ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 20.05.2011

BEFORE
THE HON'BLE DEVI PRASAD SINGH,J.
THE HON'BLE S.C. CHAURASIA,J.

Service Bench No. - 163 of 2011

U.P. State Ware Housing Corp. Lucknow Through Its M.D. ...Petitioner
Versus
Sri Brish Bhan Singh and another ...Respondents

Counsel for the Petitioner:
Sri Rakesh K. Chaudhary

Counsel for the Respondents:
C.S.C.
Sri R.K. Upadhyay

Civil Service Regulations-Regulation 351-A-Disciplinary Proceeding against retired employee of Corporation-Tribunal Set-a-side the proceeding as no permission under Regulation 351-A taken-misconceived-in absence of specific provision in corporation-statutory-provision meant for Govt. employee can not be made applicable-Respondent employee-facing charge sheet on 29.08.06 in pursuance of proceedings initiated on 19 04. 2004-while retired on 31.07.2004-held-after retirement of delinquent employee-petitioner has no right to continue with disciplinary proceeding.

Held: Para 6 and 8

In response to the argument, the learned counsel for the private respondent submits that in absence of any provision as contained in Regulation 351-A of Civil Services Regulations, the petitioner lacks jurisdiction to initiate enquiry against the retired employee. He further submits that action against a retired employee may be taken in accordance with existing rules or regulations and not otherwise. He relied upon the cases reported in AIR 1990 SC 463 C.L. Verma versus State of M.P and another and AIR 1999 SC 1841 Bhagirathi Jena versus Board of Directors, O.S.F.C and others.

Keeping in view the admitted facts, the argument advanced by the learned counsel for the respondents seems to be correct that in absence of any provision, the petitioner has got no right to initiate or continue with the disciplinary proceedings against a retired employee. The case of C.L. Verma(supra) also relates to alike controversy. Their Lordships of Hon'ble Supreme Court held that in absence of any specific provision, no disciplinary proceeding may be initiated against the retired employee because after retirement, relationship between master and servant comes to an end.

Case law discussed:
AIR 1990 SC 463 ; AIR 1999 SC 1841; (2007) 9 SCC 698;

(Delivered by Hon'ble Devi Prasad Singh, J.)

1. Affidavits have been exchanged between the parties. With the consent of the parties' counsel, we decide the writ petition finally at admission stage.

2. Heard Mr. R.K. Chaudhary, learned counsel for the petitioner and Mr. R.K. Upadhyay, learned counsel for the respondents and perused the record.

3. The claimant respondent was posted as Assistant Regional Manager in the U.P. State Ware Housing Corporation (in short, corporation). He was served with a charge-sheet on 29.8.2006. Disciplinary proceedings were initiated against the claimant respondent vide order dated 19.4.2004 with regard to certain negligence and carelessness committed by the

respondent No.1 during the course of employment causing loss to the corporation. The respondent No.1 retired from service on 31.7.2004. Thereafter, on 2.5.2006, a show cause notice was served calling upon him to submit a reply with regard to certain loss caused to the corporation. The respondent No.1 submitted a reply on 16.6.2006 and after considering the reply submitted by the respondent, a charge-sheet dated 29.8.2006 was served, in response to which the petitioner submitted a response. However, it has been stated by the petitioner's counsel that no reply was submitted by the claimant respondent.

4. The disciplinary proceedings were subject matter of dispute before the tribunal. The claimant respondent assailed the initiation of the disciplinary proceedings against him on the ground that it is violative of the provisions of Regulation 351-A of Civil Services Regulations. It was stated before the tribunal by the claimant respondent that no permission was accorded to initiate disciplinary proceedings by the Managing Director in terms of Regulation 351-A of Civil Services Regulations. The tribunal has allowed the claim petition and set aside the disciplinary proceedings with a further direction to pay cost.

5. While assailing the impugned order, it is submitted by the learned counsel appearing for the petitioner that Regulation 351-A of Civil Services Regulations is not applicable with regard to employees of corporation since the corporation has not adopted the government rules or regulations and it is covered by independent service rules. However, it has been admitted by the petitioner's counsel that in service rules, no such provision has been made to initiate enquiry against a retired employee. He submits that the provision as given in Regulation 351-A of Civil Services Regulations has been followed while holding the enquiry.

6. In response to the argument, the learned counsel for the private respondent submits that in absence of any provision as contained in Regulation 351-A of Civil Services Regulations, the petitioner lacks jurisdiction to initiate enquiry against the retired employee. He further submits that action against a retired employee may be taken in accordance with existing rules or regulations and not otherwise. He relied upon the cases reported in AIR 1990 SC 463 C.L. Verma versus State of M.P and another and AIR 1999 SC 1841 Bhagirathi Jena versus Board of Directors, O.S.F.C and others.

7. During the course of argument, learned counsel for the petitioner admitted that the Service Rules and Regulations of the corporation do not contain any provision to initiate disciplinary proceedings against the retired employee. It has also been admitted that the Board of the corporation has not adopted the provisions contained in Regulation 351-A of Civil Services Regulations to regulate the service conditions of the employees.

8. Keeping in view the admitted facts, the argument advanced by the learned counsel for the respondents seems to be correct that in absence of

any provision, the petitioner has got no right to initiate or continue with the disciplinary proceedings against a retired employee. The case of C.L. Verma(supra) also relates to alike controversy. Their Lordships of Hon'ble Supreme Court held that in absence of any specific provision, no disciplinary proceeding may be initiated against the retired employee because after retirement, relationship between master and servant comes to an end. Relevant portion from the judgment of C.L. Verma(supra) is reproduced as under :

"6. The question which arose for consideration in the writ petition before the High Court at the instance of the appellant was whether in the face of the mandate in R. 29 the administrative order could operate. It is not the stand of the State Government that the order dated 15th of May, 1981, is one under the proviso to R. 29. In fact, the tenor of the proviso clearly indicates that it is intended to cover specific cases and individual employee. An administrative instruction cannot compete with a statutory rule and if there be contrary provisions in the rule the administrative instructions must give way and the rule shall prevail. We are, therefore, of the view that the appellant, in terms of R.29, ceased to be a Government employee on his attaining the age of 58 years, two days prior to the order of dismissal. In view of the fact that he had already superannuated, Government had no right to deal with him in its disciplinary jurisdiction available in regard to employees. The ratio of the decision in R.T. Rangachari v. Secretary of State for India in Privy Council, 64 Ind. App. 40 : (AIR 1937 PC 27) supports the position."

9. In the case reported in AIR 1999 SC 1841 Bhagirathi Jena versus Board of Directors, O.S.F.C and others, their Lordships of Hon'ble Supreme Court have reiterated the aforesaid proposition of law and held that the disciplinary proceedings cannot continue after superannuation unless it is provided under the Service Rules or Regulation. Relevant portion from the judgment of Bhagirathi Jena (supra) is reproduced as under :

"6. In view of the absence of such provision in the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

8.The question has also been raised in the appeal in regard to the payment of arrears of salary and other allowances payable to the appellant during the period he was kept under suspension and up to the date of superannuation. Inasmuch as the enquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance

of the emoluments payable to him after deducting the suspension allowance that was paid to him during the abovesaid period.

