged. When the raid was arranged and the Wheat was seized the bags were being loaded in the Tractor Trolly from the Mini Truck to bring the same for the above said purpose. It was further argued by the learned counsel for the applicants that Wheat was not filled in the Bags having mark of APL but these were in SADA bags which were purchased by them from the market. Out of the three applicants, only one Anshu alias Dilip Kumar was present when the Wheat was seized. Four persons were arrested by the authorities from the spot. Why Anshu alias Dilip Kumar have not given the above details of ownership to the authorities, it is not sufficiently explained on behalf of the applicants. All the three applicants, claimed that they are agriculturists and the Wheat in the Bags was produced of their fields but no copy of Khasra and Khautani showing their land in the area was filed on behalf of the applicants. Only Anshu has given some detail and rest of the two applicants have not given any detail of Plot No. of their land, from where they have hired the Mini Truck, who is the owner of the Truck. Similarly, to whom The Tractor Trolly belongs and why this Tractor and Trolly was not having registration number, it is also not explained on behalf of the applicants. When the Tractor Trolly was handed over to the Police at the Police Station, anybody approached to the court to get released them, it is also not clear from the record and learned counsel for the applicants also could not explain the same during the course of arguments. No receipt of hiring Truck and Tractor Trolly also filed on behalf of the applicants. Mahendra Singh and Dhan Singh are not joined in the charge-sheet as the accused Anshu was charge-sheeted by the Police. How he has claimed his bail in the matter and what was the order of his release on bail, neither copy of the bail application nor the release order has been filed.

On behalf of the State authorities it has been claimed that the Wheat belongs to the Government while the applicants are claiming their own. It has to be decided by the evidence to be adduced in this regard, but no such evidence was made available on behalf of the applicants to show that the Wheat contained in the Bags is their own property.

9.. In these circumstances of the case, taking into consideration the arguments of parties counsel and facts of the case, if an application of the applicants to release the Wheat in their favour is rejected by the trial court, there is no illegality, invalidity and impropriety in the orders. However, it is correct that Wheat in the Bags is a perishable item and some arrangements should have been made by the trial court either by selling the same in the open

market or by selling the same on the Government shops and the money collected may be deposited in the court concerned or with the authority concern, subject to the result of the case but no such arrangements was made neither by the trial court nor by the authorities who seized the Wheat and kept it in the Go-down of Mandi Samiti. Possibility cannot be ruled out that by lapse of time, it may perish. Learned counsel for the applicant cited law ***2003 (46) ACC 223 Sundar Bhai Ambalal vs. State of Gujarat and 2008 (1) ADJ 321 Virendra Vs. State. Hon'ble Supreme Cour***t and this Court have given directions about the disposal of such type of items during pendency of the case. It will be appropriate for the trial court to pass necessary orders in the light of law laid down above by the courts referred above. Learned Magistrate may also direct the authorities of the district concerned for disposal of the seized Wheat according to law and the price received be deposited in the Court or with some Government authority subject to the result of the matter. Empty bags will be kept in safe custody so that they may be produced in the Court.

10. With the observation made above, the application is disposed of.

11. Copy of the order be sent to the trial court for immediate compliance.

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 22.04.2010

BEFORE
THE HON'BLE SHRI KANT TRIPATHI, J.

Criminal Misc. Application No. 11363 of 2010

Dau Dayal ...Applicant
Versus
State of U.P. & another ...Opposite Party

Counsel for the Applicant:
Sri K.K. Dwivedi

Counsel for the Opposite Party:
Govt. Advocate

Code of Criminal Procedure Code-Section 111-Noitce on printed proforma-without application of judicial mind-substance of information not disclosed-held-illegal-quashed with liberty to issue fresh notice in accordance with law.

Held: Para 8

In my opinion, if the apprehension of breach of peace was in regard to the possession of the land, the appropriate course for the Executive Magistrate was to initiate a proceeding under section 145 of the Code instead of proceeding under section 107/116 of the Code. The satisfaction recorded by the Magistrate in the notice in regard to the apprehension of breach of peace was already printed and only gaps have been filled up, therefore, the satisfaction was not recorded after application of the mind to the facts of the case.

Case law discussed:
[1993(3) ACC page 146], [1993(30) ACC page 227].

(Delivered by Hon'ble Shri Kant Tripathi, J.)

1. Heard learned counsel for the applicant and the learned AGA and perused the record.

2. This is a petition under section 482 of the Code of Criminal Procedure (in short "the Code") to quash the notice dated 21.12.2009 issued by the respondent no. 2 under section 111 of the Code.

3. The main ground for challenging the notice is that the learned Executive Magistrate has issued the notice on a

printed proforma and did not apply his mind before calling for the applicant to show cause.

4. The learned counsel for the applicant placed reliance on the case of **Siya Nand Tyagi v State of U.P. [1993(3) ACC page 146]**, the excerpts of which are being reproduced below:

"The case presents a sorry state of affairs. The order under Sec. 111 of the Code has been passed on a printed proforma which blanks have been filled in by the learned Magistrate. Judicial orders are to be passed after applying mind to the facts and circumstances of the case. I have gone through the printed order passed under Sec. 111. It is distressing to note that there is no mention of the substance of information received by the learned Sub-Divisional Magistrate on which he took action. Making an order under Sec. 111 of the Code is not an idle formality. It should be clear on the face of the order under Sec. 111 that the order has been passed after application of judicial mind. If no substance of information is given in the order under Sec. 111 the person against whom the order has been made will remain in confusion... "

5. Similarly he placed reliance on the case of **Naresh Kumar Jain & others v State of U.P. [1993(30) ACC page 227]**, the excerpts of which are also being reproduced below:

".....The order made under Sec. 111 in the present case does not at all disclose the substance of information received by the Magistrate. The order has been passed in a most mechanical manner.

It is distressing to note that the repeated pronouncement of this court as also the pronouncements made by the Supreme Court have fallen on the deaf ears of our Executive Magistrates who still treat the making of order under Sec. 111 an idle formality. Unfortunately due to lack of clear perception of law the learned VIIIth Additional Sessions Judge, Agra has also put his seal of approval on the invalid order under Sec. 111. In modern time the judiciary, like an other State Organ, is under scrutiny of the public and rightly so because in a democracy the people are the ultimate masters of the country and all State organs are meant to serve the people. The lack of vigil on the part of the lower revisional court is regrettable."

6. Apart, it was also submitted that the notice is vague and does not disclose at all the substance of information received by the Magistrate.

7. A perusal of the impugned notice reveals that there was a dispute between the applicant and one Brijesh Kumar in regard to a plot and due to which there was apprehension of breach of peace.

8. In my opinion, if the apprehension of breach of peace was in regard to the possession of the land, the appropriate course for the Executive Magistrate was to initiate a proceeding under section 145 of the Code instead of proceeding under section 107/116 of the Code. The satisfaction recorded by the Magistrate in the notice in regard to the apprehension of breach of peace was already printed and only gaps have been filled up, therefore, the satisfaction was not recorded after application of the mind to the facts of the case.

9. In view of the fact that the notice (annexure 2 to the petition) has been prepared on a printed proforma without application of mind and is silent in regard to the substance of information for initiating the proceedings under sections 107/116 of the Code, the impugned notice is quashed. It will however be open to the learned Executive Magistrate to issue a fresh notice under section 111 of the Code after making due compliance of the legal requirements, provided apprehension of breach of peace subsists on the date of issue of the fresh notice.

10. With the aforesaid observation, the petition is allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.04.2010

BEFORE
THE HON'BLE R.K. AGRAWAL, J.
THE HON'BLE JAYA SHREE TIWARI, J.

Civil Misc. Writ Petition No. 29390 of 2008

Rafiq Ahmad ...Petitioner
Versus
Union of India and others ...Respondents

Counsel for the Petitioner:
Sri K.P. Agrawal
Sri Ghazala Bano Quadri

Counsel for the Respondents:
C.S.C.,A.S.G.I.,
Sri Maneesh Trivedi

Constitution of India Art. 226-Release of Vehicle-financed by bank-default in payment of installments-bank forcible seized the vehicle without taking recourse of law-in counter affidavit plea taken by bank regarding seizer by the agent-held-such action of bank under the teeth of law laid down by the Apex Court-direction to restore the possession of vehicle in actual running condition-without charging any interest on loan during period from the date of seizer to the actual date of restoration of the possession-towards compensation excluding this period-from time prescribed in agreement.

Held: Para 8

In this view of the matter, we are of the considered opinion that the action adopted by the bank can not be justified in law and need to be deprecated. The bank is, therefore, directed to forthwith return the vehicle U.P. 70 AT 6632 to the petitioner in a perfect running condition. As the petitioner has been deprived illegally and without the authority of law from running the vehicle in question from 6.5.2008, the petitioner is entitled to be compensated. Instead of quantifying the amount of compensation, we deem fit and proper and also in the interest of justice that the bank should not demand any interest on the amount advanced for the aforesaid period beginning from 6.5.2008 till the date when the vehicle is returned. The repayment schedule should also be extended by excluding the period when the vehicle was forcibly seized and was in possession of the bank. We, therefore, direct that for the period from 6.5.2008 when the vehicle was seized illegally till its actual return, the bank shall not realise any interest on the amount of the loan advanced to the petitioner and, further for the aforesaid period, there shall be a moratorium of repayment of the instalment and it shall begin only after one month from the date of the return of the vehicle. As the interest of the petitioner has been taken care of by the aforesaid directions, we are not awarding any cost to the petitioner.

(Delivered by Hon'ble R.K. Agrawal, J.)

1. By means of the present writ petition, the petitioner seeks a writ, order or direction in the nature of mandamus

directing the respondent No. 4 i.e. ICICI Bank Ltd. Sardar Patel Marg, Civil Lines, Allahabad to release the Mini Bus Tata 407 having registration No. U.P. 70 AT 6632 to the petitioner. A further direction is sought in the nature of mandamus to direct the respondents No. 5 and 6 to register the case against the respondents on the basis of an application filed as Annexure 4 to the writ petition.

2. Briefly stated the facts giving rise to the present petition are as follows.

3. The petitioner had purchased a Mini Bus Tata 407, which was financed by the ICICI Bank Ltd. Civil Lines, Allahabad. Its registration No. is U.P. 70 AT 6632 and Chasis No. 357166 ATZ 452481 and Engine No. 4075. It was financed by the ICICI Bank Ltd. under the terms of an agreement dated 29.3.2007, a copy of which has been placed on record by the bank along with the counter affidavit as Annexure CA 1. It appears that the petitioner defaulted in payment of instalments as a result of which it is the case of the petitioner that the bank forcibly seized the vehicle on 6.5.2008 without adopting due process of law. We may mention here that a total sum of Rs.4,82,762/- was advanced by the bank for the purchase of vehicle in question and a monthly instalment of Rs.14,575/- was fixed towards the loan instalment. The vehicle was seized on 6.5.2008, whereafter, the petitioner informed the Senior Superintendent of Police, Allahabad, by means of an application dated 19.5.2008. No action was taken whereopon, the petitioner has approached this court seeking aforementioned reliefs. Counter and rejoinder affidavits have been exchanged. With the consent of the learned counsel for the parties, this writ petition is disposed of finally at the admission stage itself in accordance with the Rules of the Court.

4. Learned counsel for the petitioner submitted that the vehicle was seized by the recovery agents employed by the bank on 6.5.2008 without taking recourse to the provisions of law. She relied upon a decision of the Apex Court in the case of ICICI Bank Ltd. Versus Prakash Kaur and others, (2007) 2 SCC 711, wherein, the Court has held that the bank should resort to procedure recognised by law to take possession of vehicles in cases where borrower has committed default instead of resorting to strong arm tactics.

5. Sri Maneesh Trivedi, learned counsel appearing for the bank submitted that as the petitioner had defaulted in payment of monthly instalments, he voluntarily surrendered the vehicle on 6.5.2008, as per the surrender letter of even date filed as Annexure 1 to the counter affidavit. Necessary averments in this behalf has also been made in paragraph 7 of the counter affidavit filed by Ajay Gupta, Collection Manager, ICICI Bank Ltd. 13, Sardar Patel Marg, Civil Lines, Allahabad. He, therefore, submitted that the petition filed for release of the vehicle is wholly misconceived.

6. We have given our thoughtful consideration to the various pleas raised by the learned counsel for the parties. From the loan agreement, we find that the petitioner had signed the same in 'Hindi' whereas, in the surrender document filed along with the counter affidavit as Annexure 1, the alleged signature is in 'English'. Further, form a perusal of the Annexure CA 1, we find that the name of the petitioner and the address has been

mentioned in English under the place mentioned as borrower's name and address. However, the column containing the borrower's signature is left blank.

7. Shri Maneesh Trivedi submitted that the name of Rafiq Ahmad written in english is his signature. This can not be accepted for the simple reason that Rafiq Ahmad had signed the loan agreement in Hindi and, further the name and address only contains the name of the petitioner in English. The signature column is blank which goes to establish the case set-up by the petitioner that the recovery agents employed by the bank forcibly seized the vehicle from the petitioner for non-payment of the instalments.

8. In this view of the matter, we are of the considered opinion that the action adopted by the bank can not be justified in law and need to be deprecated. The bank is, therefore, directed to forthwith return the vehicle U.P. 70 AT 6632 to the petitioner in a perfect running condition. As the petitioner has been deprived illegally and without the authority of law from running the vehicle in question from 6.5.2008, the petitioner is entitled to be compensated. Instead of quantifying the amount of compensation, we deem fit and proper and also in the interest of justice that the bank should not demand any interest on the amount advanced for the aforesaid period beginning from 6.5.2008 till the date when the vehicle is returned. The repayment schedule should also be extended by excluding the period when the vehicle was forcibly seized and was in possession of the bank. We, therefore, direct that for the period from 6.5.2008 when the vehicle was seized illegally till its actual return, the bank shall not realise any interest on the amount of the loan advanced to the petitioner and, further for the aforesaid period, there shall be a moratorium of repayment of the instalment and it shall begin only after one month from the date of the return of the vehicle. As the interest of the petitioner has been taken care of by the aforesaid directions, we are not awarding any cost to the petitioner.

9. The writ petition stands allowed.

APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.04.2010

BEFORE
THE HON'BLE R.K. AGRAWAL, J.
THE HON'BLE MRS. JAYASHREE TIWARI, J.

Special Appeal No. 1972 of 2009

Dilip Kumar Gupta ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri Surendra Kumar Mishra
Sri Sanjay Kumar Mishra

Counsel for the Respondents:
C.S.C.
Sri M.C. Mishra
Sri Rajeshwar Singh
Sri Rajnish Dubey
Sri Umesh Kushwaha
C.S.C.

Constitution of India, Art. 226- appointment on post of Shiksha Mitra treating under Physically handicapped quota-petition dismissed by Single Judge with specific finding-that certificate of 45% handicapped a forged certificate- Appellate Court directed the appellant to deposit Rs.25000/- with Registrar General-only thereafter medical board shall examine about physical disability-

medical board found some defect in right leg but can not be treated as physical handicapped-dismissal held proper amount deposited under direction of Court be refunded to appellant.

Held: Para 3

The respondent No.5 was examined by the Medical Board on 16.1.2010 and even though the Board was of the opinion that there is some deficiency in the right leg of the respondent No.5, as a result of which, she walks with limp but the deficiency is not such which can qualify for issuance of a handicapped certificate. That being the position in our considered opinion the appointment of the respondent No.5, as Shiksha Mitra under the handicapped person was not justified. The special appeal succeeds and is allowed. The appointment of the respondent No.5 is hereby set aside. Rs.25,000/- deposited by the appellant under the order of the High Court be refunded to the appellant.

(Delivered by Hon'ble R.K. Agrawal, J.)

1. The present Special Appeal has been filed against the judgment and order dated 12.11.2009 passed by the learned Single Judge, whereby the writ petition preferred by the appellant had been dismissed.

2. Before the learned Single Judge, the case set up by the appellant was that the respondent No.5 got appointment as Shiksha Mitra claiming preference of being handicapped person and on the other hand she is not a handicapped person. Vide order dated 22.12.2009, the Court had passed the following orders;

"It is the assertion of the writ petitioner that respondent no.5 is not a handicapped person and the certificate obtained by her that she is a handicapped to the extent of 45% is forged.