9.The appeal is therefore allowed directing the respondent to pay arrears of salary and allowances payable to him during the period of suspension up to the date of superannuation after deducting the suspension allowance paid to him for the said period and also to pay the appellant, all the retiral benefits otherwise payable to him in accordance with rules and regulations applicable, as if there had been no disciplinary enquiry or order passed therein."

10. In one other case reported in **(2007)9 SCC 698 State of U.P and others versus R.C. Mishra,** Hon'ble Supreme Court while interpreting the provisions contained in Regulation 351-A of the Civil Services Regulations held that in case an enquiry is initiated before the age of superannuation, then, in such a situation, it shall not be necessary to receive fresh approval from the competent authority under Regulation 351-A read with Regulation 470 of the Civil Services Regulations. Relevant portion from the judgment of R.C. Mishra(supra) is reproduced as under :

"10. A combined reading of the proviso and the Explanation would show that there is no fetter or limitation of any kind for instituting departmental proceedings against an officer if he has not attained the age of superannuation and has not retired from service. If an officer is either placed under suspension or charges are issued to him prior to his attaining the age of superannuation, the departmental proceedings so instituted can validly continue even after he has attained the age of superannuation and has retired and the limitation imposed by sub-clause (I) or sub-clause (ii) of Clause (a) of proviso to Regulation 351-A will not apply. It is only where an officer is not placed under suspension or charges are not issued to him while he is in service and departmental proceedings are instituted against him under Regulation 351-A after he has attained the age of superannuation and has retired from service and is not under re-employment, that the limitations imposed by sub-clauses (I) and (ii) of Proviso (a) shall come into play."

11. However, the case of R.C. Mishra(supra) seems to be not applicable under the facts and circumstances of the present case for two reasons. The case of R.C. Mishra (supra) relates to a situation where the service condition was governed by Regulation 351-A of the Civil Services Regulations whereas in the present case, there is no such rule regulating the service conditions of the retired employee of the corporation and secondly, in the present case, the charge sheet was served after retirement.

12. Now, it is settled law that the enquiry shall be deemed to be initiated from the date when the charge-sheet is served on an employee.

13. In view of above, present writ petition lacks merit. It is accordingly dismissed. The order passed by the tribunal is confirmed.

APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCNOW DATED: 26.05.2011

BEFORE
THE HON'BLE F.I.REBELLO,C. J.
THE HON'BLE DEVENDRA KUMAR ARORA,J.

Special Appeal No. - 410 of 2011

Ajeeth Singh Yadav and others 2143 (M/S)2011 ...Petitioners
Versus
State Of U.P.Through Its Secy. Higher Education Civil Sectt. ...Respondents

Counsel for the Petitioner:
Sri Faisal Ahmad Khan

Counsel for the Respondents:
C.S.C
Sri C.B.Pandey
Dr. Ravi Kumar Mishra
Sri S.P.Shukla
Sri S.P.Singh

Constituton of India, Article 226-cancellation of admission-Lucknow University issued Brochure as JEE B.Ed 2010-before counseling the candidate have to deposit Rs. 5000/-after being selected they have to deposit requisite confirmation fees Rs. 2250/-in counter-Petitioner/Appellant not deposited any amount with confirmation counter under impression they have already deposited much exceed amount-given admission by affiliate colleges-subsequently the Universities in second round of counseling fulfilled those vacant seat-which resulted cancellation of first counseling admission-held-arbitrary illegal deposit of lesser amount toward confirmation and getting refund the balance amount from respective college simple procedural-meritorious candidate's candidature can not be canceled-consequential direction issued.

Held: Para 15

In our opinion, if a view is taken that there is a power of cancellation though the candidates deposits covered the fees payable then a meritorious candidate who had been selected and had paid his fees as the deposit was sufficient, then such a view would be arbitrary as that would amount to a penalty to pay additional fees though fees were not payable. A procedural requirement cannot result in denying to a meritorious candidate the seat if in fact he had deposited the fees. Further the colleges to which they were allotted had admitted them. Thus a mere procedural failure cannot result in depriving the candidate of the seat. Merely because after the allotment they had not reported to the college fee deposition counter, will not result in denying such candidates their right of completing the course after being admitted. In our opinion, the admission would be complete the very moment the candidate was selected and the necessary fees had been deposited and was admitted to the college. The requirement in the brochure was only a procedural requirement to enable the University to know if there was any vacancy and the candidate who was allotted to the college had been admitted. By any stretch of imagination it cannot result in holding that because of non completion of the said requirement, the admission of the candidate itself would be non-est. We reiterate that the moment the students are admitted and the respective University accepts, then their admission was complete. The action of the University as the allotting authority in allotting candidates in the second round against the said purported vacancy would thus be arbitrary and consequential action of the Lucknow University after the allotment has been completed, is illegal. The admission could only be cancelled by the respective Colleges or the University to which it was affiliated and that too after

complying with the principles of natural justice. If the College had admitted the students contrary to the procedure in the brochure, action if and at all is to be taken against the College authorities and not the students. There was nothing in the allotment letter which can result in holding that if the students had not reported to the seat confirmation counter even though the deposit was in excess of the fees and the College had admitted them, then those admissions were non-est.

(Delivered by Hon'ble F. I.Rebello,C. J.)

1. Heard Sri Prashant Chandra, learned Senior Advocate, assisted by Sri Faisal Ahmad Khan, Advocate, learned C.S.C., Sri S. P. Shukla, Advocate, appearing for opposite parties no. 2 & 3, Sri Shashi Prakash Singh, learned counsel appearing for opposite party no. 4, Sri C. B. Pandey, learned counsel appearing for opposite party no. 5 and Dr. Ravi Kumar Misra, Advocate. Appearing for opposite party no. 6.

2. This appeal is directed against the order dated 26th April, 2011 and consequential order dated 19.5.2011 passed in Writ Petition No. 3038 (MS) of 2011 (Ajeet Singh Yadav vs. State of U.P. & others) leading Writ Petition No. 2143 (MS) of 2011 (Sushma Devi vs. State of U.P. & others) and other connected petitions.

This appeal was jointly filed by seven appellants. The matter came up for hearing. Learned counsel has prayed that he may be allowed to pursue the appeal in respect of appellant no. 1 with liberty to file independent appeals in respect of other appellants.

We grant liberty to the said appellants.

3. The appellant was a student who had applied for B.Ed. Course in 2010-11. Admission was to be done through a central agency namely, respondent no. 2 in the light of the law declared by the Supreme Court in **P.A. Inamdar**. The respondent no. 2- Lucknow University for that purpose, issued a brochure known as "JEE B.Ed. 2010, The Counseling Procedure". There is no dispute that the appellant herein, being a meritorious candidate was called for counseling in the first round.

4. In terms of the brochure for selection, issued by the University, the candidates had to comply with the following requirements:

"SEAT CONFIRMATION FEES:

1.The allotment letter will be issued to the candidates the day after the choice filling has been carried out.