On the writ petitioner depositing a sum of Rs.25,000/- (Twenty Five Thousand only) by 4.1.2010 in the Registry of the Court, let respondent No.5, Smt. Rinku Devi be examined by the Chief Medical Officer, Deoria. The Chief Medical Officer may take assistance of any other medical officer for her examination. The Chief Medical Officer, shall proceed to examine respondent No.5 only when the writ petitioner produces before him the receipt showing deposit of the aforesaid amount in the Registry of this Court. The Chief Medical Officer, shall submit his report by 11.1.2010 to this Court in sealed cover.

In case, respondent No.5, is held to be a handicapped person, the amount deposited by the writ petitioner, shall be forfeited."

3. The respondent No.5 was examined by the Medical Board on 16.1.2010 and even though the Board was of the opinion that there is some deficiency in the right leg of the respondent No.5, as a result of which, she walks with limp but the deficiency is not such which can qualify for issuance of a handicapped certificate. That being the position in our considered opinion the appointment of the respondent No.5, as Shiksha Mitra under the handicapped person was not justified. The special appeal succeeds and is allowed. The appointment of the respondent No.5 is hereby set aside. Rs.25,000/- deposited by the appellant under the order of the High Court be refunded to the appellant.

ORIGINAL JURISDICTION
CIVIL SIDE
DATD: ALLAHABAD 19.04.2010

BEFORE
THE HON'BLE A.P. SAHI, J.

Civil Misc. Writ Petition No. 34179 of 1994

Suresh Babu ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri R.G. Padia
Sri Prakash Padia

Counsel for the Respondents:
C.S.C.

Constitution of India Art. 226- Compassionate appointment-cancellation on ground of non availability of substantive post-offer given to work on lower post-counter affidavit plea taken the post on which appointment made has been occupied by permanent appointee-offer for appointment on lower post refused by petitioner-hence not entitled for any relief-held-without affording any opportunity-even after reinstatement of permanent incumbent-petitioner can not be thrown out-compassionate appointment-shall be treated as regular appointment for every purposes-dismissal order quashed with all consequential benefits.

Held: Para 9

The contention with regard to the status of appointment of a compassionate claimant is covered by the Division Bench decision in the case of Yogendra Ram Chaurasia Vs. State of U.P. reported in (2002) 5 AWC 3708. The petitioner, therefore, could not have been thrown out of employment or given an alternative employment against a lower post. Secondly, the said order of termination of the services of the petitioner could not have been passed without giving any notice or opportunity. The third contention has also to be accepted inasmuch as the writ petition filed by Lala Ram has already been allowed. Respondents had already filed counter affidavits and after 16 years are praying again for further time for which there is no justification.

(Delivered by Hon'ble A.P. Sahi, J.)

1. Heard Sri Prakash Padia, learned counsel for the petitioner and the learned Standing Counsel Sri S.K. Mishra who prays that the respondents want further two weeks' time to file a response to the order dated 30.3.2010.

2. This matter is pending for the past 16 years and two counter affidavits have been filed on behalf of the State, one by Mr. Ghanshyam Singh which was served on the learned counsel for the petitioner on 2.12.1994 and second counter affidavit sworn by Sripati Prasad which has been served on the learned counsel for the petitioner on 26.7.1995. In view of the affidavits which have already been filed on record, the only query made by the Court on 30.3.2010 was with regard to the judgment which has been brought on record through the supplementary affidavit dated 4.5.2007 in the case of Lala Ram Vs. State of U.P. & others decided on 4.5.2007.

3. Learned Standing Counsel, therefore, states that time may again be granted for ascertaining the instructions thereon.

4. In my opinion, the pendency of this writ petition for the past 16 years and the filing of two affidavits on behalf of the respondents and time already having

been granted on 30th March, 2010, there is no necessity of accepting the request of the learned Standing Counsel. The petitioner's counsel has brought on record the judgment of this Court which may not require any further verification. Accordingly, this Court is proceeding to decide the case finally.

5. The petitioner was appointed under the compassionate appointment rules known as U.P. Recruitment of Dependants of Government Servants (Dying in Harness) Rule, 1974 as a Farm Clerk on 30.11.1987 as his father Kishan Singh died in harness while working as a Reserve Warder in the District Jail, Muzaffarnagar. This compassionate appointment continued for about 7 years when on 19th September, 1994 the services of the petitioner were dispensed with on the ground that the post against which the petitioner had been appointed is no longer available inasmuch as the same had fallen vacant due to the promotion of Lala Ram who has now been reverted to the said post. The said order was challenged and an interim order was passed on 1.12.1994 that in case the post is vacant the petitioner may be permitted to continue on the post in question inasmuch as Lala Ram had already filed a writ petition and an interim order was passed in his favour. Two counter affidavits as indicated above have been filed. For reasons best known to the respondents both the counter affidavits indicate the respondents helplessness in continuing the petitioner on the post in question on the ground that the post was not available due to the reversion of Lala Ram the earlier incumbent on the said post. The second counter affidavit also indicates that the petitioner was offered an alternative employment as a Junior Assistant keeping in view his status of a compassionate appointee but the petitioner did not accept the request and instead filed this writ petition.

6. Sri Padia, learned counsel for the petitioner contends that the post which the petitioner was offered was on compassionate basis and it has been held in a series of decisions of this Court that an appointment on compassionate basis is a permanent appointment which cannot be terminated in the manner in which it has been done by the respondents. He further submits that even if Lala Ram had been reverted back the respondents were duty bound to appoint the petitioner against a permanent post. Sri Padia further contends that the impugned order was passed without giving any notice or opportunity to the petitioner and the same is in violation of principles of natural justice and thirdly once Lala Ram had already filed a writ petition and an interim order was passed by the Lucknow Bench of this court there was no occasion to terminate the services of the petitioner.

7. Learned Standing Counsel on the other hand contends that the petitioner cannot claim the same post, and he had been offered an alternative employment inasmuch as the post could not be filled up due to the reversion of Lala Ram. In rejoinder Sri Padia submitted that the supplementary affidavit which has been filed bringing on record the judgment in the case of Lala Ram clearly indicates that the writ petition filed by Lala Ram had been allowed and the reversion has been set aside. In such a situation the very basis of the contention raised in the counter affidavit vanishes.

8. I have heard learned counsel for the parties and perused the affidavits.

9. The contention with regard to the status of appointment of a compassionate claimant is covered by the Division Bench decision in the case of Yogendra Ram Chaurasia Vs. State of U.P. reported in (2002) 5 AWC 3708. The petitioner, therefore, could not have been thrown out of employment or given an alternative employment against a lower post. Secondly, the said order of termination of the services of the petitioner could not have been passed without giving any notice or opportunity. The third contention has also to be accepted inasmuch as the writ petition filed by Lala Ram has already been allowed. Respondents had already filed counter affidavits and after 16 years are praying again for further time for which there is no justification.

10. Accordingly on all three counts the writ petition has to succeed. The order impugned dated 19.9.1994 as communicated to the petitioner vide letter dated 6.10.1994 is quashed. Petitioner shall be treated to have been continuing on the post in question and he shall be entitled to all consequential benefits.

11. The writ petition is accordingly allowed. No order as to costs.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.04.2010

BEFORE
THE HON'BLE R.K. AGRAWAL, J.
THE HON'BLE MRS.JAYASHREE TIWARI, J.

Civil Misc. Writ Petition No. 30231 of 2008

Baboo Khan ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri Manish Goyal

Counsel for the Respondents:
Sri Vivek Varma
C.S.C.

Urban Land (Ceiling & Regulation) Act 1976-Section 11 and 16-Writ of mandamus the State Government to accept the amount of compensation received earlier by the petitioner on ground of his possession and the govt. has not taken actual physical possession-held-the moment on which petitioner received 80% of compensation-land deemed to be vested with government free from all encumbrances-now government can not be compelled to received back said compensation and handover the possession to the petitioner against statutory provision-petition dismissed.

Held: Para 10, 11 &13

Section 16 of the Land Acquisition Act provides that when the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

In the present case before us, it is admittedly clear that 80% of the compensation has already been received by the petitioner. In such circumstances,

the contention that they are still in possession of the land is not sustainable. The land shall be deemed to have vested in the State absolutely in the Government free from all encumbrances.

So the substance which comes out from perusal of this section is that it is the sole discretion of the State Government and the liberty provided to the State Government to withdraw from the acquisition but the Government cannot be compelled or enforced to accept the return amount of the compensation received by the petitioner and to consider and withdraw from the acquisition. No judicial intervention can be made in the domain of the State to apply its discretion or exercise its powers of liberty to withdraw its acquisition.

(Delivered by Hon'ble Jayashree Tiwari, J.)

1. The present writ petition has been filed for grant of writ of certiorari for quashing the order dated 28.3.2008 passed by respondent no. 1 and also for quashing the possession letter dated 10.2.1986 and also for a writ of mandamus directing the respondents to accept the amount of compensation awarded to be returned by the petitioner.

2. Briefly stating contentions of the petitioner is that in respect of disputed land proceedings were instituted against the petitioner seeking for declaration of land measuring an area of 5652.6478 Sq. Metres as surplus land with the petitioner. As the same was declared surplus by the respondents vide order dated 26.10.1983 and the State assumed ownership over the said land on 8.2.1986. These proceedings were enunciated ex-parte under the Ceiling Act against the petitioner. Hence the petitioner filed an appeal under Section 33(1) of the Urban Land (Ceiling and Regulation) Act, 1976 which was numbered as Misc. Appeal No. 286 of 1993. The appellate authority stayed the dispossession of the petitioner and after deciding on merit allowed in favour of the petitioner. The matter was remanded back for reconsideration afresh by the competent authority vide order dated 16.11.1995. Against the aforesaid order the State preferred a writ petition on 27.5.1997. The writ petition was dismissed. Against that dismissal order the Special Leave Petition was filed on 17.12.1988 which again was dismissed by the Apex Court.

3. Respondent no. 1 in between issued a notification under Section 4 of the Land Acquisition Act wherein the entire land belonging to the petitioner including the land which formed part of the of the ceiling proceeding as aforesaid was a subject matter of that notification. On 8.2.1990 notification under Section 6 of the Land Acquisition Act was also issued. The declaration under Section 4 and 6 was challenged before the High Court in writ petition no. 5462 of 1990 which writ petition was allowed on 20.8.1983 and the declaration under Section 6 was quashed. Under section 6 of the Land Acquisition Act the land of the petitioner was shown to be included in the said declaration. Consequently, award was made on 29.2.1982 and on 7.2.2001 which was challenged before Hon'ble High Court and was dismissed by a Division Bench vide order dated 5.1.2000. The Special Leave Petition was filed before the Hon'ble Supreme Court by the Agra Development Authority and the award was amended as per order and the amended award was published as per order of the Hon'ble Supreme Court. The petitioner's land which was subject matter

of the proceeding under the Ceiling Act was never transferred to the State Government nor any possession with regard to the same was taken by the State Government. It is apparent from the possession certificate dated 30.3.1991. This possession was acknowledged by respondent no. 3 who directed the petitioner that since the compensation has been paid to the petitioner by mistake for the entire land, the same may be refunded by the petitioner alongwith interest for the land measuring 1 Bigha and 5 Biswas which does not form part of the acquisition proceedings.

The petitioner approached respondent no. 3 for depositing the said amount but the said amount was not accepted and therefore he approached respondent no. 1 by means of representation and requested respondent no. 1 to release the land in favour of the petitioner and whatever compensation was received by the petitioner was directed to be refunded to the respondent no. 4 through respondent no. 3. The said representation of the petitioner has been rejected by the respondent no. 1.

4. The State Government filed its counter affidavit denying the averments as made and filed affidavit of Sri Baboo Ram, Under Secretary Awas Evam Shahari Niyojan Department, Government of U.P. While denying the contentions raised in the writ petition it is submitted that in notification under Section 4 of the Land Acquisition Act the petitioner's plot no. 460 was included and subsequently notification under section 6 was issued. The urgency clause was invoked. The contention that ceiling proceedings were ex-parte proceedings and notice under Section 10(1) was not served is denied. It is contended that due procedure regarding ceiling act was followed and at this stage they need not reply. The petitioner has no right, title or interest at present over the plot no. 460 measuring 2 Bigha 1 Biswa and 18 Biswansi. It is further contended that possession memo dated dated 30.3.1991 shows that possession of total area of plot no. 460 have been handed over to the Agra Development Authority who is at present in actual physical possession over the plot alongwith other plots. The representations of the petitioner dated 12.12.2007 and 26.2.2008 have been duly disposed of vide order dated 28.3.2008 which is annexure 1 to the writ petition. The said representations have been disposed of considering each and every aspect of the matter. The petitioner has failed to make out the case under Section 226 of the Constitution of India. The contention is denied and is liable to be dismissed.

5. Against the averments made in the counter affidavit, a rejoinder affidavit has been filed on behalf of the petitioner wherein the contentions raised in the counter affidavit have been denied. It is contended that till date the plot no. 460 is not transferred to the State Government nor any possession was taken. That after quashing of the declaration under Section 6 of the Land Acquisition Act by the High Court fresh declaration has been made on 16.1.1995. The petitioner is still in actual physical possession over the plot no. 460 and the possession was never obtained by the State Government and the excess compensation paid to the petitioner may be refunded with interest for the land in question. Order dated 28.3.2008 is not sustainable in law.

6. Now coming to the main controversy as comes out in the rival submissions made by the parties as to whether the possession taken by the State under emergency clause invoking section 17-A of the Land Acquisition Act by paying 80% of the compensation is completed or whether the contention of the petitioner that since possession is still with him despite the fact that he has received 80% of the compensation and is ready to return the same is sustainable or the process for possession under law is complete or incomplete. Secondly, whether the Government can be compelled to exercise its power as enunciated under Section 48 of the Land Acquisition Act on the ground that the applicant is ready and willing to return the amount of compensation received by him and is praying for the return of his land.

7. In this connection it will be appropriate to go through the scheme as enunciated in the provisions of Land Acquisition Act. Under Section 4 of the Act there is publication of preliminary notification which shows the intention of the appropriate Government to acquire certain lands for public purposes. Under Section 6 a declaration is made of intended acquisition. In the normal course when publication of section 6 is made then the normal procedure followed is that the Collector shall take order for acquisition. Section 7 shows that whenever any land shall have been so declared to be needed for a public purpose or for a company, the appropriate Government or some officer authorised by the appropriate Government in this behalf, shall direct the Collector to take order for the acquisition of the land and thereafter under Section 8 of the Act the land so needed shall be marked out, measured and planned and thereafter under Section 9 public notice shall be given by the Collector to persons interested and then the Collector shall make an inquiry and also then make an award under Section 11 of the Act. Section 11 (A) provides that in normal course such an award shall be made within a period of two years from the date of publication of declaration under Section 6 and in case the award is not made within the stipulated period the acquisition proceedings shall stand lapse and under Section 12 it is provided that award made by the Collector shall become final as between collector and interested persons. The Collector shall give notice of his award to such of the persons interested under sub Section (2) of Section 12 of the Act. Then after competing all the formalities as mentioned and as and when needed under Sections 13, 13-A,14, 15 and 15(A) the award becomes final. The Collector shall under Section 16 exercise his power to take possession. Section 16 of the Act says like this that when the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. In the scheme of the Land Acquisition Section 17 is the Special Powers in cases of urgency.

Section 17. Special powers in cases of urgency._(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1) take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely

in the Government free from all encumbrances.

(2) Whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficiently to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested, compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24, and; in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2), and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto,) shall apply as they apply to the payment of compensation under that section.

(3B) The amount paid or deposited under sub-section (3A), shall be taken into account for determining the amount of compensation required to be tendered under Section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the date of the publication of the

notification under Section 4, sub-section (1).

8. Thus the main question involved in the case is to consider in the light of the scheme as enunciated under the land Acquisition Act in the aforesaid quoted sections. It has to be considered whether the contention of the petitioner that he is still in possession of the land is sustainable in the light of the provisions as enunciated. It is admitted to the petitioner that he has already obtained 80% of the compensation amount and in exercise of the power under Section 17 of the Act there is no denial to the fact that 80% of the compensation has already been tendered and obtained by the petitioner.

9. Now, the question remains to be considered is whether the possession, as alleged by the petitioner, that he is still in possession is sustainable in the eye of law or not. A perusal of Section 16 (2) of the Act clearly indicates that affect of such taking possession as has been mentioned in Section 16(1) may be notified by the Deputy Commissioner.

10. Section 16 of the Land Acquisition Act provides that when the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

11. In the present case before us, it is admittedly clear that 80% of the compensation has already been received by the petitioner. In such circumstances, the contention that they are still in possession of the land is not sustainable. The land shall be deemed to have vested in the State absolutely in the Government free from all encumbrances.

12. So far as the contention of the petitioner that he is ready to return the amount received and the Government may be directed to accept from the petitioner the amount of Rs.2,32,394.71 alongwith interest with respect to the disputed land which was received by the petitioner as compensation and the Government may allow the prayer for withdrawal from acquisition is concerned, in this connection it is obvious from the perusal of Section 48 of Land Acquisition Act which reads as follows

"Section 48. Completion of Acquisition not compulsory, but compensation to be awarded when not completed:- (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

13. So the substance which comes out from perusal of this section is that it is the sole discretion of the State Government and the liberty provided to

the State Government to withdraw from the acquisition but the Government cannot be compelled or enforced to accept the return amount of the compensation received by the petitioner and to consider and withdraw from the acquisition. No judicial intervention can be made in the domain of the State to apply its discretion or exercise its powers of liberty to withdraw its acquisition.

14. Considering the entirety of the circumstances when already 80% of the compensation has been received by the petitioner and the discretion of the State cannot be compelled in any way, there is no force in the contention of the petitioner.

15. The writ petition appears to be not maintainable and therefore dismissed accordingly.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.03.2010

BEFORE
THE HON'BLE AMITAVA LALA, ACJ
THE HON'BLE ASHOK SRIVASTAVA, J.

Civil Misc. Writ Petition No. 13424 of 2010

Satish Chandra Pandey ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri S.K. Chaubey

Counsel for the Respondents:
Sri Anuj Kumar
Sri H.N. Shukla
Sri R.K. Shukla on behalf of Gaon Sabha
C.S.C.

Constitution of India Art. 226-Public Interest Litigation U.P. Punchayat Raj Act 1947-Section 95(g)-suspension of Gaon Pradhan-on allegation of construction of Punchayat Bhawan and Jachcha Bachcha Hospital digging of pond land on another Gaon Sabha land already in progress-No financial irregularity found-nor the village Pradhan mis appropriated Gaon Sabha and for his personal benefits-suggestion given by Chief Development Officer approved-petitioner highlighting irregularities in shape of PIL-held-liable to be dismissed.

Held: Para 12

Therefore, the suggestion in the form of letter, as given by the Chief Development Officer, seems to be appropriate. Therefore, on the basis of that suggestion of Chief Development Officer, if the pond is being made, that can be done as expeditiously as possible. However, even having such suggestion for construction of pond in a place other than the place of pond which has been converted for the public purpose, if the writ petitioners feel aggrieved then it clearly indicates that in the back of making this writ petition, the public interest is not there but some sort of private interest is there, which cannot be encouraged by the Court. It is well settled that complainant cannot make such petitions and hence on both the accounts, we dismiss the writ petition filed in the form of Public Interest Litigation, however, without imposing any cost considering the facts and circumstances of the case.

Case law discussed:
(2001) 6 SCC 496, 2009 (3) UPLBEC 2868.

(Delivered by Hon'ble Amitava Lala, ACJ)

1. The petitioner is a complainant. He filed a complaint satisfying the provisions of Section 95 (g) of the U.P. Panchayat Raj Act, 1947 (hereinafter

called the 'Act') read with the relevant Rules framed thereunder. The main allegation was that the elected Pradhan has encroached a pond and illegally constructed over it the Panchayat Bhawan and Jachcha Bachcha Kendra. However, the Pradhan of the Gram Panchayat through his counsel has contended before us that he has already been suspended and challenging such order of suspension, a writ petition being Civil Misc. Writ Petition No. 16083 of 2009 has been filed before this High Court. The writ petitioner herein is also a party to the said writ petition.

2. So far as the pond is concerned, it has been stated that no water is there in the pond for a considerable long period and in the record of consolidation the land is recorded as such and not as a pond. The concerned Tehsildar has made a complaint to that extent. However, learned counsel appearing for the petitioner has contended before us that by an order of the Division Bench dated 26.8.2008 passed in Civil Misc. Writ Petition No. 43652 of 2008 (Vijmauti Vs. Commissioner Vindhyachal Division Mirzapur and others), an inquiry was allowed to continue against the petitioner of said writ petition. It is further recorded that if it is found that construction was illegal, appropriate amount be recovered from the Gram Pradhan and Gram Panchayat Adhikari. Demolition of Gram Panchayat was also urged but the Court held that the same is not warranted at this stage and that will depend upon the result of the inquiry.

3. However, by a letter dated 16th February, 2010, the concerned Chief Development Officer has directed that there should be a digging for making a pond upon some other land of Gram Panchayat in the village in view of the construction of Panchayat Bhawan and the Maternity Home, as above. By filing this writ petition, the writ petitioner contended that whatever action is required to be taken against the Pradhan that will be under Section 95(g) of the Act and rules. The writ petition has been filed only for the purpose of having a pond which has been illegally filled up. He has cited before us a judgement of the Supreme Court reported in **(2001) 6 SCC 496 Hinch Lal Tiwari Vs. Kamala Devi and others,** relying upon the penultimate paragraph, wherein it has been held that *"the person who has constructed a house over and above a pond was directed to take away materials of the house which has been constructed on the said land. It was further directed that if they do not vacate the land, the official respondents will demolish the construction and get the possession of the land in accordance with law. State respondents were directed to restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which the Supreme Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride".*

4. Learned standing counsel has cited two Division Bench judgements of this Court wherein it was considered and held that the import of the Hinch Lal Tiwari's case (Supra) does not necessarily mean that removal of a person, even a trespasser, can be made, without following the procedure. The reference of these two judgements are dated 4th

September, 2009 and 24th November, 2009 passed in Civil Misc. Writ Petition No. 45164 of 2009 and Writ Petition No. 61403 of 2009.

5. Learned standing counsel further said on the basis of the report of A.D.M. dated 30th September, 2009 that though the land was recorded as pond but on an inquiry he found that it is a land and the developments are there from before inclusive of Maternity Home which was built up earlier.

6. However, learned counsel appearing for the petitioner has contended that on the other hand, the A.D.M. (Finance) by its report, Annexure No. 5 to the writ petition, has stated that construction was wrongly made over the land which is recorded as pond.

7. Against these backgrounds, it is crystal clear before us that dispute with regard to the land in question is still existing and has not been finalized. Moreover, the construction, which is now available over the land, is not made for any private purpose and by any private party. A public office i.e. Panchayat Bhawan and a Maternity Home have already been constructed and if it is demolished without proper inquiry, scrutiny and hearing to the parties in this respect, it will also go against the public interest. Therefore, both the Panchayat Bhawan and the Maternity Home will also be available not only for ecological balance but also for public purposes.

8. Learned counsel appearing for the Gaon Sabha has cited a judgement of single Judge reported in **2009 (3) UPLBEC 2868 Mohan Singh Vs. State of U.P. and others** to satisfy the Court. In paragraph 5 of the said judgement, it has been held that *"complainant cannot be a litigant he could be, at the most examined as a witness in the inquiry but cannot be permitted to become a party in the lis'. In paragraph 6 of the judgement, it has been further held that "A member of the Gaon Sabha has been given a right to make a complaint along with the affidavit bringing to the notice that the allegations of misuse of powers and irregularities. The complaint, however, is not a prosecutor*. The matter thereafter rests between the District Magistrate and the Pradhan.

9. It is true to say that in this context the District Magistrate is the proper person to hold an inquiry and pass an appropriate order. It is open for all the parties to approach him. But, so far as the ecological balance is concerned, the suggestion which has been given by the Chief Development Officer under its order dated 16th February, 2010 will serve the purpose.

10. According to the letter of Chief Development Officer, a pond is required to be dug immediately at a particular place within the Gram Panchayat to avoid the controversy. This can be done to maintain the ecological balance as per the said letter, which appears to be backed by sound principles of law of ecological balance.

11. Now a days, various developments are being caused in the urban and rural areas and for the sake of constructions certain steps are being taken by the authorities even for removing trees and plants but the authorities or the court of law are always directing to maintain the ecological balance by placing plants at

appropriate places, which will maintain the ecological balance so that both the development as well as ecological balance cannot be suffered.

12. Therefore, the suggestion in the form of letter, as given by the Chief Development Officer, seems to be appropriate. Therefore, on the basis of that suggestion of Chief Development Officer, if the pond is being made, that can be done as expeditiously as possible. However, even having such suggestion for construction of pond in a place other than the place of pond which has been converted for the public purpose, if the writ petitioners feel aggrieved then it clearly indicates that in the back of making this writ petition, the public interest is not there but some sort of private interest is there, which cannot be encouraged by the Court. It is well settled that complainant cannot make such petitions and hence on both the accounts, we dismiss the writ petition filed in the form of Public Interest Litigation, however, without imposing any cost considering the facts and circumstances of the case.

13. In any event, passing of this order will in no way affect the right of the parties to approach the concerned District Magistrate for a decision in this respect, at the earliest.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.04.2010

BEFORE
THE HON'BLE A.P. SAHI, J.

Civil Misc. Writ Petition No. 37681 of 2005

Shiv Ram ...Petitioner
Versus
State of U.P. Secy' Revenue U.P. and others ...Respondent

Counsel for the Petitioner:
Sri R.S. Parihar
Sri B.D. Mishra
Sri D.K. Jaiswal
Sri Santosh Shukla

Counsel for the Respondents:
C.S.C.
Sri V.K. Chandel
Sri V.K.S. Chandel

Constitution of India-Art. 226-Recovery of Salary-petitioner working as peon-by impugned order dated 4.9.04-allowed to work upto 31.08.2004 treating notionally retire w.e.f. 01.07.1998 itself goes to show continuous working w.e.f.01.07.1998 to 31.08.04-No allegation of concealment of fact or fraud by petitioner-No question of recovery of Salary given during those period-direction for release of retirement benefits within 3 months on basis of impugned order itself-given.

Held: Para 6

From the impugned order dated 4.9.2004, it is evident that the petitioner has been made to retire in fact on 31.8.2004 and notionally w.e.f. 1.7.1998. It is, therefore, evident that the petitioner was allowed to continue in service by the respondents between 1.7.1998 and 31.8.2004 during which period he has performed his duty. There

is no indication of any fraud or misrepresentation on the part of the petitioner. In such a situation, it is observed that the respondents shall not proceed to make any recovery of salary if the same has been actually paid to the petitioner between the period 1.7.1998 to 31.8.2004. I am supported in my view from the decision in the case of Union of India and others Vs. Central Administrative Tribunal, Allahabad, and another, 2003 (4) ESC 2006 and in the case of Duryodhan Lal Jatav Vs. State of U.P. and others, 2005 (2) ALJ 1141. The contention raised by the learned Standing Counsel has, therefore, to be rejected on this count.

(Delivered by Hon'ble A.P. Sahi, J.)

1. Heard Sri Deepak Jaiswal, learned counsel for the petitioner, who has at the outset made a request that the petitioner does not want to press relief clause (I) which is for quashing of the order dated 4.9.2004. He, however, prays that an observation be made to the effect that salary paid for the period worked may not be recovered. The dispute relates to the correct date of birth of the petitioner who retired as a peon. The petitioner's service-book which was prepared in 1963 indicates that he was 25 years of age then, but the date of birth claimed is 1.9.1948. The authority came to the conclusion that taking the age of the petitioner as 25 years in 1963 the petitioner was born in 1938 and is, therefore, liable to retire at the age of 60 years in 1998.

2. Sri Jaiswal contends that treating the said order dated 4.9.2004 to be valid even otherwise the petitioner is entitled for certain benefits which have been withheld so far. He submits that the same may be directed to be released in case the same is admissible to the petitioner. Sri Jaiswal further invited the attention of the Court to paragraph no.11 of the counter-affidavit, where it has been stated the pension papers, in accordance with order dated 4.9.2004, have already been forwarded to the Senior Treasury Officer, Etawah, on 31.3.2005 which is still awaiting finalization.

3. A supplementary-Affidavit has been filed copy whereof has been served on the learned Standing Counsel today stating therein that there is every likelihood of recovery of salary from the petitioner for the period between 30.6.1998 to 31.7.2004 and the petitioner shall suffer irreparable loss.

4. Learned counsel Sri Jaiswal submits that he does not want any other benefit out of the order dated 4.9.2004 and the petitioner is prepared to accept the calculation of pension on the strength of the said order dated 4.9.2004 but an observation be made that no recovery of salary may be made from the petitioner.

5. Learned Standing Counsel contends that there is no order or direction for recovery of salary and, therefore, no observation is required to be made and even otherwise in law the petitioner is liable to return the salary for the said period. Sri Jaiswal, learned counsel for the petitioner, contends that the petitioner has continued to work till 31.7.2004 and in such a situation if the salary is recovered, the petitioner shall be put to irreparable loss. He submits that there was no fraud or misrepresentation on the part of the petitioner and, therefore, recovery cannot be made.

6. From the impugned order dated 4.9.2004, it is evident that the petitioner

has been made to retire in fact on 31.8.2004 and notionally w.e.f. 1.7.1998. It is, therefore, evident that the petitioner was allowed to continue in service by the respondents between 1.7.1998 and 31.8.2004 during which period he has performed his duty. There is no indication of any fraud or misrepresentation on the part of the petitioner. In such a situation, it is observed that the respondents shall not proceed to make any recovery of salary if the same has been actually paid to the petitioner between the period 1.7.1998 to 31.8.2004. I am supported in my view from the decision in the case of Union of India and others Vs. Central Administrative Tribunal, Allahabad, and another, 2003 (4) ESC 2006 and in the case of Duryodhan Lal Jatav Vs. State of U.P. and others, 2005 (2) ALJ 1141. The contention raised by the learned Standing Counsel has, therefore, to be rejected on this count.

7. Apart from this, no other relief can be granted to the petitioner as he has conceded to the order dated 4.9.2004. The calculation of pension shall, therefore, be made on the basis of the order dated 4.9.2004.

8. Learned Standing counsel contends that in view of this conceded position by the petitioner, the writ petition be disposed of finally at this stage.

9. In view of the aforesaid submissions advanced at the Bar and the observations made herein above, this writ petition is disposed of with a direction to the respondent No.2 to proceed to finalize the claim of the petitioner and issue necessary directions to the Senior Treasury Officer, to whom the papers have already been forwarded and make payment to which he is entitled in accordance with law as expeditiously as possible preferably within a period of 3 months from the date of production of a certified copy of this order before him.

10. The petitioner may serve a copy of this order on the said respondents along with his specific claim in respect of the emoluments which are due to him.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.04.2010

BEFORE
THE HON'BLE SUNIL AMBWANI, J.
THE HON'BLE KASHI NATH PANDEY, J.

Civil Misc. Writ Petition No. 53094 of 2007

Dr. Ravi Prakash Dwivedi ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri V.D. Shukla
Sri Ashok Khare
Sri Siddharth Khare

Counsel for the Respondents:
C.S.C.
Sri Anil Kumar Srivastava
Sri Gautam Baghel
Sri I.A. Siddiqui
Sri M.A. Qadeer
Sri Pushpendra Singh
Sri P.S. Baghel

U.P. Veterinary Group-B Service Rules 1998-Rule 8 (2)-cancellation of candidature-on ground petition was not registered State of U.P. under Section 23 of Indian Veterinary Council Act 1984-admittialy petitioner possess every requisite qualification-duly registered with Jharkhand-under Section 49 and 54 of Act 1984-after depositing certain

amount-certificate could be transferred in State of U.P.-objection raised by commission-is the result of misinterpretation of Rule 8 (2)-consequential direction given by Quashing the order of cancellation of candidature.

Held: Para 12

We do not find substance in the objections of the respondents that the petitioner was not registered under the Rules to be considered for selection as Veterinary Medical Officer. The petitioner's registration in U.P. and its transfer after issuing 'no objection certificate' did not render him unregistered Veterinary Practitioner. He continued to be a registered Veterinary Practitioner with his registration in the State of Jharkhand. He can get a transfer of his certificate to the U.P., if he was selected.

(Delivered by Hon'ble Sunil Ambwani, J.)

1. Heard Sri Ashok Khare, learned Senior Advocate, assisted by Sri Siddharth Khare for the petitioner. Sri P.S. Baghel, learned Senior Advocate assisted by Sri Gautam Baghel appears for U.P. Public Service Commission-respondent No.4. Sri Pankaj Saxena, learned standing counsel appears for State-respondents.