2.All candidates allotted a seat have to deposit a Seat Confirmation fees at the SEAT CONFIRMATION COUNTER within four days of choice filling.

3.The amount of seat confirmation fees will be mentioned on the candidate's allotment letter.

4.If the candidate fails to deposit the seat confirmation fees within the stipulated time, he/she will have no claim over the seat any more. (emphasis supplied)

5.The candidates have to report to the SEAT CONFIRMATION COUNTER

for confirming their seats even if the amount of college fees is less than the advance fees of Rs. 5000.00.

6. Several aided colleges have fees less than the advance fees of Rs. 5000.00. Candidates allotted such colleges will be refunded the remaining amount from the respective college after they report there."

From these conditions which had to be complied with, condition no. 4 was specific inasmuch as if the candidate fails to deposit the seat confirmation fees within the stipulated period, it was set out that such candidate will have no claim over the seat anymore. The appellant, in the instant case, did not deposit the seat confirmation fees at the seat confirmation counter. Based on the allotment letter, the institution where he was to be admitted, granted admission and the appellant is pursuing his course till date pursuant to interim orders of this Court.

5. The students who were admitted in the first round were issued a letter by the University of Lucknow that the students had been provisionally allotted a seat in the College and the candidate had to deposit the college fee at the Counselling Centre through a demand draft in favour of the Finance Officer, University of Lucknow within three days and if the amount was not deposited within the specified time, the allotment will stand cancelled. Each of the students had deposited the advance of Rs.5000/- and the fees claimed were either less or no fees and based on the letter of allotment they went to the College and were admitted. The fact of admission was also confirmed by the M.J.P. Rohilkhand University. Factually, however, they had not deposited the amount which they were called upon to deposit at the seat confirmation centre.

6. The respondent no. 1 thereafter sought to fill the unfilled and/or vacant seats in the second round. According to the respondent University, as the candidates had not produced the seat confirmation fees receipt at the Seat Confirmation Counter in terms of the brochure and the allotment letter, they had forfeited the right to admission. The computer also showed the seat as vacant. The respondent University, therefore, made another allotment in respect of those seats. It is admitted position that when the candidates from the second round went for admission, the colleges concerned in some cases did not admit such students and in some other cases admitted the students against the available seats.

Consequent to the selection authority, the University of Lucknow, sent a second list of names, for the seats where allotment was made in the first round against seats where students had been admitted, various petitions were filed before this Court both by candidates who were earlier admitted and by those candidates who were allotted in the second round but not admitted. One of such petitions is W.P. No. 10188 (MB) of 2010 along with other connected petitions. We may reproduce the interim order passed by this Court:

" On 07.10.2010, we had passed the following order in Writ Petition No.10052 (M/B) of 2010, which on reproduction reads as under:-

"This writ petition has been filed against the order of cancellation of admissions of petitioners, claiming to be

the B.Ed. students. It is submitted on behalf of the petitioners that they had fared quite well in the examination and had been placed high in merit list.

Thus, they were given admissions by allotting various colleges where they are pursuing studies but to their utter disappointment and dismay the university authorities which are expected to act like their guardian have betrayed them by canceling the admissions without giving them any opportunity and behind their back and by giving admissions to such students who were placed much lower in comparison to the petitioners in the merit list.

Hence such an act on the part of teaching institutions need to be curbed, and firmly dealt with by nipping it in the bud.

Hence we direct the Director, C.B.I. to constitute a team of C.B.I. Officers who shall enquire into the allegation and submit a report to the Court. In case they find that the university authorities have acted malafide just in order to harass the students and such acts come within the definition of offence, the C.B.I. would be at liberty to register cases against them and put up charge sheet.

At this stage, Sri S.P. Shukla makes repeated prayers to give a chance to University authorities to correct themselves. Thus, we defer the matter till Monday (11.10.2010) for giving an opportunity to the University to review its decision. The impugned order of cancellation shall remain stayed during the pendency of this writ petition.

Put up on Monday i.e. 11.10.2010."

7. In another petition being no. Misc. Bench No. 10052 of 2010 this Court noted that 546 students were admitted to the B. Ed. Course and it appears that they had not complied with the procedure for admission, namely, obtaining their confirmation, as a result of that, the body conducting the interview found that those seats were vacant and conducted the second round counseling and allotted the seats accordingly. This Court further noted that most of 546 students approached this Court and this Court granted interim order in their favour. This Court also noted that in the meantime the other students who were admitted in the second round of counseling, approached this Court at the Principal Seat, Allahabad and the learned Single Judge in several writ petitions including one Writ -C No. 64060 of 2010, had directed the colleges in those cases, to admit the students. In the light of that, the University was called upon to seek information. The matter was, however, adjourned.

Writ Petition No. 10052 of 2010 thereafter was taken up on 28.4.2011 on which date the University made a statement that after passing of order by this Court on 20.10.2010, the University has not mentioned anything on record, saying that these candidates are not eligible to be admitted for the purpose of pursuing the course, this Court observed:

"Thus, we direct that all the colleges with B.Ed. Courses to which the candidates have been allocated, shall allow the candidates to continue with their study of B.Ed. Course. Moreover, these candidates are said to be belonging to the first counseling, therefore, on completion of their course, they may lay their claim

for entitlement to appear at the examination at the end of the course."

Thus, in so far as about 546 students who were admitted in the first round, this Court by interim order protected their admissions in the institutions in which they were admitted. Those students are prosecuting their studies and the term is about to end.

8. A learned Single Judge at the Principal Seat at Allahabad in Civil Misc, Writ Petition No. 536 of 2011, Sachin Arora & others vs. State of U. P. & others, delivered on 31.1.2011, observed that those students who were admitted in the first round and whose admissions were canceled or they were not permitted to pursue their studies on account of hon-deposit of fees had no right to continue and the cancellation of the admission was upheld. In that petition, there was also a challenge to the Notification of the Registrar of the University of Lucknow dated 28.9.2010. The Court held that there was no reason to quash the Notification dated 29th/30th September, 2010.

9.In that notification, it was set out that -

"Seats in the B.Ed. Program for academic session 2010-11, allotted through JEE B.Ed. 2011 counseling to all those candidates who failed to submit the Allotment Confirmation/Seat Acceptance Declaration (Balance college fee deposit receipt) to the colleges, have been cancelled. Fresh candidates have been admitted against these seats by the second round of counseling. The participating colleges/universities are expected to verify all the documents submitted by the candidates. Names of only those candidates who report with initial fees deposit receipt (Rs. 5000.00), Counseling fee deposit receipt (Rs. 500.00), Allotment letter and Allotment confirmation/ Seat acceptance declaration (Balance college fee deposit receipt) must be entered in the rolls of the colleges. Offering seats to any candidates without duly completed above documents will amount to giving admission to an ineligible candidate against the rules specifically formulated for JEE B.Ed. 2010 by competent authorities. The onus, in all such cases, would solely lie on the Principal/Dean/Head to whom the allotment letter is addressed and who is the overall in charge of the college/faculty/department."