2. The petitioner's application for selection as Veterinary Medical Officer in question pursuant to the advertisement dated 29.9.2007 was rejected by the U.P. Public Service Commission on the ground that in terms of Rule 8 (2) of the U.P. Veterinary Group-B Service Rules, 1998 and the advertisement, the petitioner is not registered as Veterinary Surgeon in the State of U.P. under Section 23 of the Indian Veterinary Council Act, 1984 (hereinafter referred to as 'the 1984 Act').

3. It is not denied that the petitioner holds requisite qualification i.e. Bachelor Degree in Veterinary Science & Animal Husbandry (B.V.Sc & A.H) from Chaudhary Charan Singh Haryana Agriculture University, Hissar, and was registered with Veterinary Council of U.P. vide Registration No. U.P.V.C. 3933 dated 23.1.2004. He got selected as Veterinary Medical Officer in the State of Jharkhand on which he got his registration certificate transferred from U.P. to the State of Jharkhand under Section 52 of the 1994 Act. The petitioner has submitted the certificates of his registration, in proof thereof with the application form to the U.P. Public Service Commission.

4. In the counter affidavit of Sri A.K. Singh, Veterinary Officer, Laxmanpur, Pratapgarh filed on behalf of respondent Nos. 1 to 3, it is stated in paragraph No. 5 that registration in other State cannot be done till 'no objection certificate' is issued from the previous State in which the candidate was registered as per Rule 52 of Veterinary Council of India. In paragraph No.6 it is stated that registration can be done only in one State Veterinary Council. The U.P. Veterinary Council has issued 'no objection certificate' to the petitioner for getting him registered with the Jharkhand Veterinary Council. His registration was automatically cancelled from U.P. Veterinary Council after issuance of 'no objection certificate from U.P. Veterinary Council. Thus he was not registered with the U.P. Veterinary Council after getting 'no objection certificate' issued on 9.7.2007.

5. The petitioner has filed an amendment application challenging Rule 8 (2) of the U.P. Veterinary Group-B Service Rules, 1998 as ultra vires and inoperative.

6. After hearing the counsels for the parties, we find that the objections taken by the U.P. Public Service Commission are wholly illegal, irrational and superfluous.

7. The petitioner was registered with the U.P. Veterinary Council and consequently he was also registered with Veterinary Council of India, vide Registration No. V.C.I/002728 dated 15.1.2007. The Veterinary Council of India certified that the petitioner was duly registered under the provisions of the Indian Veterinary Council Act, 1984, with date and place of his registration with the State Veterinary Council shown as UPVC/3933 dated 23.1.2004 with the Veterinary Council of U.P.

8. The State Veterinary Councils are established under Section 32 of the Act of 1984. Under Section 44 of the Act, the State Government provides a register of veterinary practitioners known as the State Veterinary Register of the State. The qualifications are to be entered in the register, after scrutiny of application for registration under Section 47. Section 52 of the 1984 Act provides transfer of registration where a registered veterinary practitioner of one State is practising veterinary medicine in another State, on payment of prescribed fee.

9. It is not denied that the petitioner was not only qualified, but was registered in the State of U.P. After his selection as Veterinary Medical Officer in the State of Jharkhand, his registration was transferred in accordance with provisions of the Act. He was therefore entitled to be treated as a duly qualified and registered Veterinary Practitioner. He was not required to get his name registered in the State of U.P., again only for applying for the post in the State of U.P. His registration in any State entitled him to be registered in the Veterinary Council of India, under Section 24 of the Act.

10. The object and purpose of requiring a person to have a registration before he applies for appointment as Veterinary Officer is to verify that the person is qualified, fulfils all the terms and conditions of valid practitioner under the Act and may be subjected to disciplinary proceedings if the occasion so arises.

11. The petitioner has challenged Rule 8 (2) of the U.P. Veterinary Group-B Service Rules, 1998 requiring a person should be registered with Veterinary Council of U.P. for the appointment. We do not find that the rule to be illegal, irrational or arbitrary. It only needs to be correctly interpreted. A narrow or pedantic interpretation would defeat the purpose of enacting the rule.

12. We do not find substance in the objections of the respondents that the petitioner was not registered under the Rules to be considered for selection as Veterinary Medical Officer. The petitioner's registration in U.P. and its transfer after issuing 'no objection certificate' did not render him unregistered Veterinary Practitioner. He continued to be a registered Veterinary Practitioner with his registration in the State of Jharkhand. He can get a transfer

of his certificate to the U.P., if he was selected.

13. The writ petition is allowed. The letter of the U.P. Public Service Commission rejecting the petitioner's candidature for want of registration with U.P. Veterinary Council, as a precondition for consideration for the post of Veterinary Medical Officer, is set aside. We direct the Commission to declare the petitioner's result, and if he is selected and recommended, to the State Government, to give him appointment in accordance with law very expeditiously, and if possible within a period of three months from the date a certified copy of this order is produced before the Commission and the concerned authority.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.04.2010

BEFORE
THE HON'BLE S.P. MEHROTRA, J.

Civil Misc. Writ Petition No. 4686 of 2006

Committee of Management, Anjuman Madarsa Zeenatul Islam, Amrodha, Tehsil Bhoganipur, District Kanpur Dehat through its Manager and others ...Petitioners
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri Ashok Khare
Sri S.D. Shukla

Counsel for the Respondents:
Sri G.K. Singh
Sri V.K. Singh
C.S.C.

Constitution of India Art. 226-Principle of Natural Justice-election dispute-claim set up by reval claimants-enquiry report against the petitioner relied without affording opportunity-without giving the copy of said reports-order entailing civil consequences-can not be passed, nor such report can be the basis for impugned order-quashed.

Held: Para 66

As the said enquiry was conducted without any intimation to the petitioners and behind the back of the petitioners and even copy of the Enquiry Report was not given to the petitioners, the Deputy Registrar (respondent no.2) has acted in violation of the principles of natural justice in placing reliance on the said enquiry and the Enquiry Report submitted as a result thereof while passing the impugned order. The impugned order dated 13.12.2005 passed by the Deputy Registrar (respondent no.2) has, thus, been passed in violation of the principles of natural justice.

Case law discussed:
2005 (61) ALR 74, 2009 (75) ALR 369.

(Delivered by Hon'ble S.P. Mehrotra, J.)

1. The petitioners have filed the present writ petition under Article 226 of the Constitution of India, interalia, praying for quashing the order dated 13.12.2005 (Annexure-10 to the writ petition) passed by the Deputy Registrar, Firms, Societies and Chits, Kanpur (respondent no.2) whereby the papers submitted by the petitioners regarding the elections allegedly held on 28.11.2004 were disapproved and the papers submitted by the respondent no.4 regarding the elections allegedly held on 31.7.2004 were approved, and further, for directing the respondents to approve the papers submitted by the petitioners in

regard to the election dated 28.11.2004 and to recognize the same.

2. It is, interalia, averred in the writ petition that in District-Kanpur Dehat, there is a registered society under the name of Anjuman Madarsa Zeenatul Islam (hereinafter also referred to as "the society in question"), which is governed by the provisions of the Societies Registration Act, 1860; and that the said society runs and manages the institution Anjuman Madarsa Zeenatul Islam, Amrodha, Kanpur Dehat; and that the said society has its registered bye-laws in accordance therewith the management of the society is governed. Copy of the bye-laws of the society in question has been filed as Annexure-1 to the writ petition.

3. A perusal of the said bye-laws shows that the term of the Committee of Management is specified for a period of three years, which may be extended or reduced for a period of six months in special circumstances by the President of the society in question; and that the election of the Committee of Management shall be conducted by the General Body of the society in question, and the maximum number of the office bearers will be ten; and that the President has been given power in special circumstances to convene the meeting of the General Body and the Committee of Management and to adjourn such meeting. Averments in this regard have been made in paragraphs 6,7 and 8 of the writ petition.

4. It is, interalia, further averred in the writ petition that the elections of the Committee of Management of the society in question took place on 1.6.2001; and that in the said election, the Committee of Management with Mohd. Bachchan (petitioner no.3) as the President, Mohd. Ibrahim (respondent no.4) as the Manager and Mohd. Rizwan as the Treasurer were elected; and that the papers regarding the said election were submitted before the Deputy Registrar, Firms, Societies and Chits, Kanpur (respondent no.2) and based thereon the Deputy Registrar (respondent no.2) registered the list of office-bearers for the year 2001-02. Copy of the list of office-bearers registered by the Deputy Registrar, Firms, Societies and Chits (respondent no.2) has been filed as Annexure-2 to the writ petition.

5. It is, interalia, further averred in the writ petition that Mohd. Bachchan (petitioner no.3) issued an Agenda Notice on 22.11.2004 for calling a meeting of the General Body for getting the election held on 28.11.2004; and that the Agenda Notice was circulated amongst the 19 Members of the General Body out of 25 members. Copy of the said Agenda Notice dated 22.11.2004 has been filed as Annexure-5 to the writ petition.

6. The petitioners have, interalia, further averred in the writ petition that pursuant to the said Agenda Notice circulated amongst the members, the meeting of the General Body was convened on 28.11.2004; and that in the said meeting, the election of Committee of Management of the society in question took place wherein Mohd. Bachchan was elected for the post of President and Mohd. Iqbal Ahmad Noori was elected for the post of Manager/ Secretary; and that in the said election, 19 members of the General Body out of 25 members participated. Copy of the proceedings dated 28.11.2004 has been filed as Annexure-6 to the writ petition.

7. It is, interalia, further averred in the writ petition that the papers regarding the aforesaid election held on 28.11.2004 were submitted before the Deputy Registrar, Firms, Societies and Chits (respondent no.2) for being registered.

8. It is, interalia, further averred in the writ petition that the respondent no.4 (Mohd. Ibrahim) submitted some forged elections dated 31.7.2004 alleging Mohd. Achchan as the President and himself (Mohd. Ibrahim) as the Manager.

9. It is, interalia, further averred in the writ petition that on the basis of the papers submitted before the Deputy Registrar, Firms, Societies and Chits (respondent no.2), a notice was issued by the Deputy Registrar on 9.12.2004 to both the parties; and that after giving opportunity of hearing to the petitioners as well as the respondent no.4 (Mohd. Ibrahim), the Deputy Registrar (respondent no.2) passed an order dated 20.8.2005 directing for registration of list of office-bearers of the election dated 28.11.2004. Copy of the said order dated 20.8.2005 has been filed as Annexure-7 to the writ petition.

10. It is, interalia, further averred in the writ petition that that against the said order dated 20.8.2005, the respondent no.4 (Mohd. Ibrahim) filed writ petition being Civil Misc. Writ Petition No. 59299 of 2005 before this Court; and that the said writ petition was disposed of by the order dated 7.9.2005 whereby the said writ petition was allowed and the matter was remitted back to the Deputy Registrar, Firms, Societies and Chits (respondent no.2) for rehearing the same and taking appropriate decision in accordance with law, after affording opportunity of hearing to Mohd. Ibrahim as well as Iqbal Noori. Copy of the said order dated 7.9.2005 passed by this Court has been filed as Annexure-8 to the writ petition.

11. Relevant portion of the said order dated 7.9.2005 is reproduced below:

".....After respective arguments have been heard, factual position which is emerging is to the effect that on 6.1.2005 and 17.1.2005, hearing in the matter was done by Mohd. Jama, the then Deputy Registrar, but before he could pass order, he was transferred and relieved, and new incumbent Sri K.P. Jaiswal was posted in his place, and before him two set of persons came up praying for renewal basing their claims on different date of elections in this fact and background, it was wholly inappropriate on the part of new Deputy Registrar to have passed order without providing opportunity of hearing, as such order dated 20.8.2005 has been passed in utter contravention of the principles of natural justice without providing any opportunity of hearing to the petitioners.

Consequently, writ petition succeeds and is allowed the impugned order dated 20.8.2005 is hereby quashed. The Deputy Registrar, Firms Societies and Chits, Kanpur Region, Kanpur, is directed to re-hear the matter and take appropriate decision in accordance with law, after affording opportunity of hearing to Mohd. Ibrahim as well as Iqbal Noori, within a record of two months from the date of production of a certified copy of this Court."

Pursuant to the said order dated 7.9.2005 passed by this Court, the Deputy

Registrar (respondent no.2) passed the order dated 13.12.2005 whereby the papers submitted by the petitioners in regard to the elections allegedly held on 28.11.2004 were disapproved while the papers submitted by the respondent no.4 in regard to the elections allegedly held on 31.7.2004 were approved. Copy of the said order dated 13.12.2005 has been filed as Annexure-10 to the writ petition.

The petitioners have, thereafter, filed the present writ petition seeking the reliefs, as mentioned above.

Counter affidavit on behalf of the respondent nos. 1 and 2, sworn on 12.4.2006, has been filed. The petitioners have filed their rejoinder affidavit, sworn on 11.3.2007 in reply to the said counter affidavit.

Another counter affidavit, sworn on 13.12.2007, was filed on behalf of the respondent nos. 3 and 4. However, subsequently, an affidavit, sworn on 15.3.2009 by the said Mohd. Ibrahim, has been filed on behalf of the respondent nos. 3 and 4, interalia, stating that the said respondents want to withdraw the said counter affidavit filed on their behalf. Paragraphs 2,3 and 4 of the said affidavit, filed on behalf of the respondent nos. 3 and 4, are reproduced below:

"2. That in the aforesaid writ petition a counter affidavit has been filed by the deponent namely Mohd. Ibrahim on behalf of respondent nos. 3 & 4.

3. That the deponent now does not want to contest the aforesaid writ petition. He wants to withdraw the aforesaid counter affidavit.

4. That in view of the aforesaid facts and circumstances it is therefore in the interest of justice that the Hon'ble Court may kindly be pleased to permit the deponent to withdraw the counter affidavit, which was filed by him on behalf of respondent nos. 3 & 4; so that justice be done."

12. I have heard Shri Ashok Khare, learned Senior Counsel assisted by Shri S.D. Shukla, learned counsel for the petitioners, the learned Standing Counsel appearing for the respondent nos. 1 and 2 and Shri G.K. Singh, learned counsel appearing for the respondent nos. 3 and 4, and perused the record.

13. Shri Ashok Khare, learned Senior Counsel has made the following submissions:

1. The dispute before the Deputy Registrar (respondent no.2) was between two factions of Management, and the Deputy Registrar could not decide such dispute as such dispute ought to have been referred by the Deputy Registrar to the Prescribed Authority under Section 25 of the Societies Registration Act, 1860. It is submitted that in the present case, there was a bonafide dispute between the two factions of the Management, and the Deputy Registrar in the impugned order has considered the said dispute and upheld the claim of one faction (i.e. respondent no.4) as against the other (i.e. the petitioners). The Deputy Registrar has no such jurisdiction, and the only course open to him was to have referred the dispute to the Prescribed Authority under Section 25 of the Societies Registration Act, 1860. Reliance in this regard is placed on a Division Bench decision of this Court in ***All India Council and another Vs. Assistant Registrar, Firms, Societies and Chits, Varanasi***

Region, Varanasi and another, AIR 1988 Allahabad 236.

2. From a perusal of the order dated 20.8.2005 (Annexure-7 to the writ petition) passed by the Deputy Registrar (respondent no.2) shows that the original record was produced before the respondent no.2. After the said order dated 20.8.2005 was quashed by this Court by its order dated 7.9.2005 passed in Civil Misc. Writ Petition No. 59299 of 2005, the petitioners again produced the original record before the respondent no.2 on 5.12.2005 alongwith the Written Submissions and the affidavits of 19 members of the General Body. The original record was not accepted by the Deputy Registrar (respondent no.2) on the ground that the same had already been placed on the record and the copy of the same was available. Reference in this regard is made to the averments made in paragraphs 25 and 29 of the writ petition. In the circumstances, the recital in the impugned order dated 13.12.2005 passed by the Deputy Registrar (respondent no.2) regarding non-production of the original record was not correct.

3. The impugned order dated 13.12.2005 has been passed in violation of the principles of natural justice. The said submission has been elaborated as under:

(A) The Deputy Registrar (respondent no.2) in the impugned order has placed reliance on the written submissions and the documents produced by the respondent no.4 but no copies of the said documents or the written submissions submitted by the respondent no.4 were supplied to the petitioners, and the petitioners were not aware of the contents thereof. Reference in this regard is made to the averments made in paragraph 26 of the writ petition.

(B) The impugned order dated 13.12.2005 has placed reliance on an enquiry conducted by the Tehsildar and the Deputy District Magistrate, Bhognipur, District-Kanpur Dehat, and the Enquiry Report submitted as a result of the said enquiry. However, no intimation was given to the petitioners in regard to the said enquiry conducted by the said officers, and the entire proceedings were totally ex-parte. Even copy of the said Enquiry Report was not supplied to the petitioners at any point of time. Reference in this regard is made to the averments made in paragraph 30 of the writ petition.

14. In *reply*, the learned Standing Counsel appearing for the respondent nos. 1 and 2 submits as under:

1. Having regard to the nature of the dispute raised before the Deputy Registrar (respondent no.2), the dispute was rightly decided by the Deputy Registrar (respondent no.2), and there was no occasion for referring the dispute to the Prescribed Authority under Section 25 of the Societies Registration Act, 1860.

2. Recital in the impugned order dated 13.12.2005 regarding non-production of the original record is correct. No original record was produced on behalf of the petitioners on 5.12.2005 despite having been given time for the purpose on the earlier dates fixed in the matter. Reference in this regard is made to the averments made in paragraphs 7 and 16 of the counter affidavit filed on behalf of the respondent nos. 1 and 2.

3. There has not been any violation of the principles of natural justice in the proceedings before the Deputy Registrar (respondent no.2) wherein the impugned order dated 13.12.2005 has been passed. The documents produced by the rival parties are permitted to be inspected by each other but no copies of the documents are required to be furnished by one party to the other. Reference in this regard is made to the averments made in paragraph 17 of the counter affidavit filed on behalf of the respondent nos. 1 and 2.

15. As regards the Enquiry Report submitted on the basis of enquiry conducted by the Tehsildar and the Deputy District Magistrate, Bhognipur, District-Kanpur Dehat, the same has rightly been relied upon by the Deputy Registrar (respondent no.2) in the impugned order dated 13.12.2005.

16. In rejoinder, Shri Ashok Khare, learned Senior Counsel has reiterated the submissions made earlier.

17. I have considered the submissions made by the learned counsel for the parties.

18. Taking up the ***FIRST SUBMISSION*** made by Shri Ashok Khare, learned Senior Counsel appearing for the petitioners, it is pertinent to refer to the relevant provisions of the Societies Registration Act, 1860.

19. Section 1 of the Societies Registration Act, 1860 provides that any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in Section 20 of the said Act, may, by subscribing their names to a memorandum of association, and filing the same with the Registrar form themselves into a society under the said Act.

Section 2 of the Societies Registration Act, 1860 deals with the memorandum of association and provides as under:

"2. Memorandum of association.- *The memorandum of association shall contain the following things, that is to say, -*

the name of the society;
the objects of the society;
the names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association."

20. Thus, Section 2, interalia, requires that copy of the Rules and Regulations of the Society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

21. Sub-section (1) of Section 3 of the Societies Registration Act, 1860, as amended in the State of Uttar Pradesh, interalia, provides that upon the memorandum of association and certified copy of the Rules and Regulations of the Society being filed alongwith particulars of the address of the Society's office,

which shall be its registered address, by the Secretary of the Society on behalf of the persons subscribing to the memorandum, the Registrar shall certify under his hand that the society is registered under the said Act. Relevant portion of Section 3 of the said Act, as amended in the State of Uttar Pradesh, is quoted as under:

"3. Registration and fees. *(1) Upon such memorandum and certified copy being filed along with particulars of the address of the Society's office which shall be its registered address, by the Secretary of the Society on behalf of the persons subscribing to the memorandum, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of one thousand rupees or such smaller fee as the State Government may notify in respect of any class of societies:*

Provided that the State Government may, by notification in the Official Gazette, increase from time to time the fee payable under this sub-section:

Provided further that the Registrar may, in his discretion, issue public notice or issue notices to such persons as he thinks fit inviting objections, if any, against the proposed registration and consider all objections that may be received by him before registering the society....."

22. Section 3-A of the Societies Registration Act, 1860, as inserted in the State of Uttar Pradesh, deals with the renewal of certificate of registration. The said Section 3-A of the Societies Registration Act, 1860, in so far as is relevant, is as under:

"3A. Renewal of certificate of registration*.-(1) Subject to the provisions of sub-section (2), a certificate of registration issued under Section 3 shall remain in force for a period of two years from the date of issue:*

Provided that a certificate issued before the commencement of the Societies Registration (Uttar Pradesh Amendment) Act, 1984 (hereinafter in this section referred to as the said Act), shall remain in force for a period of five years from the date of such commencement on payment of the difference of the fees specified under sub-section (3) and the fees already paid.]

(2) A Society registered under Section 3, whether before or after the commencement of the said Act, shall on application made to the Registrar within one month of the expiration of the period referred to in sub-section (1) and on payment of the fee specified in sub-section (3), be entitled to have its certificate of registration renewed for [five years], at a time :

Provided that in the case of a society registered before the commencement of the said Act, the Registrar shall refuse to renew the certificate of registration, if after giving it an opportunity of showing cause against such refusal, he is satisfied that any of the grounds mentioned in sub-section (2) of Section 3 exist in respect thereof.

(3) There shall be paid to the Registrar with every application for renewal of the certificate of registration –
(a) [a fee equal to the registration fee payable under Section 3 or rupees [one hundred], whichever is less], if such application is filed within the period specified in sub-section (2):

Provided that the State Government may, by notification in the official Gazette, increase from time to time the fee payable under this clause subject to the condition that the fee so increased shall not exceed the registration fee payable under Section 3;

(b) an additional fee of forty rupees or such higher fee not exceeding one-fifth of the fee payable under clause (a) as may be notified by the State Government, if such application is filed within one month of the date of expiration of the period specified in sub-section (2); and

(c) an additional fee at the rate of twenty rupees per month or part thereof, or such higher additional fee per month not exceeding half of the additional fee payable under clause (b) as may be notified by the State Government, if such application is filed beyond one month of the expiration of the period specified in sub-section (2).

(4) Every application for renewal of the certificate shall be accompanied by a list of members of the managing body elected after the registration of the society or after the renewal of certificate of registration and also the certificate sought to be renewed unless dispensed with by the registrar on the ground of its loss or destruction or other sufficient cause.

(5) & (6)......"

Thus, sub-section (1) of Section 3A lays down that a certificate of registration issued under Section 3 shall remain in force for a period of five years from the date of issue.

Sub-section (2) of Section 3A provides that on application made to the Registrar within one month of the expiration of the period referred to in sub-section (1) of Section 3A and on payment of the fee specified in sub-section (3) of Section 3A, a Society registered under Section 3 shall be entitled to have its certificate of registration renewed for five years, at a time.

Sub-section (4) of Section 3A provides that every application for renewal of the certificate shall be accompanied by a list of members of the managing body and also the certificate sought to be renewed.

23. Section 4 of the Societies Registration Act, 1860 deals with filing of the annual list of the managing body. The said Section 4, as amended in the State of Uttar Pradesh, lays down as under:

"4. Annual list of managing body to be filed. *- (1) Once in every year, on or before the fourteeth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general, in the month of January, a list shall be filed with the Registrar, of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society:*

Provided that if the managing body is elected after the last submission of the list, the counter signatures of the old members, shall, as far as possible, be contained on the list. If the old office-bearers do not countersign the list, the Registrar may, in his discretion, issue a public notice or notice to such persons as he thinks fit inviting objections within a specified period and shall decide all objections received within the said period.

(2) Together with list mentioned in sub-section (1), there shall be sent to the Registrar a copy of the memorandum of association including any alteration, extension, or abridgment of purposes made under Section 12, and of the rules of the society corrected up to date and certified by not less than three of the members of the said governing body to be a correct copy and also a copy of the balance-sheet for the preceding year of account."

24. Sub-section (1) of Section 4, thus, provides that once in every year, on or before the date mentioned in the said sub-section, a list shall be filed with the Registrar, of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

25. Proviso to sub-section (1) of Section 4 lays down that if the managing body is elected after the last submission of the list, the counter signatures of the old members, shall, as far as possible, be obtained on the list. If the old office-bearers do not countersign the list, the Registrar may, in his discretion, issue a public notice or notice to such persons as he thinks fit inviting objections within a specified period and shall decide all objections received within the said period.

26. Section 25 of the Societies Registration Act, 1860 deals with the disputes regarding election of office bearers, and provides as under:

"25. Disputes regarding election of office-bearers.-*(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an office-bearer of such society, and may pass such orders in respect thereof as it deems fit:*

Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied:-

(a) that any corrupt practice has been committed by such office-bearer; or

(b) that the nomination of any candidate has been improperly rejected; or

(c) that the result of the election in so far as it concerns such office-bearer has been materially affected by the improper acceptance of any nomination, or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or by any non-compliance with the provisions of any rules of the society.

Explanation 1.- A person shall be deemed to have committed a corrupt practice who, directly or indirectly by himself or by any other person:

(i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any elector to give or to refrain from giving a vote in favour of any candidate, or any person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at the election;

(ii) with a view to inducing any elector to give or to refrain from giving a vote in favour of any candidate, or to inducing any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election offers or gives any money, or valuable consideration, or any place of employment, or holds out any promise of

individual advantage or profit to any person;

(iii) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in clauses (i) and (ii);

(iv) induces, or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;

(v) canvasses on grounds of caste, community, sect or religion;

(vi) commits such other practice as the State Government may by rule prescribe to be a corrupt practice.

Explanation II.- A promise of individual advantage or profit to a person includes a promise for the benefit of the person himself, or of any one in which he is interested.

Explanation III.-The State Government may prescribe the procedure for hearing any decision of doubts or disputes in respect of such elections and make provision in respect of any other matter relating to such elections for which insufficient provision exists in this Act or in the rules of the society.

(2) Where by an order made under sub-section (1), an election is set aside or an office-bearer is held no longer entitled to continue in office, or where the Registrar is satisfied that any election of office-bearers of a society has not been held within the time specified in the rules of that society, he may call a meeting of the general body of such society for electing such office-bearer or office-bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officer authorised by him in this behalf, and the provisions in the rules of the society relating to meetings and elections shall apply to such meeting and election with necessary modifications.

(3) Where a meeting is called by the Registrar under sub-section (2), no other meeting shall be called for the purpose of election by any other authority or by any person claiming to be an office-bearer of the society.

Explanation.- For the purposes of this section, the expression 'prescribed authority' means an officer or court authorised in this behalf by the State Government by notification published in the Official Gazette."

Sub-section (1) of Section 25 thus provides that a reference may be made to the Prescribed Authority by the Registrar or by at least 1/4th of the members of a society registered in Uttar Pradesh, and on such reference being made, the Prescribed Authority may hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an office-bearer of such society, and may pass such orders in respect thereof as it deems fit.

Proviso to sub-section (1) of Section 25, inserted by the U.P. Act No. 13 of 1978, provides that the election of an office-bearer shall be set aside where the prescribed authority is satisfied as regards any of the grounds mentioned in clauses (a), (b) and (c) of the said proviso.

27. Sub-section (2) of Section 25 provides that where by an order made under sub-section (1) of Section 25, an election is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearers of a society has not been held within the time specified in the rules of that society, he

may call a meeting of the general body of such society for electing such office-bearer or office-bearers. Such meeting shall be presided over and be conducted by the Registrar or by any officer authorised by him in this behalf. The provisions in the rules of the society relating to meetings and elections shall apply to such meeting and election with necessary modifications.

28. Sub-section (3) of Section 25 lays down that where a meeting is called by the Registrar under sub-section (2) of Section 25, no other meeting shall be called for the purpose of election by any other authority or by any person claiming to be an office-bearer of the society.

29. It will be noticed from the above-quoted provisions of Section 4 of the Societies Registration Act, 1860 that the proviso to sub-section (1) of Section 4, as inserted in the State of U.P., deals with the situation where the managing body is elected after the last submission of the list of managing body as contemplated under sub-section (1) of Section 4. The said proviso lays that if the managing body is elected after the last submission of the list, the counter signatures of the old members, shall, as far as possible, be obtained on the list. If the old office-bearers do not countersign the list, the Registrar may, in his discretion, issue a public notice or notice to such persons as he thinks fit inviting objections within a specified period. The Registrar shall decide all objections received within the period so specified.

30. Sub-section (1) of Section 25 of the Societies Registration Act, 1860, as noted above, provides that a reference to the Prescribed Authority by the Registrar or by at least one fourth of the members of the society registered in Uttar Pradesh in regard to "any doubt or dispute in respect of the election or continuance in office of an office-bearer of such society". On such reference being made, the Prescribed Authority may hear and decide in a summary manner the said doubt or dispute, and may pass such orders in respect thereof as it thinks fit. On being satisfied as regards the situations contemplated in any of the clauses (a), (b) and (c) of the proviso to sub-section (1) of Section 25, the Prescribed Authority is bound to set aside the election of an office-bearer.

31. The question, therefore, arises as to what is the respective scope of the provisions contained in the proviso to sub-section (1) of Section 4 and the provisions contained in sub-section (1) of Section 25 of the Societies Registration Act, 1860, and what is the inter-relationship between the said provisions. Reference in this regard may be made to certain judicial decisions:

32. In All India Council and another Vs. Assistant Registrar, Firms, Societies and Chits, Varanasi Region, Varanasi and another, AIR 1988 Allahabad 236, a Division Bench of this Court was dealing with a writ petition directed against the order dated 23.12.1987 passed by the Assistant Registrar, Firms,Societies and Chits, Varanasi purporting to determine a dispute relating to the election or continuance in office of certain office bearers of the Society. The facts of the case, as mentioned in paragraphs 2,3 and 4 of the said AIR, are as under:

"2. Bharat Dharm Mahamandal is a Society registered under the Societies

Registration Act, 1860. The society has been established for the purpose of promoting Hindu Religious Education in accordance with the Sanatan Dharma. The object disclosed in the memorandum of Association is to defuse the knowledge of Vedas, Puranas and other Hindu Shastras. The management of the Society and the control of its affairs are exercised by All India Pratinidhi Sabha ('Pratinidhi Sabha' for short) which is the General Body of the Society. The office-bearers of the Pratinidhi Sabha are (i) President, (ii) Vice President; (iii) Chief Secretary; (iv) Joint Chief Secretary. On 25-10-86 the office-bearers of the Pratinidhi Sabha were elected for a term of three years. Sri Shiv Nandan Lal Dar was elected as the Chief Secretary and Sri Param Hans Misra as the Joint Chief Secretary. On 15-2-87 Sri Shiv Nandan Lal Dar submitted his resignation at a meeting of the Pratinidhi Sabha which was accepted and Sri Siva Ram Matre was asked to perform the function and duties of the Chief Secretary for the remaining term. The proceedings of the meeting of the Pratinidhi Sabha held on 15-2-87 are stated to have been revoked at a meeting held on 24-8-87 and at another meeting held on 13-9-87 Sri Dar was persuaded to withdraw his resignation and to continue on the post of the Chief Secretary as before. Sri Param Hans Misra the Chief Secretary, on the other hand, seems to have held a parallel meeting on 3-7-87 at which the resignation of Sri Dar was accepted and in his place he was himself alleged to have been elected as the Chief Secretary. A further decision to remove Sri Brij Mohan Dixit, the President of All India Council, the executive of the Society is also claimed to have taken at the same meeting.

3. These two parallel meetings and the decisions taken thereat regarding the continuance of Sri Shiv Nandan Lal Dar as the Chief Secretary and the alleged election of Sri Param Hans Misra at the meeting of the 3rd July, 1987 convened by him as the Chief Secretary led to disputes and differences between the parties. Both the groups, one represented by the petitioner and the other by Param Hans Misra the respondent 2 seem to have addressed letters to the Assistant Registrar each seeking legitimacy of the action taken by it and both disputing the claim of the other as regards the office of the Chief Secretary of the Pratinidhi Sabha. Upon these letters the impugned order has been passed.

4. By the impugned order, the Assistant Registrar has disposed of two matters, one pertaining to certain amendments of the by-laws of the Society which he has disapproved on the ground that the same travelled beyond the objects of the Society and the other relating to the question whether Sri Dar had a right to continue as the Chief Secretary after the submission of his resignation and whether Sri Param Hans Misra was validly elected as the Chief Secretary of the Pratinidhi Sabha. The Assistant Registrar has held that the resignation of Sri Dar did not require acceptance and consequently he ceased to be the Chief Secretary after his resignation on 15-2-87. As regards Sri Param Hans Misra the finding is that as the Deputy Chief Secretary he had a right to perform functions of the Chief Secretary for the remaining terra. He has also upheld the election of Shri Param Hans Misra as the Chief Secretary at the meeting convened by Sri Misra for 3-7-87."