10. A learned Single Judge at Lucknow placing reliance on the judgment of the learned Single Judge at Allahabad was pleased to dismiss the petitions against which the present special appeal.

11. At the hearing of this appeal, on behalf of the appellants, learned counsel submits that the action of the University which was not the admitting University in cancelling the allotment of the appellants and in forwarding other candidates in second round for admission is illegal, null and void. It is submitted that though in the brochure there was a condition that the allotted candidates had to deposit the seat confirmation fees, that was only a procedural requirement as the appellant and similarly situated candidates were under a bona fide belief that as they had deposited an amount of Rs.5000/- as advance for the fees and the fees were less than the said amount, they need not deposit the fees confirmation fee. The College also granted admissions without

the said deposit. Once they were admitted, the civil right of the appellants would be affected if the cancellation of allotment is done without affording any opportunity to them. In the instant case, no such opportunity was given to the appellants. Secondly, learned counsel for the appellants contended that neither in the brochure nor in the purported notification issued by the Registrar dated 28.9.2010 there was any specific condition that on failure of taking Allotment Confirmation/ Seat Acceptance declaration, the admissions of the appellants would be cancelled and what was set out was that the candidates will have no claim to the seat. It is pointed out that once admissions were made by the College, the issue of no claim would not arise. Assuming that the notification was issued on 28.9.2010, that would not apply in the facts and circumstances of the case to the appellant and the other similarly situated candidates. Apart from that, the notification notes that it is the duty of the College to ensure that the requisite receipt is produced.

12. On the other hand, on behalf of the University, learned counsel submits that in absence of any information as to how many candidates have been allowed to take admission by the Colleges and as their computer data entry showed the seats as vacant, on failure of the appellant and similarly situated candidates in producing the Allotment Confirmation/Seat Acceptance declaration before the Counselling Centre, they were compelled to send other candidates in the second round of counselling.

13. The question for consideration is whether the selection authority, which was not the admitting authority in most cases except for the affiliated colleges of Lucknow University could treat the admissions done already by the allottee College and treat it as non-est and allot candidates in the second round for the same seat. The second question is whether the failure to deposit the amount as set out in the allotment letters could result in depriving the selected candidates the right to admission, even if the fees asked to be deposited were covered by the deposit of Rs.5000/- already made by them.

14. We have earlier noted, the admission brochure of which we have reproduced the relevant portion. In so far as Seat Confirmation fee is concerned, it would be clear from the brochure that all the candidates who had been allotted seats, had to deposit Seat Confirmation fees at the Seat Confirmation Counter and if the candidate failed to deposit the seat confirmation fees within the stipulated time, he/she will have no claim over the seat any more. The appellants and other similarly situated candidates had deposited advance fees of Rs. 5000/-. Their seat confirmation fee was less than that. In these circumstances, can the students like the appellants be placed in a position that though their college and the affiliated University had granted them admission, the allotting authority had allotted other candidates for the same seats. Condition no. 5, shows that the candidates had to report to the Seat Confirmation Counter for confirming their seats even if the amount of college fees is less than the advance fees of Rs. 5000.00. In the instant case, the appellant and other similarly situated candidates had paid the advance fees of Rs. 5000.00 and were entitled to refund of the balance fee. Learned counsel for the University took us to the letter of allotment. We may

refer to one which is set out in the said letter of allotment:

"The candidate has to deposit Rs. (-2022) as the balance of the college fee at the counselling centre through a DD in favour of Finance Officer, University of Lucknow, payable at Lucknow within three calendar days from the issue of this letter (excluding the Independence Day). If this amount is not deposited at the counselling centre within the specified time, the allotment will stand cancelled and the sum of Rs. 5000.00 deposited by the candidate as the Advance College Fee will be forfeited.

Even if the amount of college fee is less than Rs. 5000.00 or the candidate is allowed zero-fee, he/she has to report to the fees deposition counter today itself and get a receipt with negative balance to confirm his/her allotment. The excess amount, if any, will be refunded to the candidate by the respective college. All candidates have to report to the colleges fee deposition counter at the counselling centre without which the seat allotment will be incomplete."

From this, it would be clear that as in the brochure it is set out that if the amount is not deposited at the counselling centre within the specified time, the provisional allotment would not be confirmed even if the amount was less than Rs.5000/- then to get a receipt with negative balance to confirm the allotment. There is no dispute that seat allotment fees had not been paid by the appellants.

15. We may now consider the merit of the second paragraph although it says that if the amount of college fee is less than Rs. 5000.00 or the candidate is allowed zero-fee, he/she has to report to the fees deposition counter and get a receipt with negative balance to confirm his/her allotment. Later part of paragraph only says that all the candidates have to report to the colleges fee deposition counter at the counselling centre without which the seat allotment will be incomplete. This is similar to the language of the brochure. If allotment was incomplete, could it be completed. In our opinion, if a view is taken that there is a power of cancellation though the candidates deposits covered the fees payable then a meritorious candidate who had been selected and had paid his fees as the deposit was sufficient, then such a view would be arbitrary as that would amount to a penalty to pay additional fees though fees were not payable. A procedural requirement cannot result in denying to a meritorious candidate the seat if in fact he had deposited the fees. Further the colleges to which they were allotted had admitted them. Thus a mere procedural failure cannot result in depriving the candidate of the seat. Merely because after the allotment they had not reported to the college fee deposition counter, will not result in denying such candidates their right of completing the course after being admitted. In our opinion, the admission would be complete the very moment the candidate was selected and the necessary fees had been deposited and was admitted to the college. The requirement in the brochure was only a procedural requirement to enable the University to know if there was any vacancy and the candidate who was allotted to the college had been admitted. By any stretch of imagination it cannot result in holding that because of non completion of the said requirement, the admission of the candidate itself would be non-est. We reiterate that the moment the students are

admitted and the respective University accepts, then their admission was complete. The action of the University as the allotting authority in allotting candidates in the second round against the said purported vacancy would thus be arbitrary and consequential action of the Lucknow University after the allotment has been completed, is illegal. The admission could only be cancelled by the respective Colleges or the University to which it was affiliated and that too after complying with the principles of natural justice. If the College had admitted the students contrary to the procedure in the brochure, action if and at all is to be taken against the College authorities and not the students. There was nothing in the allotment letter which can result in holding that if the students had not reported to the seat confirmation counter even though the deposit was in excess of the fees and the College had admitted them, then those admissions were non-est.

16. For all the aforesaid reasons, the appeal is allowed. The impugned order is set aside and the petition is allowed in terms of prayer clause (C) which reads as under:

"a writ, order or direction in the nature of mandamus commanding the opposite parties to allow the petitioner to pursue his studies and also to allow him to appear in the forthcoming B.Ed. Examinations for the academic session 2010-11 and to declare his results."

17. We make it clear that if any other candidate had been admitted pursuant to the second round of counseling and their admission does not affect the right of the candidates admitted in the first round, then in that event, the admission of such candidates would also not be interfered with. We further direct that the authority which is entrusted with the procedure for selection does not make it a requirement for the students to pay additional amount towards fees, if the fees can be adjusted from the sum of Rs.5000/- or such as the students may be called upon to deposit.

APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.04.2011

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

Special Appeal No. 444 of 2003

Food Corporation of India and others ...Appellants

Versus

H.N. Srivastava ...Respondent

Counsel for the Appellants:
Sri Satya Prakash

Counsel for the Respondent:
Sri Arvind Srivastava

Constitution of India-Article 226-punishment-reversion-compulsory retirement alongwith fine of Rs. 166320/-inspite of accepting the report of enquiry officer by which negligence in duty-no charge of misappropriation or loss proved-held-power exercised by the disciplinary authority amounts to colorable exercise of power-the approach of disciplinary authority is self contradictory-order of recovery-set-a-side corporation to refund entire amount with interest.

Held: Para 10

We have gone through the order passed by the learned Single Judge on 22nd April, 2003, impugned in this appeal, and the order of the disciplinary authority

along with the report of the enquiry officer. We agree with the fact that there is no reflection in the report of the enquiry officer that there was any pecuniary loss. On the contrary it was held that there was lapse or negligence on the part of the delinquent officer in respect of both the charges i.e. Article Nos. 1 and 4. Against this background, we are of the view that either disciplinary authority will accept the report of the enquiry officer in toto or he will disagree and upon service of second show cause and obtaining reply pass a fresh order with reasons giving opportunity of hearing. In this case, the disciplinary authority has accepted the report in one hand by saying that the enquiry officer has assessed all the documentary evidences and witnesses in a judicious manner particularly in respect of the Article Nos. I and IV, but on the other hand, imposed the penalty of Rs.1,99,897/- under Regulation 56 of the Food Corporation of India (Staff) Regulation, 1971. Both the stands are self contradictory in nature. Therefore, it is a clear case of disagreement with the report of the enquiry officer, without affording any opportunity of hearing. Consequently, imposition of penalty of recovery of Rs.1,99,897/- without any pecuniary loss to the appellant-Corporation is colourable exercise of power. That apart, the respondent- writ petitioner has suffered two punishments; (i) reversion, and (ii) compulsory retirement. Even thereafter imposition of penalty for a sum of Rs. 1,99,897/- without any pecuniary loss, as established before the enquiry officer and as accepted by the disciplinary authority as judicious, is not only harsh but disproportionate in nature.

(Delivered by Hon'ble Amitava Lala,J.)

1. **Amitava Lala, J.--** This special appeal is arising out of the judgement and order dated 22nd April, 2003 passed by the learned Single Judge in Civil Misc. Writ Petition No. 33047 of 2002 (H.N. Srivastava Vs. Food Corporation of India and others), thereby allowing the writ petition in favour of the respondent-writ petitioner.

2. The main contention of the respondent-writ petitioner is that in spite of none of the charges as levelled against him having been proved before the enquiry officer except some irregularities in properly recording details on the concerned register and the stock stored at various places of depot, the disciplinary authority passed an order dated 21st May, 2002 reverting the respondent-writ petitioner from the post of AG-I to AG-II (D) and also imposed penalty to the tune of Rs.1,99,897/- on account of pecuniary loss. Such order of reversion was challenged by filing writ petition before the learned Single Judge, when upon hearing the parties the Court was pleased to allow the writ petition and quash the order dated 21st May, 2002 passed by the authority concerned. Such order of learned Single Judge dated 22nd April, 2003 is impugned in this appeal.

3. This appeal was preferred on 22nd May, 2003 and on 23rd May, 2003 upon hearing learned Counsel for the parties a Division Bench of this Court has stayed the operation of the order of learned Single Judge dated 22nd April, 2003 with a liberty to file an application for vacation, variation or extension of the order. Hence, the order of reversion was in operation. Respondent-writ petitioner was allowed to work as AG-II (D) for a period of four years. The tenure of four years was to expire in May, 2006. However, when the respondent-writ petitioner was working as AG-II (D), he was compulsorily retired in the year 2004

in another departmental proceeding vide order dated 26th October, 2004 arising out of selfsame incident. Neither he has challenged such order in any civil proceeding nor in the writ proceeding. Additionally, he has received his full retiral benefits i.e. leave encashment, gratuity, contributory provident fund, etc. after his retirement in 2004 itself. No dues are pending. However, the appellant Corporation has recovered amount of alleged loss i.e. Rs.1,99,897/- as penalty from the salary of the delinquent.

4. It appears to us that scope of dispute at this stage is limited to that extent in view of the facts that the respondent-writ petitioner continued in service as AG-II (D) pursuant to stay order of the Division Bench and has been subjected to compulsory retirement, which was given effect to with benefits.

5. We have gone through the records and found that though the charges are moulded but it appears that the orders of reversion and compulsory retirement are more or less arising out of the similar incident. In both the cases i.e. reversion and compulsory retirement, the article of charges are as follows:

Article of Charges in the case of reversion:

"ARTICLE NO. I:

He misappropriated 89 bags weighing 83-50-000 Qtls. wheat at Mandi Yard Gola from stock No. R/2/1. He caused financial loss of Rs.33,577/- (@ Rs.402/- per Qntl) in connivance with Shri Mohd. Ubaid, AG-II (D) for his personal gain.

ARTICLE NO. II:

He misappropriated 6409 bags = 6412.94.000 Qtls. wheat during 1-4-95 to 30-6-96 valuing Rs. 25,78,001.18 (@ Rs.402/- per Qtl.) in connivance with Shri Mohd. Ubaid, AG-II (D) for his personal gain.

ARTICLE NO. III:

He misappropriated about 228"A' class gunnies valuing Rs.4,560/- in connivance with Shri Mohd. Ubadi, Ex. AG-II (D) for his personal gain.

ARTICLE NO. IV:

He misappropriated 8316 B.T. "A' class gunnies by showing false replacement at F.S.D. Gola valuing Rs.1,66,320/- in connivance with Shri Mohd. Ubadi, Ex. AG-II (D) for his personal gain.

ARTICLE NO. V:

He misappropriated 697 B.T. "A' class gunnies by showing false replacement at Railhead Gola valuing Rs.13,940/- for his personal gain."

Article of Charges in the case of compulsory retirement:

"Article-I

Shri H.N. Srivastava, misappropriated 6580 bags = 6248-77-000 qtls. wheat by issuing false acknowledgement and payment in connivance with Late Shri Mohd. Ubaid AG-II (D), Shri Swami Nath Shukla, AG-II (D), Shri A.K. Singh, AM (AC) Shri S.K. Shukla, TA-I, Shri M.A. Siddiqui,

TA-I, Shri Raj Pal Verma, TA-III. He caused financial loss of Rs.31,86,872-70 paise to the Corporation for his personal gain.

Article-II

Shri H.N. Srivastava, misappropriated 15394 bags SB = 7697-00-000 qtls wheat against FCI wheat Purchase Centre Gola in connivance with Purchase Point Staff, Handling Agent and Depot Staff of Mandi Yard Gola. He caused financial loss of Rs.52,95,536/- to the Food Corporation of India for his personal gain.