Having noticed the facts of the case, as above, this Court laid down as under (paragraphs 5,6,7 and 8 of the said AIR):

"5. The contention of the learned counsel for the petitioner is that the Assistant Registrar had no jurisdiction to decide the dispute with regard to continuance of Sri Dar as the Chief Secretary and that he was bound to refer the dispute under S.25 of the Societies Registration Act to the Prescribed Authority.

6. The petitioners are clearly right. S.25 of the Societies Registration Act as amended by the State Legislature enacts a comprehensive code and creates a designated forum or tribunal for adjudication in a summary manner of all disputes or doubts in respect of the election or continuance in office of an office-bearer of such society. It also provides the grounds upon which the election of an office-bearer can be set aside. The procedure to be followed for filling up of the vacancies arising from the decisions rendered by the Prescribed Authority under sub-sec. (i) of S.25 has also been laid down (S. 25(2).)

7. It will, therefore, be seen that insofar as disputes or doubts in respect of the election or continuance in office of the office-bearers of a society registered in Uttar Pradesh are concerned, the Legislature has created a specific forum and laid down an exhaustive procedure for determination of the same under S.25. There is no other provision, express or otherwise, providing for determination of such disputes specifically. It is settled law that where, as here, the Legislature creates a specific forum and lays an exhaustive procedure for determination of a particular class of disputes in respect of matters covered by the statute, such disputes can be determined only in that forum and in the manner prescribed thereunder and not otherwise. If, therefore, a dispute is raised with regard to the election or continuance in office of an office-bearer of a society registered in Uttar Pradesh, the same has to be decided only by the Prescribed Authority under S.25(1) and not by the Registrar, save, of course, to the decision of the Prescribed Authority being subject to the result of a civil suit.

8. Reverting to the facts of the present case, without doubt a dispute had clearly arisen with regard to the election of Sri Param Hans Misra as the Chief Secretary on July 3, 1987 as well as the continuance in the office of Sri Shyam Nandan Lal Dar as the Chief Secretary. The dispute indubitably fell within the four corners of the class of disputes or doubts referred to in S.25(1). Such a dispute could not, therefore, be decided by the Assistant Registrar."

(Emphasis supplied)

After quoting sub-section (1) of Section 4, including proviso thereto, of the Societies Registration Act, 1860, this Court opined as under (paragraph 11 of the said AIR):

"11. It was urged that the Registrar derives jurisdiction under this provision to determine the dispute. We are unable to agree. In the first place, the dispute has not arisen in the context of the submission of the annual list of the managing body which is required to be filed under S.4(1). Secondly, the power of the Registrar to decide objections filed under the proviso to S.4(1) must be held to operate in a field

not covered by S.25 of the Act. Under the proviso to S.4(1), the Registrar deals only such matters as may arise in the context of the submission of the annual list of the managing body. Further in the present case we are concerned here not with the election of the managing body but with the election of the office-bearers of the Society. The managing body here is the All India Council which is different from the Pratinidhi Sabha. In any case, insofar as the disputes relating to the election of the office-bearers of a society registered in Uttar Pradesh is concerned, the same has to be decided only in the manner prescribed under S.25(1) on the principle that the 'special excludes the general'. This is the only way in which the proviso to S.4 can be harmanised with S.25. Consequently if a dispute of the nature covered by S.25 is raised before the Registrar in connection with the submission of the annual list under S.4(1) of the Act the same must, in view of the Legislative mandate embodied in S.25(1), be referred by him to the Prescribed Authority. The Bench deciding writ petn. No. 14879 of 1986 referred to above was also of the opinion that the proviso to S.4(1) does not have the effect of whittling down the scope of S.25(1)."

(Emphasis supplied)

33. This decision, thus, lays down that if a dispute of the nature covered by Section 25 of the Societies Registration Act, 1860 is raised before the Registrar in connection with the submission of the annual list under sub-section (1) of Section 4 of the said Act, the same must be referred by him to the Prescribed Authority. Such dispute has to be decided by the Prescribed Authority under Section 25(1) of the Act and not by the Registrar. However, the decision of the Prescribed Authority is subject to the result of a civil suit.

34. In ***Khapraha Educational Society, Khapraha Jaunpur and another Vs. Assistant Registrar, Firms, Chits & Societies, Varanasi Region, Varanasi and another, 1993 AWC 332***, the Assistant Registrar, Firms,Chits & Societies, Varanasi Region, Varanasi passed an order dated 6.8.1992 in purported exercise of the powers conferred by Section 4 of the Societies Registration Act, 1860 (as amended) and accepted the list of office bearers submitted by the respondent no.2, and rejected the list submitted by the petitioner no.1 through the petitioner no.2. Thereupon, the said petitioners filed Writ Petition before this Court. This Court allowed the said Writ Petition, interalia, holding as under (paragraphs 9 and 11 of the said AWC):

"9. Having heard learned counsel for the parties and having perused the record of the writ petition, I am of the opinion that in the facts of the present case the submissions made by the learned counsel for respondent cannot be accepted. For deciding the controversy, it will be necessary to determine whether the dispute before the respondent no.1 was confined only with regards to the names submitted in the list, removing the name of the life member and questions arising therefrom, as contended by the learned counsel for the respondent no.2, or something more which raises the question regarding some election dispute or a dispute of that nature which calls for a decision under section 25(1) of the Act. To find an answer to this, it will be pertinent to refer to the objections filed by the petitioner no.2 before the respondent

no.1. The said objections have been annexed as Annexure 7 to the writ petition. A bare perusal of the same would reveal that in paragraphs 1 to 7 the petitioner no.2 had asserted about the elections of May, 1992 in which he was elected as the Secretary and his committee was elected. In paragraphs 8 to 12 of the said objections the petitioner no.2 had challenged the membership of the respondent no.2 and some other members named therein saying that they were not the members of the society and had no right to call a meeting of the general body, hence the alleged meeting of 26-9-91 was void and inoperative and all the subsequent proceedings were consequently illegal and void. In paragraphs 13 to 16 of the said objections he had referred to the post litigations and the pending proceedings between the parties. From the impugned order, Annexure-8 to the writ petition, it is apparent that the respondent no.1 had noticed that there were two rival parties before him each of whom was claiming to be the validly elected body and both of whom had submitted their respective lists. Though in the issues framed by the respondent no.1 he has avoided to frame any issue which could make it appear to be an election dispute but it is obvious that the dispute was not confined to the validity of the lists submitted by the respective parties but went much deeper. It had ultimately to be decided whether the meeting which was called for removing the petitioner no.2 or for holding the fresh elections and the consequent elections which were held on 15.12.1991 were validly convened. This dispute, as already seen above had been raised in the objections filed by the petitioner no.2 though purportedly in reply to a notice sent to that party by the respondent no.1 under section 4(1) of the Act. Learned counsel for the respondent contended that the issues framed do not show that the Assistant Registrar was deciding a dispute with regards to any election. It may be so, but it is always open for the Court to lift the veil and see what is the real dispute which had to be decided. As already observed by me, it is apparent that the dispute was not confined to the respective lists submitted by the parties but it touched an election dispute and raised doubts about the membership of certain persons and thus the situation clearly attracted the provisions of Section 25(1) of the Act. In facts of the present case, therefore, the decisions cited by the learned counsel for the petitioners, which have been referred to above, were clearly applicable. I do not find any merit in the submission of the learned counsel for the respondent that as there was no specific prohibition in the provisions of Section 4(1) of the Act, the Assistant Registrar could decide the matter himself. If this interpretation is given then the provisions of Section 25(1) of the Act would become infructuous and meaningless. The Court has, therefore, to decide the case on the basis of the provisions as contained in the Act and it is not open to the Court to add something to the provisions of Section 4(1) of the Act to enlarge the jurisdiction or scope of the power exercised by the Registrar under Section 4(1) of the Act. The ruling cited by the learned counsel for the respondent in my opinion, does not apply to the facts of the present case and it also does not call for any reference to be made for consideration of the matter by a larger Bench.

***11**. In view of the aforesaid discussions, I am of the view that the*

impugned order dated 6.8.1992 passed by the respondent no.1 is without jurisdiction inasmuch as the respondent no.1 could not decide the dispute himself but had to make a reference to the prescribed Authority under Section 25(1) of the Act. The impugned order is, therefore,hereby quashed. However, in the facts and circumstances of the case, I direct the Assistant Registrar, Firms, Societies & Chits, U.P. Varanasi (respondent no.1) to make a reference of the dispute between the parties regarding the elections by which each of them is claiming to be elected, to the prescribed Authority within a period of three weeks from the date of receipt of a certified copy of this order produced before him and forward alongwith the reference a copy of this order to the prescribed Authority. I further direct the concerned prescribed Authority, to decide the dispute in accordance with law within a period of three months from the date of receipt of the reference from the Assistant Registrar after due notice to both sides and hearing them. Till the decision of the prescribed Authority status quo shall be maintained by the parties and whosoever is in effective actual control will remain till the matter is finally decided by the prescribed Authority. While deciding the dispute the prescribed Authority shall not be influenced in any manner by any observation of this Court made in this order."

(Emphasis supplied)

35. This decision, thus, lays down that it is always open for the Court to lift the veil and see what is the real dispute which is to be decided by the Assistant Registrar under sub-section (1) of Section 4 of the Societies Registration Act, 1860. In case the Court finds that the dispute is not confined to the respective lists submitted by the parties, but it touches an election dispute and raises doubts about the membership of certain persons, then the provisions of Section 25(1) of the said Act are clearly attracted and the Assistant Registrar cannot himself decide such dispute under sub-section (1) of Section 4 of the said Act but should refer the dispute to the Prescribed Authority under sub-section (1) of Section 25 of the said Act.

36. In ***Committee of Management Raja Tej Singh Vidyalaya Aurandh, Mainpuri and another Vs. District Inspector of Schools, Mainpuri and others, 2000 (2) AWC 1086***, different sets of persons were allegedly elected as office bearers and members of the Committee of Management of the Society in different elections. All submitted their papers to the Assistant Registrar, Firms, Societies & Chits, Agra under Section 4 of the Societies Registration Act, 1860 for information as well as to the Basic Shiksha Adhikari, Mainpuri for their recognition. This Court held that the dispute between the parties was as to which of the two elections, namely, one held on 3.12.1998 and the other held on 6.12.1998, was valid. This dispute was cognizable by the Prescribed Authority, and the Assistant Registrar had no jurisdiction to decide it. The order of the Assistant Registrar was accordingly quashed, and the Assistant Registrar was directed to refer the dispute to the Prescribed Authority.

One of the points framed for determination in this case was : "What is the role of the Registrar and the Prescribed Authority under the Societies Registration Act? What are their powers

as regards each other?". It was held as under (paragraphs 8,11,12,13 and 14 of the said AWC):

"8. Section 25(1) of the Act confers powers and jurisdiction to the Prescribed Authority under the Societies Registration Act.

11. .....A Registrar cannot dissolve a society : a Court does it. He cannot decide a doubt about an election or an election dispute or about continuance of an office bearer in a society. The prescribed authority decides it under Section 25(1) of the Societies Registration Act. The Registrar cannot under the garb of exercising other powers, decide the aforesaid dispute indirectly.

12. Every society has a governing body (Committee of Management) entrusted with management of the affairs of the society. This governing body is known by different names in different societies. Section 4 of the Societies Registration Act contemplates that a society has to submit a list of its governing body (Committee of Management) with the Registrar. Section 4(2) of the Societies Registration Act contemplates that the memorandum of a society including alteration, extension or abridgment of purpose should also be filed along with the list of governing body; it has to be certified by three members. The proviso to Section 4(1) of the Societies Registration Act states that in case any member in the list of governing body is different from the last submission of the list (which can happen only if a new election has been held), then old office bearers should also countersign the list. The purpose of Section 4 is that the correct list of governing body (Committee of Management) of a society should be maintained and it may not be disputed. Its proviso contemplates that in case old office bearers do not countersign the list then the Registrar may issue public notice inviting objections and decide the same. What is the purpose of such decision? What is the scope of his jurisdiction?

13. The jurisdiction of the Registrar under the proviso to Section 4 of the Societies Registration Act is to see if there is any dispute : whether the dispute is a bona fide dispute or not; whether it is a dispute for the sake of it. But, if there is a dispute, then his jurisdiction ends; the matter has to be referred to the prescribed authority under Section 25 of the Societies Registration Act. He cannot in garb of deciding objections decide dispute within the jurisdiction of the prescribed authority under Section 25 of the Societies Registration Act.

14. The prescribed authority can neither entertain a dispute by himself nor can he decide a dispute on reference by one member. He can only decide if it is referred by the Registrar, or by 1/4th of the members (i.e., at least two members) of a society.

The Legislature thought that in case less than 1/4th of the members of a society are raising a dispute, then it is not a bona fide dispute; not worth investigating. In order to decide if there is a bona fide dispute, the Registrar may also decide :

(i) if the persons raising disputes are members of a society or not;

(ii) or decide if a person presenting the papers is entitled to present the papers for renewal or not.

But he can do so only if he does not have to decide –

(i) a doubt, or a dispute about an election; or

(ii) continuance of any office bearer. In case he has to decide any doubt or dispute about election, or continuance of an office bearer, it becomes bona fide dispute and his jurisdiction ceases. He has to refer the matter to the prescribed authority. The prescribed authority has pre-emptive jurisdiction in this regard.

Secondly, the power of the Registrar to decide objections filed under the proviso to Section 4(1) must be held to operate in a field not covered by Section 25 of the Act. Under the proviso to Section 4(1) the Registrar deals only such matters as may arise in the context of the submission of the annual list of the managing body. Further in the present case we are concerned here not with the election of the managing body but with the election of the office bearers of the society.....In any case insofar as the disputes relating to the election of the office-bearers of a society registered in Uttar Pradesh is concerned, the same has to be decided only in the manner prescribed under Section 25(1) on the principle that the 'special excludes the general'. This is the only way in which the proviso to Section 4 can be harmonised with Section 25."

(Emphasis supplied)

37. This decision, thus, lays down that the jurisdiction of the Registrar under the proviso to Section 4 of the Societies Registration Act, 1860 is to see if there is any dispute; whether the dispute is a bonafide dispute or not; whether it is a dispute for the sake of it.

38. It has further been laid down that in case, for deciding the matter under sub-section (1) of Section 4 of the Societies Registration Act, 1860, the Registrar has to decide any doubt or dispute about election, or continuance of an office-bearer, it becomes bonafide dispute and his jurisdiction ceases. He has to refer the matter to the Prescribed Authority. The Prescribed Authority has pre-emptive jurisdiction in this regard.

39. In ***Committee of Management of Rashtriya Junior High School (Society) Babhaniyaon Vs. Assistant Registrar, Firms, Societies and Chits,Varanasi Region, Varanasi and others, 2005 (61) ALR 74***, a Division Bench of this Court held as under (paragraphs 4 and 7 of the said ALR):

"4. It is the standard law that if any bona fide dispute as to two rival Committees of Managements is shown to be in existence to the Registrar or Assistant Registrar, a reference by him of the dispute to the Prescribed Authority follows as a matter of course. But a bona fide dispute does come into existence merely because one member, even if he is a founder member, chooses simply to say or assert that he has a rival Committee and therefore, a bona fide dispute as to Management exists. Sufficient prima facie material must be produced before the Registrar before he can validly exercise his jurisdiction of referring the dispute. He must, simply put, be satisfied that there is something to refer and he is not merely sending litigations before the Prescribed Authority, without there being even a shadow of real cause for litigation.

7. It is the well known law that with the proof of a supporting claim by at least

a quarter of the members of the Society in the General Body, a reference can be made as of right under section 25 of the Societies Registration Act to the Prescribed Authority directly. On the other hand, as we have mentioned above, the genuine existence of a bona fide dispute might give rise to a reference to the Prescribed Authority through the Registrar. That these courses exist in law, does not mean that we should give liberty to the appellant to avail himself of any of these courses; he cannot avail himself of these courses on the basis of the appeal Court's liberty; he has to show the existence of a rival body with sufficient clarity before the appropriate authority before he can exercise the rights given to some persons in accordance with law; if the appellant has achieved the status or the support of a group of disputants then only he can dispute, otherwise not."

(Emphasis supplied)

40. This decision, thus, lays down that if any bona fide dispute as to two rival Committees of Managements is shown to be in existence to the Registrar or Assistant Registrar, a reference by him of the dispute to the Prescribed Authority follows as a matter of course. Sufficient prima-facie material must be produced before the Registrar to show existence of a bona fide dispute as to two rival Committees of Managements. In case the Registrar is satisfied regarding the existence of a bonafide dispute, he can validly exercise his jurisdiction of referring the dispute to the Prescribed Authority under Section 25 of the Societies Registration Act, 1860.

41. In ***Madarsa Arabiya Noorul Olum Gaderua, Azamgarh through its Nazim and others Vs. State of U.P. and others, 2009 (75) ALR 369,*** the petitioners challenged the order dated 15.12.2008 passed by the respondent no.2, Assistant Registrar, Firms, Societies and Chits, Azamgarh. One of the grounds for challenge was that the respondent no.2 illegally proceeded to decide the dispute of Committee of Management elected by the members of the Society which ought to have been referred to the Prescribed Authority under Section (1) of Section 25 of the Act. The facts of the case, as noted in paragraphs 5,6,7,8 and 9 of the said ALR, are as under:

"5. The facts of the case are that Madarsa Arbiya Noorul Olum Gaderua, Azamgarh is a society registered under the Societies Registration Act, 1860. Sri Mukhtar Ahmad, petitioner No.2 claims himself to be the Nazim i.e., Manager of the Society and petitioner No.3 claims himself to be the Sadar i.e., President of hte Society. According to the bye-laws of the society, the term of the Committee of Management is 5 years and comprises of 9 office bearers i.e., Sadar/President, Nayab Sadar/ Vice-President, Nazim/ Manager, Nayab Nazim/ Deputy Manager, Khajanchi/Treasurer, Auditor and two members.

6. The society was registered under the Societies Registration Act, 1860 on 28.4.1992 and is said to have been renewed from time to time and its office bearers were also approved by respondent No.2.

7. It appears that a dispute arose on account of submission of another list of Committee of Management allegedly is said to have been elected by the members of the society wherein one Sri Imtiyaz Ahmad son of Sri Inayatullah claimed himself to be its Manager. The objections along with an affidavit dated 17.5.2008

are said to have been filed by the then President by Shri Mohd. Ramzan against the aforesaid list of office bearers of the committee of management submitted for approval showing Sri Imtiyaz Ahmad son of Sri Inayatullah as elected Manager.

8. The society runs an academic institution Madarsa Arabiya Noorul Olum in village Garedua in District Azamgarh. It is alleged that there was some dispute of Committee of Management and under the pressure of the people of the locality the rival factions of the two committees of managements agreed to hold the meeting for resolution of dispute in the larger interest of the Madarsa. Pursuant to thereof, the compromise is alleged to have been arrived at and a new Committee of Management was elected. Thereafter, meeting of the society was held on 27.1.2006.

9. It is claimed that in order to facilitate formation of new committee of management by consensus the erstwhile Manager Sri Haji Inayatullah tendered his resignation on 18.10.2006 from his office as Manager and one Sri Imtiyaz Ahmad also relinquished his rival claim of being the Manager. It is stated that newly elected committee of management was headed by petitioner No.3 as its President and petitioner No.2 as its Manager. The list of office bearers of the aforesaid newly formed committee of management was submitted before respondent No.2 and was approved.

42. Having noted the facts of the case, as above, this Court opined as under (paragraphs 22,23,24,25,26,27 and 28 of the said ALR):

"22. Admittedly, the list of the office bearers has to be signed by the ex-office bearers of the Committee of Management which was not done in this case. The petitioners claim that their new committee of management was elected on the basis of compromise, which is said to be 'farji' by the respondents, and a finding to this effect has also been recorded by the Assistant Registrar. Therefore, basically the dispute, in my considered opinion, is not regarding election but is regarding list of office bearers of the society submitted by the petitioners which is also apparent from paragraph 8 of the writ petition wherein it has been held that –

"8. That, however, the dispute arose on account of submission of another list of committee of management allegedly elected by the members of the society wherein one Sri Imtiyaz Ahmad son of Sri Inayatullah was shown to be its Manager."

23. From aforesaid paragraph 8 it is evident that question of dispute of rival committee of management is not there for being challenged but another list submitted by respondents.

24. When section 4 of the Act provides for registration of the office bearers of the Committee of Management it means validly elected committee of management in accordance with law. A committee of management is to continue for a period of 5 years or as provided in the bye-laws and is not elected every year. It is only the list which is to be submitted annually by the said validly elected committee of management showing change if any in the list of office bearers registered earlier. The change may be due to death or recognition etc. of an office bearer or due to any other such reason. This list is to be registered annually in accordance with the provisions contained in section 4 of the Act, which provides for

signatures of the members of the office bearers of old Committee of Management.

25. Admittedly, in the instant case, the petitioners claim themselves to be the President and Manager of the society on the basis of an election said to have been held pursuant to a compromise which was got approved by the petitioners on the basis of forged papers whereas the respondents deny any such compromise.

26. Since the dispute pertains to the registration of list of validly elected office bearers of the society, it may also touch the question of election of the office bearers of the Committee of Management. If the dispute is confined only to the list then section 4 comes into play and the Assistant Registrar has the jurisdiction in the matter but if question of election is dominant question then in that case section 25(1) of the Act would be attracted.

27. The Courts, therefore, have to be cautious as to what is the predominant dispute as well as the effect of the order passed by the authority. The order impugned in the present writ petition appears to be confined only to the question of validity of list of office bearers, though while deciding the facts the authority may have referred the stand taken by the parties regarding election on the basis of which the parties claim to file their respective lists of office bearers. However, the substantial and dominant question of registration of list of office beareres of the society has been decided by the authority and not the election. Moreover, this does not appear to be a bona fide dispute which ought to have been referred by the authority under section 25(1) of the Act. This is also import the judgment of the Division Bench in Committee of Management, Rashtriya Junior High School (supra).

28. Furthermore, proceedings under section 4 of the Act pertaining to registration of annual list of managing body as well as the proceedings under section 25(1) of the Act are summary in nature. Reference of dispute in respect of election can always be referred by the Assistant Registrar to the prescribed authority or by at least 1/4th members of the society registered under the Act, hence, whether any dispute has been decided under section 4 or under section 25(1) of the Act, the order is subject to adjudication in a Civil Court being orders arising out of summary proceedings, where parties can adduce oral and documentary evidence in support of their cases."

43. This decision, thus, lays down that if the dispute is confined only to the list of office-bearers then Section 4 of the Act comes into play and the Assistant Registrar has the jurisdiction in the matter, though incidentally such dispute may also touch the question of election of the office bearers of the Committee of Management. However, if the question of election is the dominant question, then in that case Section 25(1) of the Societies Registration Act, 1860 would be attracted. The Court must, therefore, examine as to what is the predominant dispute as well as the effect of the order passed by the authority. In case substantial and dominant question of registration of list of office bearers of the society has been decided by the authority and not the election, then the order passed under sub-section (1) of Section 4 of the Societies Registration Act, 1860 would be valid.

44. It has further been laid down that in order to attract Section 25(1) of the Societies Registration Act, 1860, the dispute in respect of the election of an office-bearer of the society must be a bonafide dispute.

45. The decision further lays down that the proceedings under Section 4 of the Societies Registration Act, 1860 and the proceedings under Section 25(1) of the said Act are summary in nature, and the orders passed in such proceedings are subject to adjudication in a Civil Court.

46. In view of the said propositions, this Court dismissed the writ petition filed by the petitioners in the above case.

From the propositions laid down in the above decisions, the following principles may be deduced:

1. If the Managing Body of a Society is elected after the last submission of the list of Managing Body, and a list of Managing Body is submitted before the Registrar on the basis of such election, and objections, as contemplated in the proviso to sub-section (1) of Section 4 of the Societies Registration Act, 1860, are filed raising issues other than regarding any doubt or dispute in respect of the election or continuance in office of an office-bearer of such society, then such objections will be decided by the Registrar under the proviso to sub-section (1) of Section 4 of the Societies Registration Act, 1860, and no reference under Section 25 of the said Act will be required to be made to the Prescribed Authority.

It may be added that in some cases, difficulty may arise in determining as to whether the objections raise issues regarding any doubt or dispute in respect of the election or continuance in office of an office-bearer, or raise issues other than any such doubt or dispute.

In order to decide as to whether the objections raise issues regarding any doubt or dispute in respect of the election or continuance in office of an office-bearer of the Society, or raise issues other than such election dispute, the test of main/primary/ substantial/ dominant dispute/ question and the secondary/incidental/ subsidiary dispute/ question may be applied. Hence if the main/ primary/ substantial/ dominant dispute/ question raised in the objections is other than any doubt or dispute in respect of the election or continuance in office of an office-bearer of the society, then the Registrar may decide such dispute/ question even though in deciding the same, the Registrar may have to touch upon the question of election of the Managing Body as a secondary/ incidental/ subsidiary dispute/ question. On the other hand, if the main/ primary/ substantial/ dominant dispute/ question raised in the objections is regarding any doubt/ dispute in respect of the election or continuance in office of an office-bearer of the society, and other issues raised in the objections are only secondary / incidental/ subsidiary in nature, then the Registrar cannot adjudicate upon the objections and he will have to refer the matter to the Prescribed Authority under sub-section (1) of Section 25 of the Societies Registration Act, 1860.

2. When the list of Managing Body of a Society is submitted before the Registrar under sub-section (1) of Section 4 of the Societies Registration Act, 1860 on the

basis of the alleged election held since the last submission of the list of Managing Body, and objections, as contemplated in the proviso to sub-section (1) of Section 4 of the said Act, are filed raising any doubt or dispute in respect of the election or continuance in office of an office-bearer of such Society, but without setting up any rival election, then the Registrar may consider such objections to find out as to whether the doubt or dispute in respect of the election or continuance in office of an office-bearer of the Society as raised in the objections is totally frivolous, unsupported by any material, or the same is bonafide based on relevant material. In case the Registrar finds that such doubt or dispute raised in the objections is totally frivolous, unsupported by any material, then the Registrar may reject such objections and register the list of Managing Body submitted before him. However, in case the Registrar finds that such doubt or dispute raised in the objections is bonafide and supported by relevant material, then the Registrar will not decide such doubt or dispute raised in the objections, and will refer such doubt or dispute to the Prescribed Authority under sub-section (1) of Section 25 of the Societies Registration Act, 1860. Thus, in a case where the objections filed under the proviso to sub-section (1) of Section 4 raise any doubt or dispute in respect of the election or continuance in office of an office-bearer of the Society without setting up any rival election, then the jurisdiction of the Registrar under the proviso to sub-section (1) of Section 4 is limited to examine as to whether such doubt or dispute raised in the objections is frivolous or bonafide. Once the Registrar is satisfied that such doubt or dispute raised in the objections is bonafide and based on relevant material, then the Registrar has no jurisdiction to adjudicate upon such doubt or dispute raised in the objections, and he is bound to refer such doubt or dispute raised in the objections to the Prescribed Authority under sub-section (1) of Section 25.

3. When the list of Managing Body of a Society is submitted before the Registrar under sub-section (1) of Section 4 of the Societies Registration Act, 1860 on the basis of the alleged election held since last submission of the list of Managing Body, and objections, as contemplated in the proviso to sub-section (1) of Section 4 of the said Act, are filed setting-up a rival election alleged to have been held since the last submission of the list of Managing Body, then the Registrar may consider as to whether the respective claims of elections set-up by the rival parties are totally frivolous, unsupported by any material, or are bonafide and supported by relevant material.

47. If the Registrar finds that the claim of election set-up by one of the rival parties, is totally frivolous and unsupported by any material while the claim of election set-up by the other party is bonafide and valid and is supported by relevant material, then the Registrar may pass appropriate orders under the proviso to sub-section (1) of Section 4 of the Societies Registration Act, 1860, and reject the claim of election of the first party and accept the claim of election of the second party.

48. However, if the Registrar finds that the respective claims of elections set-up by both the parties are bonafide and supported by relevant material placed by such parties, then the Registrar will not adjudicate upon the validity of the rival

claims of elections, and he will refer the matter to the Prescribed Authority under sub-section (1) of Section 25 of the Societies Registration Act, 1860.

49. Thus, in a case where rival elections are set-up by the parties, the jurisdiction of the Registrar under the proviso to sub-section (1) of Section 4 of the Societies Registration Act, 1860 is limited to examine as to whether such claims are totally frivolous and unsupported by any material or are bonafide and supported by relevant material. Once the Registrar finds that the claims set-up by both the rival parties are bonafide and based on relevant material, then the Registrar has no jurisdiction to adjudicate upon such claims, and he is bound to refer the matter to the Prescribed Authority under sub-section (1) of Section 25 of the said Act.

50. Keeping in view the principles mentioned above, let us consider the present case.

In the present case, the Deputy Registrar (respondent no.2) exercising the power of the Registrar under Section 4 of the Societies Registration Act, 1860 has not considered the question as to whether the rival claims of elections set-up by the petitioners and the respondent no.4 were bonafide and based on relevant material. Instead, the Deputy Registrar (respondent no.2) has proceeded to examine the claim of elections set-up by the petitioners and the claim of election set-up by the respondent no.4 on merits and has accepted the claim of elections set-up by the respondent no.2 as against the claim of election set-up by the petitioners. The respondent no.2 was bound to examine the claim of the petitioners regarding the election allegedly held on 28.11.2004 on the basis of the material produced by the petitioners to find-out as to whether the claim of the petitioners was totally frivolous and unsupported by any material or the same was bonafide and based on relevant material. Similarly, the respondent no.2 ought to have examined the claim of the respondent no.4 regarding the election allegedly held on 31.7.2004 on the basis of the material produced by the respondent no.4 to find-out as to whether the claim of the respondent no.4 was totally frivolous and unsupported by any material or the same was bonafide and based on relevant material.

51. After having undertaken the above exercise, the respondent no.2 ought to have proceeded in accordance with principle no.3, mentioned above. Accordingly, in case the Deputy Registrar (respondent no.2) came to the conclusion that both the claims of elections set-up before him, namely, one by the petitioners and the other by the respondent no.4, were bonafide and based on relevant material, then the Deputy Registrar (respondent no.2) ought to have referred the matter to the Prescribed Authority under sub-section (1) of Section 25 of the Societies Registration Act, 1860. As noted above, the Deputy Registrar (respondent no.2) has not considered the said aspects, but has proceeded to examine the rival claims of elections set-up before him on merits. The Deputy Registrar (respondent no.2) has, thus, not acted in accordance with law.

52. Let us now consider the ***SECOND SUBMISSION*** made by Shri Ashok Khare, learned Senior Counsel, namely, that the recital in the impugned order dated 13.12.2005 regarding non-

production of original record by the petitioners was not correct.

53. Shri Khare in this regard has referred to the averments made in paragraphs 25 and 29 of the writ petition wherein it has, interalia, been asserted that on 5.12.2005 the petitioners again produced the original record alongwith the Written Submissions and the affidavits of 19 members of the General Body but the original record was not accepted by the Deputy Registrar (respondent no.2) on the ground that the same had already been placed on the record and the copy of the same was available.

54. On the other hand, the learned Standing Counsel submits that the recital in the impugned order dated 13.12.2005 regarding non-production of the original record by the petitioners was correct. Learned Standing Counsel refers to the averments made in paragraphs 7 and 16 of the counter affidavit filed on behalf of the respondent nos. 1 and 2 wherein it has, interalia, been asserted that despite time having been granted on various dates, the original record was not produced by the petitioners on 5.12.2005 even though on the said date, 19 affidavits were filed on behalf of the petitioners.

55. It may be mentioned that the averments made in paragraphs 7 and 16 of the counter affidavit filed on behalf of the respondent nos. 1 and 2, have been replied to in paragraphs 6 and 14 of the rejoinder affidavit filed on behalf of the petitioners wherein the petitioners have reiterated the averments made in the writ petition.