Article-III

He misappropriated 900 bags = 055-00-000 qtls. wheat by taking less opening balance in quarterly PV of 30-6-98 in connivance with Late Shri Mohd. Ubaid, AG-II (D) & Shri S.N. Shukla, and thereby caused financial loss of Rs.5,88,240-00 for his personal gain.

Article-IV

During Rabi procurement season 1998-99 Shri H.N. Srivastava, AM (D) managed acceptance of short weight bags of wheat at Mandi Yard Gola and issued acknowledgement for quantity as mentioned in movement challans in connivance with S/Shri Late Shri Mohd. Ubaid, AG-II (D), Rajender Kumar, AG-II (D), Mohd. Abrar Khan, AG-III (D). He also got accepted wheat stocks in old gunnies against new gunnies. He got stored wheat stocks without weightment and caused storage loss of 18749-15-300 qtls and thereby caused financial loss of Rs.1,28,99,415-00 for his personal gain.

Article-V

He misappropriated 6 truck load of wheat received from wheat purchase centre Rehaia, the thereby caused financial loss of Rs.5,84,800-00 to the Food Corporation of India, for his personal gain.

Article-VI

He did not distribute the depot work properly amongst the Asstt. Gr-I (Depot) and Asstt. Gr-II at FSD, Gola. He allotted maximum of work of depot to late Shri Mohd. Abaid, AG-II (D), while other depot staff like Shri K.B. Lal, AG-I (D), P.K. Shukla, AG-II (D) and two other AG-II (D) were posted at Gola.

Article-VII

Shri H.N. Srivastava, AM (D) allowed to store wheat stocks at Kachcha and low lying ground at Mandi Yard Gola without making proper arrangement of polythene covers, proper dunnage, ropes and drainage system in Mandi Yard Gola. He did not divert the stocks to rake loading point Bisan inspite of order from DM (Q.C.) Shri B.L. Kureel. He allowed storage of wheat stock on Kachcha, low lying land, which caused damages to the wheat stocks to the tune of 4637-63-00 qtls valuing Rs.31,86,800/- The FCI suffered from loss of Rs.31,86,800/- due to his wrong and malafide decision.

Article-VIII

Shri H.N. Srivastava, AM (D) issued fictitious work slips to the HTC of 1,04,938 bags SBT wheat against which work was not done by HTC. Shri R.C. Gupta, as the said stocks were received

from Wheat Purchase Centre Gola on book balance. He embezzled about Rs.15,000/- in connivance with S/Shri Late Shri Mohd. Abaid, AG-II (D) and R.C. Gupta, HTC for his personal gain."

6. It is contended by the learned Counsel appearing for the appellant that so far as the order of compulsory retirement is concerned, the same is not subject matter of the writ petition and there is a provision of appeal from such order. It is open to the respondent-writ petitioner to prefer appeal or not, particularly when he has accepted the order of compulsory retirement with all financial benefits.

7. So far as the case of reversion is concerned, the enquiry officer held that delinquent is not guilty of charges of Article Nos. 2, 3 and 5 but charges of Article Nos. 1 and 4 and that too in a limited manner i.e. carelessness of the delinquent officer. Inference drawn by the enquiry officer with regard to Article No. 1 is as follows:

"1) The AM (D) Shri H.N. Srivastava has verified 1548 bags in stack No. R/2/1 in the quarterly P.V. Report 31-3-95 and 30-6-95; whereas Shri Mohd. Qumar, AM (PV) has verified 1459 bags as per his P.V. Report 2/A P.V.

2) The difference of 89 bags have been noticed in both the documents.

3) The C.O. has pointed out that AM (PV) has conducted the verification on 25-9-95 after the gap of six months from 31-3-95.

4) He has further stated that R/2/1 was stacked on the road side and 1548 bags were stacked in that stack. In the first week of Sept. some bags were fallen out due to jerk of truck passing through the road side. These bags were fallen out and could not be stacked in the same stack as such these 89 bags were kept adjacent to stack No. M/4/2, M/4/5 and M/4/9.

5) The AM (PV) has verified 1349 bags in stack No. M/4/2, 1331 in M/4/5 and 1297 in M/4/9 against the Book Balance of 1296. No doubt that this difference comes of 89 bags and made up of stack No. R/2/1.

6) This plea of C.O. can not be agreed because he should have given a remark in his report that these bags have been fallen down and stacked nearby other stacks. No doubt there is no difference but the lapse on the part of C.O. can not be ruled out.

7) He should have directed during his visit to Unit I/C Shri Mohd. Ubaid and Rajeshwar Singh Depot I/c to account for these bags against these stacks or make a remark in the stackwise register but he failed to issue the instructions during his visit to FSD Gola.

8) As regards showing the quantity of 147 MT in R/2/1 in the M.T.R. for the months of April' 95, July' 95 and Aug.'95 by AM (QC) also do not fill up the gap because generally the AM (QC) do not physically verify the stocks and take the figures as mentioned by the depot and it might have happened the same in this case.

9) It is true that total stock position has been tallied by Sh. Mohd. Quamar with the Master Ledger of FCI Gola for

the month of Sept.'95 and no difference was noticed.

10) Not only the C.O. is responsible for these 89 bags being a supervisory Officer, Shri Rajeshwar Singh, Depot I/c is wholly and personally responsible in addition to the custodian. The custodian Shri Mohd. Ubaid has already expired as such no need to comment but Shri Rajeshwar Singh is liable for answering these lapses.

11) The C.O. has verified 1569 bags in R/6, R/11 and R/12 when there is no bag as per stackwise register. 1708 bags in M/2/15 and 1296 bags in M/2/16 and there was no stock. He has also verified 1569 bags in R/4/6 against 383, 1296 in M/3/5 against 562, 1296 bags against M/3/9 against 720. It proves that he has not carefully carried out the job."

With regard to charge of Article No. IV, important part of the inference of the enquiry officer is as follows:

"4) No doubt, Shri Rajeshwar Singh, as Shri Mohd. Ubaid has died, is answerable for this negligency on his part.

5) As per Exb.D-3, 1-15-000, 0-72-000, 0-52-000 jute twine has been purchased and consumed at Gola during 95-96, for stitching of the replaced gunnies.

6) The position given by AM (A/Cs)/ (Compilation), Distt. Office, the investigation is incorrect when he has given a certificate for purchase of jute twine and already adjusted by him vide J.E. No. 260/5, 385/10, 233/2.

7) Rs. 79,064/- has been paid as per Exb.D-4 to casual labourers for replacement of gunny at Gola during 95-96 and this amount has already been adjusted vide J.E. No. 385/3, 385/10 and 235/2.

8) It proves that the replacement has been during the operation at Gola and gunnies have not been misappropriated except these have not been entered on day-to-day basis, for which AG-I(D) is responsible and it also reflects on the part of Supervisory Officer."