56. It will, thus, be noticed that it is a disputed question of fact as to whether on 5.12.2005 the petitioners produced the original record before the Deputy Registrar (respondent no.2) and as to whether the Deputy Registrar (respondent no.2) returned the said original record on the ground mentioned by the petitioners. Except for making assertions in the writ petition and reiterating the same in the rejoinder affidavit, the petitioners have not placed any material to substantiate the correctness of the stand taken by them in regard to the production of the original record on 5.12.2005. It will not be appropriate for this Court to examine such disputed questions of fact in exercise of its Writ Jurisdiction under Article 226 of the Constitution of India. The second submission made by Shri Ashok Khare, learned Senior Counsel, therefore, cannot be accepted.

57. Let us now consider the ***SUBMISSION NO.3A*** raised on behalf of the petitioners, namely, that the impugned order is violative of the principles of natural justice as no copies of the written submissions or the documents submitted by the respondent no.4 before the Deputy Registrar (respondent no.2) were supplied to the petitioners, and the petitioners were not aware of the contents thereof. Reference in this regard is made to paragraph 26 of the writ petition wherein the averments to the said effect have been made.

58. On the other hand, the learned Standing Counsel submits that the documents produced by the rival parties are permitted to be inspected by each other but no copies of the documents are required to be furnished by one party to the other. The learned Standing Counsel

refers to paragraph 17 of the counter affidavit filed on behalf of the respondent nos. 1 and 2 wherein the averments to the said effect have been made.

59. The averments made in paragraph 17 of the said counter affidavit have been replied to in paragraph 15 of the rejoinder affidavit wherein the averments made in paragraph 26 of the writ petition have been reiterated. However, no specific reply has been given to the averments in paragraph 17 of the counter affidavit regarding the parties being permitted to inspect the documents submitted by each other. There is no assertion in paragraph 15 of the rejoinder affidavit that the petitioners were not permitted to inspect the documents and the written submissions submitted by the respondent no.4. In the absence of any specific averment in paragraph 15 of the rejoinder affidavit that the petitioners were not permitted to inspect the written submissions and the documents submitted on behalf of the respondent no.4, there is no reason to doubt the correctness of the averments made in paragraph 17 of the counter affidavit filed on behalf of the respondent nos. 1 and 2. Thus, the petitioners had opportunity to inspect the written submissions and the documents submitted on behalf of the respondent no.4 before the Deputy Registrar (respondent no.2), and there was, thus, no violation of the principles of natural justice on account of non-supply of copies of the written submissions and the documents submitted on behalf of the respondent no.4 to the petitioners.

60. Let us now consider the ***SUBMISSION NO.3B*** raised on behalf of the petitioners, namely, that the impugned order has been passed in violation of the principles of natural justice as the impugned order has relied upon an enquiry conducted by the Tehsildar and the Deputy District Magistrate, Bhognipur behind the back of the petitioners, and even copy of the Enquiry Report was never supplied to the petitioners. Reference in this regard has been made to paragraph 30 of the writ petition, which is reproduced below:

"30. That the impugned order refers the enquiry conducted by the Tehsildar as well as the Deputy District Magistrate, Bhognipur, Kanpur Dehat. However, neither any intimation has been given to the petitioners with regard to the enquiry conducted by the Tehsildar as well as the Deputy District Magistrate, Bhognipur. The entire proceeding is totally ex parte to the petitioners even the copy of the said enquiry report has not been supplied to the petitioners at any point of time."

61. On the other hand, the learned Standing Counsel submits that there has been no violation of the principles of natural justice in passing the impugned order on account of placing reliance on the Enquiry Report submitted by the Tehsildar and the Deputy District Magistrate, Bhognipur.

62. I have considered the submissions made by the learned counsel for the parties.

63. The averments made in paragraph 30 of the writ petition have been replied to in paragraph 21 of the counter affidavit filed on behalf of the respondent nos. 1 and 2, which is as under:

"21. यह कि याचिका के प्रस्तर-30 में वर्णित कथन प्रतिवादी सं०-2 से संबंधित नहीं है अतः किसी टिप्पणी की आवश्यकता नहीं है।"

64. It will, thus, be noticed that the averments made in paragraph 30 of the writ petition have not been denied in paragraph 21 of the counter affidavit filed on behalf of the respondent nos. 1 and 2. In the circumstances, there is no reason to doubt the correctness of the averments made in paragraph 30 of the writ petition. It is, thus, evident that the enquiry was conducted by the Tehsildar and the Deputy District Magistrate, Bhognipur, Kanpur Dehat without any intimation to the petitioners, and behind the back of the petitioners. It is further evident that copy of the Enquiry Report was not supplied to the petitioners at any point of time.

65. A perusal of the impugned order dated 13.12.2005 shows that the Deputy Registrar (respondent no.2) has relied upon the said enquiry conducted by the Tehsildar and the Deputy District Magistrate, Bhognipur, and the Enquiry Report submitted as a result of the said enquiry.

66. As the said enquiry was conducted without any intimation to the petitioners and behind the back of the petitioners and even copy of the Enquiry Report was not given to the petitioners, the Deputy Registrar (respondent no.2) has acted in violation of the principles of natural justice in placing reliance on the said enquiry and the Enquiry Report submitted as a result thereof while passing the impugned order. The impugned order dated 13.12.2005 passed by the Deputy Registrar (respondent no.2) has, thus, been passed in violation of the principles of natural justice.

67. In view of the above discussion, I am of the opinion that the writ petition deserves to be allowed and the impugned order dated 13.12.2005 (Annexure-10 to the writ petition) passed by the Deputy Registrar (respondent no.2) is liable to be quashed, and the matter is liable to be remanded to the Deputy Registrar (respondent no.2) for deciding the same afresh in accordance with law keeping in view the observations made in this judgment and also keeping in view the developments, if any, subsequent to the passing of the impugned order dated 13.12.2005 after affording opportunity of hearing to all concerned including the petitioners and the respondent no.4.

68. Accordingly, the writ petition is allowed. The impugned order dated 13.12.2005 (Annexure-10 to the writ petition) passed by the Deputy Registrar (respondent no.2) is quashed, and the matter is remanded to the Deputy Registrar (respondent no.2) for deciding the same afresh in accordance with law keeping in view the observations made in this judgment and also keeping in view the developments, if any, subsequent to the passing of the impugned order dated 13.12.2005 after affording opportunity of hearing to all concerned including the petitioners and the respondent no.4.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.04.2010

BEFORE
THE HON'BLE R.K.AGRAWAL, J.
THE HON'BLE MRS. JAYASHREE TIWARI,J.

Civil Misc. Writ Petition No.8977 of 2008

M/s Chitra Gupta Trading ...Petitioner
Versus
U.P. Public Works Department and others ...Respondents

Counsel for the Petitioner:
Sri N.K. Singh

Counsel for the Respondent:
C.S.C.

Constitution of India Art.226- Clearance of Bills-petitioner a government contractor-completed task within time scheduled-Bill and working approved-counter affidavit accepted the claim but due to paucity fund-could not be cleared-direction to give entire amount with.12% interest thereon.

Held Para-4

Accordingly, this Court is convinced that delay in making payment to the petitioner is not justified. It has been held by this Court that on completion of work if there is no dispute about bill/quantum of payment should be ensured to the petitioner and the writ petitions were allowed from time to time. Reference can be given to the recent orders passed by this Court in Writ Petition No. 8974 of 2005, Chain Shakti Cosmetic decided on 9.7.2009 and Writ Petition No 14821 of 2008 Vijay Kumar Yadav vs. State of U.P. and others decided on 13.7.2009.

Case law discussed:
Writ Petition No. 8974 of 2005, Chain Shakti Cosmetic decided on 9.7.2009 and Writ Petition No 14821 of 2008 Vijay Kumar Yadav vs. State of U.P. and others decided on 13.7.2009.

(Delivered by Hon'ble R.K. Agrawal, J.)

1. Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

2. Prayer in this writ petition is for the issuance of a writ of mandamus directing respondents to make the payment to the petitioner in respect of the work done/completed.

3. Submission is that the petitioner is a registered contractor in Public Works Department, Ballia and completed the work assigned satisfactorily. Submission is that after completion of work in the year 2000, bills were submitted but till date payment has not been made to the petitioner. Record shows that there is no dispute with regard to the work done/completed by the petitioner and the amount so payable to the petitioner has been physically and technically verified and all the bills are passed by the authorities but due to non availability of fund/budget the petitioner is not able to get the amount.

Counter affidavit has been filed by respondent authorities.

In the counter affidavit filed by S.P. Srivastava, who is Assistant Engineer in Public Works Department in paragraph nos.4 to 8 has accepted the liability for payment to the petitioner for the work done. It has been stated in the counter affidavit that the payment of the bill is already under consideration and the amount shall be paid as soon as the funds are released by the State Government.

In view of the aforesaid there is absolutely no dispute of the fact that the claim of the petitioner is not justified.

4. Accordingly, this Court is convinced that delay in making payment to the petitioner is not justified. It has been held by this Court that on completion of work if there is no dispute about bill/quantum of payment payment should be ensured to the petitioner and the writ petitions were allowed from time to time. Reference can be given to the recent orders passed by this Court in Writ Petition No. 8974 of 2005, Chain Shakti Cosmetic decided on 9.7.2009 and Writ

Petition No 14821 of 2008 Vijay Kumar Yadav vs. State of U.P. and others decided on 13.7.2009.

Accordingly, this Court is of the view that the petitioner is entitled to get relief.

5. This writ petition succeeds and is allowed. Respondents are directed to ensure payment of outstanding amount as may be found due and payable to the petitioner with the interest of twelve per cent per annum from one month after the date of entitlement to the date of payment. The payment has to be ensured within a period of six weeks from the date of receipt of this order.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.04.2010

BEFORE
THE HON'BLE SUNIL AMBWANI, J.

Civil Misc. Writ Petition No. 4572 of 2007

Smt. Malti Devi ...Petitioner
Versus
The State of U.P. & others ...Respondents

Counsel for the Petitioner:
Sri Girish Chandra Yadav
Sri R.K. Misra
Sri V.K. Rai
Counsel for the Respondents:
Sri R.K. Singh
C.S.C.

Constitution of India Art. 226- Transfer-Assistant Teacher in Primary School run by district Social welfare officer-Transfer from one institution to another institution-not permissible-grievance that at Transferred institution- one Mr. 'A' even after his retirement interfering with the affairs of the institution- on inquiry the D.D.E. rightly held the petitioner should go back of her previous institution warrant no interference-Petition dismissed-petition has no right to question functioning- where transfer order itself illegal.

Held Para-10

There is no good ground made out to interfere with the impugned order. The Director, Samaj Kalyan had clarified by his circular letter dated 27.3.1987 that all the primary schools running for the benefit of scheduled caste students from the government funds were independent units and that the inter-se transfer between these schools was not allowed. The petitioner's transfer after the clarification dated 27.3.1987 in the year 1988, was not a regular transfer and thus she did not have a right to take over as Head Mistress at Anusuchit Primary Pathshala at Mudiyar, Block Mirzapur, Tehsil Nizamabad in District Azamgarh and to run the school.

(Delivered by Hon'ble Sunil Ambwani, J.)

1. Heard Shri Girish Chandra Yadav, learned counsel for the petitioner. Learned Standing Counsel appears for the State respondents. Shri Ram Kirti Singh appears for the respondent no. 6.

2. The petitioner Smt. Malti Devi was appointed as Assistant Teacher in Anusuchit Jati Primary Pathshala Charan Raj Pokhare Chiraiya Kot, District Azamgarh in the year 1982. It is stated by her in para-3 of the writ petition that she was transferred from Chiraiyakot to Girdharpur and again from Girdharpur to Badi Korauli Saraimeer in 1983. She was lastly transferred from Badi Korauli to Mudiyar in place of Shri Ram Awadh Ram and started functioning as Head Mistress after the retirement of Shri Ram

Awadh Ram on 30.6.2004 after session's benefit.

3. It appears that Shri Ram Awadh Ram continued to interfere in the affairs of the institution even after his retirement. The District Social Welfare Officer, Azamgarh forwarded petitioner's application on 30.3.2005 to Incharge Inspector Kotwali, Phoolpur, Azamgarh to restrain Shri Ram Awadh Ram from interfering in the teaching and distribution of mid day meal in the school. After about one year on 17.7.2006 Shri Raghunath made an application on 'Janta Diwas' to the District Social Welfare Officer alleging that the teaching work was not carried out in the School efficiently, and that the petitioner is a quarrelsome lady. An inspection was earlier carried out in the school on 27.1.2006 in which the Deputy Director, Social Welfare, Azamgarh Region, Azamgarh found that the attendance of the students in the school is very poor. The petitioner had manipulated the attendance register of the teachers and students. He recommended that the petitioner's salary be stopped. The Deputy Director also found that the petitioner's transfer to the institution was irregular.

4. The petitioner has prayed for quashing the inspection report and the recommendations of her transfer.

5. Learned counsel for petitioner submits that Shri Ram Awadh Ram has superannuated but is still interfering in the affairs of the institution. He has not handed over the records of the institution to the petitioner. The Deputy Director in his report dated 27.1.2006 had found that Ram Awadh retired Headmaster was still keeping the records of the school with him. The recommendations to stop petitioner's salary and to transfer her was actuated by the malafides with the interference of Shri Ram Awadh.

6. Shri Visheshawar Singh, Deputy Director, Social Welfare, Azamgarh Region, Azamgarh has stated in the counter affidavit that the petitioner's transfer order dated 2.2.1988, was illegal and in valid. All the institutions under the District Social Welfare Officer are running independently and there is no provision for transfer. The Deputy Director, Social Welfare and District Social Welfare Officer had cancelled the transfer order of the petitioner vide office memo dated 23.4.2004, as well as the letter dated 8.12.2005. In paragraph-4 of the counter affidavit the contents of paragraph-3, that she was transferred from Dharamdas Ka Pokhara Chiraiya Kot Mau to some other Pathashala is denied. It is further stated that the dispute between Ram Awadh and the petitioner has no concern with her transfer order. In the inspections, it was found that the petitioner had manipulated the attendance register. The attendance of the students was very low and that the petitioner was not managing the school properly. After the retirement of Shri Ram Awadh the charge was given to Shri Bhrigunath, Assistant Teacher on 7.3.2006. The petitioner was insisting upon handing over charge to her. After cancellation of her transfer she could not be handed over the charge of the school.

7. The circular letter of the Director, Harijan and Samaj Kalyan dated 27.3.1987 annexed as Annexure-1 to the counter affidavit shows that at that time there were 492 educational institutions running in the State for the benefit of the

Scheduled Caste students out of which 295 were primary schools. All these institutions are independent institutions with no provision of transfer. The Director had issued the instructions that the teachers receiving salary from government account were required to maintain their provident fund account with the treasury and not in the post office.

8. It appears that the petitioner was transferred by the order of District, Harijan and Samaj Kalyan dated 13.7.1983 from Girdharpur to Badi Korauli before the orders were issued by the Director, Harijan and Samaj Kalyan, Uttar Pradesh clarifying that the institutions are independent institutions and that inter-se transfer is not permissible. The petitioner's transfer to Mudiyar was in teeth of the directions of the Director, Samaj Kalyan prohibiting such transfers. On the retirement of Shri Ram Awadh, the charge of the institution was handed over to Shri Bhrigunath and that by letter dated 17.7.2006 the petitioner Smt. Malti Devi was required to comply with the orders of Deputy Director, Samaj Kalyan, Azamgarh Region, Azamgarh.

9. From the pleadings it is apparent that after petitioner's illegal and irregular transfer to Primary Pathashala Mudiyar, Azamgarh. Shri Ram Awadh did not accept her as Assistant Teacher in the institution and that on his retirement he allowed Shri Bhrigunath to take over charge. In between Smt. Malti Devi was insisting upon running the school as Head Mistress. The dispute was decided by the Deputy Director, Samaj Kalyan by his order dated 15.7.2006, on which Smt. Malti Devi was required to go back to the school from where she was transferred. Even otherwise the Deputy Director had found in his inspection that she was not carrying out her duties properly and had manipulated the attendance register.

10. There is no good ground made out to interfere with the impugned order. The Director, Samaj Kalyan had clarified by his circular letter dated 27.3.1987 that all the primary schools running for the benefit of scheduled caste students from the government funds were independent units and that the inter-se transfer between these schools was not allowed. The petitioner's transfer after the clarification dated 27.3.1987 in the year 1988, was not a regular transfer and thus she did not have a right to take over as Head Mistress at Anusuchit Primary Pathshala at Mudiyar, Block Mirzapur, Tehsil Nizamabad in District Azamgarh and to run the school.

11. The writ petition is dismissed.