8. However, the disciplinary authority by its order of punishment dated 21/22nd May, 2002 not only reverted the delinquent but also imposed penalty of recovery of Rs.1,99,897/- in spite of accepting and appreciating the assessment of the enquiry officer in a judicious manner. The relevant portion of such order of disciplinary authority is quoted below:

"I have gone through the contents of the charge sheet, the inquiry report and reply submitted by the C.O. on the findings of Inquiry Officer along with other relevant materials on record in a careful manner. I observe that the I.O. has assessed all the documentary evidences and witnesses linked with the article I & IV in a judicious manner, which establishes complicity and lack of supervision of C.O. in misappropriation of 89 bags of wheat at Mandi Yard Gola and misappropriation of 8316 BT "A' class gunnies by showing false replacement at FSD Gola resulting into pecuniary loss of Rs.33577/- and Rs.166,320 respectively to the Corporation. Moreover in regard to articles II, III & V which have not been

proved by the I.O. on some technical ground I am of the opinion that the C.O. can't absolve himself from the guilt of his supervisory lapses on the basis of varion please taken by him in his reply.

Taking into account aforesaid facts and observation, I infer that the C.O. is definitely responsible for the charges levelled against him about his complicity which led to loss of said amount to the Corporation and for such misconduct on his part he deserves a penalty to meet the end of justice.

Now, therefore, I Kush Verma, Zonal Manager (N) in exercise of the powers conferred under Regulation 56 of FCI (Staff) Regulation 1971 hereby impose the penalty of recovery of Rs.1,99,897 (Rupees one lac ninety nine thousand eight hundred ninety seven) and reversion to the post of AG II (D) for a preiod of 4 years upon said Shri H.N. Srivastava, now AG-I (D) with immediate effect."

9. Such order was set aside by the learned Single Judge, but the Division Bench while entertaining the special appeal at the initial stage passed an order of stay, and as a result whereof the delinquent officer continued in service in the reverted post being AG-II (D) till his compulsory retirement subsequent thereto. At the time of coming to conclusion, the learned Single Judge passed the following order:

"In view of the analysis made above, it is clear that on the facts and finding so given by the enquiry officer, **the petitioner was never found to be guilty of misappropriation causing pecuniary loss to the Corporation,** rather slight negligence in discharge of duty was found but the disciplinary authority by not properly noticing the finding of the enquiry officer, without assigning any reason in respect to the reply submitted by the petitioner and even by accepting the charges in respect to item no. 2, 3 and 5 which have not been found to be proved against the petitioner and for which, he was never given any opportunity, the impugned decision has been taken. Thus the impugned order is vitiated in law, entitling the petitioner to get relief from this Court.

For the reasons recorded above, this writ petition succeeds and is allowed. The impugned order passed by the respondent no. 2 (annexure 5 to the writ petition) dated 21.5.2002 is hereby quashed."

10. We have gone through the order passed by the learned Single Judge on 22nd April, 2003, impugned in this appeal, and the order of the disciplinary authority along with the report of the enquiry officer. We agree with the fact that there is no reflection in the report of the enquiry officer that there was any pecuniary loss. On the contrary it was held that there was lapse or negligence on the part of the delinquent officer in respect of both the charges i.e. Article Nos. 1 and 4. Against this background, we are of the view that either disciplinary authority will accept the report of the enquiry officer in toto or he will disagree and upon service of second show cause and obtaining reply pass a fresh order with reasons giving opportunity of hearing. In this case, the disciplinary authority has accepted the report in one hand by saying that the **enquiry officer has assessed all the documentary evidences and witnesses in a judicious manner** particularly in respect of the

Article Nos. I and IV, but on the other hand, imposed the penalty of Rs.1,99,897/- under Regulation 56 of the Food Corporation of India (Staff) Regulation, 1971. Both the stands are self contradictory in nature. Therefore, it is a clear case of disagreement with the report of the enquiry officer, without affording any opportunity of hearing. Consequently, imposition of penalty of recovery of Rs.1,99,897/- without any pecuniary loss to the appellant-Corporation is colourable exercise of power. That apart, the respondent- writ petitioner has suffered two punishments; (i) reversion, and (ii) compulsory retirement. Even thereafter imposition of penalty for a sum of Rs. 1,99,897/- without any pecuniary loss, as established before the enquiry officer and as accepted by the disciplinary authority as judicious, is not only harsh but disproportionate in nature.

11. It is to be remembered that principle of unjust enrichment is not required to be looked from the angle of fiscal disputes but from the angle of other disputes like a dispute between master and servant, who is not in equal bargaining position with the other, particularly when the Government or governmental bodies claim to be model employer.

12. In further, rights and duties are occupying two distinct places. Definitely one can be required to be punished for just cause but not for unjust cause. It is also to be seen from the social point of view. Due to commercial or economical globalization, we can not forget the preamble of the Constitution. This is the case where imposition of penalty is absolutely unjusticiable on the part of the appellant and as such, the amount of penalty, which has been recovered by the appellant from the respondent-writ petitioner, is required to be returned to the respondent-writ petitioner within a period of one month from this date, failing which it will carry simple interest @ 6% per annum till the date of actual payment.

13. Accordingly, the special appeal is disposed of, however, without imposing any cost. Interim order, if any, is merged with the final order.

APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.04.2011

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

Special Appeal No. 463 of 2010

Smt. Uma Gupta ...Appellant
Versus
District Inspector of Schools, Allahabad and others ...Respondent

Counsel for the Appellants:
Sri Anil Bhushan

Counsel for the Respondents:
C.S.C.

U.P. Education Service Selection Board Act 1982-Section 33(c) iii-A-Regularization-Petitioner/Appellant continuously working since the date of her initial appointment-till date of commencement of Act-juniors already regularized, except the appellant-Single Judge view-regarding negative equality-not proper after having such clear cut Statutory Provision to the extent if more than one teachers appointed on same day-elder in age entitled for recommendation.

Held: Para 9

Against this background, we dispose of the appeal by saying that the matter will be placed before the appropriate Regularisation Committee constituted under Section 33-B and 33-C of the U.P. Secondary Education Services Selection Board Act, 1982 for the purpose of coming an appropriate conclusion as early as possible preferably within one month from the date of communication of this order. For the purpose of effective adjudication all the parties concerned will be given opportunity of hearing and the Committee will pass appropriate reasoned order upon hearing all the parties. Copy of the paper book of this special appeal can also be treated as part and parcel of the representation, if any, to be filed before the authority concerned as an additional papers. It is obvious that at the time of consideration the cause of the appellant-petitioner question of her initial appointment will also be adjudged.

(Delivered by Hon'ble Amitava Lala, A.C.J.)

1. **Amitava Lala, J.** - This special appeal is arising out of an order passed by learned Single Judge on 18.2.2010. The writ petition was dismissed due to lack of merit. Amendment application which has been made by the appellant-petitioner therein was also rejected. The writ petition was originally filed for the purpose of getting the salary.

2. During consideration of the cause, a question arose before the learned Single Judge whether the service of the petitioner can be regularised or not and the court ultimately held that 10 teachers were appointed as against seven vacancies. Therefore, neither the service of the petitioner can be regularised nor she can get salary. It was argued before the learned Single Judge and also before us that by different orders several other teachers' services were regularised excepting the petitioner who is the appellant herein. The learned Single Judge held that there cannot be any negative equality and no mandamus can be issued by the Court to that extent.

3. In view of the aforesaid facts, by preferring this appeal, Mr. Anil Bhushan, learned counsel appearing for the appellant, has contended before this court that there is a committee called as Regularisation Committee constituted under Section 33-B of U.P. Secondary Education Services Selection Board Act, 1982. Therefore, when there is a scope, the matter can be sent to such committee, which can resolve the issue either way. The provisions of Section 33-B was inserted in the Act w.e.f. 7th August, 1993. There is other provision being Section 33-C which speaks about the regularisation of certain more appointments which was inserted by an amendment of 1998 w.e.f. 20th April, 1998.

4. Mr. Rama Nand Pandey, learned Standing Counsel, appearing for the State has contended that the appointment, if any, on ad-hoc basis can be considered by the Regularisation Committee provided it has been done against the substantive vacancy and if the candidate is not appointed against the substantive vacancy but in excess, no regularisation can be made. Moreover, no such case has been made out before the learned Single Judge.

5. On the other hand Mr. Anil Bhushan has contended that the report of the Regularisation Committee dated 2.9.2004, at page 202 of the paper book, was the part and parcel of the amendment

application which was rejected by the learned Single Judge alongwith the writ petition. It provides that nine persons were appointed in L.T. Grade and six persons were appointed against C.T. Grade and by the report it has been said that total 15 posts could be there when both the grades are merged with each other. Hence, according to him the appellant cannot be said to be "not appointed against the sanctioned post".

6. He further said that she is the senior most amongst all and if the juniors are accommodated in the substantive vacancies, how the appellant can be eliminated by saying that she was not appointed against sanctioned post.

7. However, upon being heard Mr. Bhushan and Mr. Pandey we have gone through the relevant parts of both sections 33-B and 33-C and found that if some body is continuously serving in an institution from the date of such appointment upto the date of commencement of the Act as referred to in sub-clause (iii) of Clause A, then service can be regularised to which the submission of the respondent is that ad-hoc appointment can be regularised only against substantive vacancy. But as per sub-section 3-A of Section 33-C the names of the teachers shall be recommended for substantive appointment in order to **seniority** as determined from the date of their appointments. Section 33-B says that if **more than one teacher are appointed on the same day,** the teacher who is elder shall be recommended first. Ultimately Mr. Pandey has submitted before this Court that if the appellant is dissatisfied with the order, the matter could be remanded back to the learned Single Judge for the purpose of passing an appropriate order.

8. We are of the view that there is a little difference between hearing of the writ petition by the learned Single Judge and the special appeal arising out of writ petition by the Division Bench so far as the procedure as per the Allahabad High Court Rules, 1952 is concerned. Restrictions made in the procedure are to maintain check and balance but not for any other reasons. Some of the writ petitions are required to be heard by the learned Single Judge which will be ended there and from such order no special appeal lies before any Division Bench. Similarly, some of the writ petitions can not be heard by the learned Single Judge but will be heard by the respective Division Benches. Therefore, such type of structures as made by the High court are only for the purpose of administrative exigency. Against this background, there is no embargo for the Court of special appeal which is competent to hear out any appeal from an order of the learned Single Judge passed in writ jurisdiction and act as Court of first instance. In such circumstances, it is desirable that unless the situation prescribes, the matter is required to be disposed of by the Court of special appeal in the place of remanding matter to the learned Single Judge in a routine manner. On the other hand, it will affect the arrear disposal by the High Court.

9. Against this background, we dispose of the appeal by saying that the matter will be placed before the appropriate Regularisation Committee constituted under Section 33-B and 33-C of the U.P. Secondary Education Services Selection Board Act, 1982 for the purpose

of coming an appropriate conclusion as early as possible preferably within one month from the date of communication of this order. For the purpose of effective adjudication all the parties concerned will be given opportunity of hearing and the Committee will pass appropriate reasoned order upon hearing all the parties. Copy of the paper book of this special appeal can also be treated as part and parcel of the representation, if any, to be filed before the authority concerned as an additional papers. It is obvious that at the time of consideration the cause of the appellant-petitioner question of her initial appointment will also be adjudged.

10. No order is passed as to costs.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 09.05.2011

BEFORE
THE HON'BLE DEVI PRASAD SINGH,J.
THE HON'BLE S.C. CHAURASIA,J.

Service Bench No. - 678 of 2010

Mahendra Pratap Singh ...Petitioner
Versus
State Of U.P.,Thru. Prin. Secy.,Training & Employment and others ...Respondents

Counsel for the Petitioner:
Sri Alok Kr. Tripathi

Counsel for the Respondents:
C.S.C.

Constitution of India, Article 226- Recovery of excess amount from gratuity-after 3 years of retirement amount Rs. 200586/-withheld and remaining amount released on ground of excess payment-due to miscalculation by the authorities-petitioner not found instrumental or mis representated in drawing excess amount-if excess amount paid with collusion of employees it can be dealt suitably-but such excess amount can not be withheld.

Held: Para 9

In another case, reported in 2004 ESC(All) 455 Union of India versus Rakesh Chandra, a Division Bench of this Court after considering catena of judgments of Hon'ble Supreme Court held that incorrect calculation of pay scale and payment thereof of no fault on the part of the employee shall not make out a ground to recover the same.

In view of settled proposition of law, it appears that once the amount is paid for no fault on the part of the government employee, then at later stage, that too after retirement, the same cannot be recovered. Of course, in case higher pay-scale is paid because of collusive act between the office and the employee concerned, then in such situation, it will be open for the State to recover the same.

Case law discussed:
[2004 (22) LCD 486]; [2004 (22) LCD 490]; (1994) 2 SCC 521; [1998 (16) LCD-1277]; (1994) 6 SCC 589; (1981) 1 SCC 449; 2004 ESC (All) 455

(Delivered by Hon'ble Devi Prasad Singh,J.)

1. Heard learned counsel for the petitioner and learned Standing Counsel. With the consent of the parties, we proceed to decide the writ petition finally at admission stage.

2. The petitioner was appointed on the post of Assistant Employment Officer through Public Service Commission on 12.11.1976. After ten years of satisfactory service, he was given selection grade and posted as District Employment Officer on 11.11.1986. By order dated 31.10.2001

with effect from 12.11.1992, the petitioner was granted first selection grade along with other persons in furtherance of Government Order dated 2.12.2000 after completion of fourteen years of satisfactory service. Again, he was granted second selection grade in terms of the Government Order dated 2.9.2002 after completion of 24 years of continuous service. The petitioner attained the age of superannuation on 31.7.2006. At the time of retirement, he was holding the office of Regional Employment Officer. By the impugned order dated 12.5.2008, passed by the opposite party No.2, an amount of Rs.2,00,586/- has been deducted from the gratuity of the petitioner on the ground that the petitioner was given excess amount by incorrect calculation by the officials during the course of employment. Withholding the amount of Rs.2,00,586/-, rest of the gratuity was released in favour of the petitioner by the impugned order.

3. While assailing the impugned order, learned counsel for the petitioner relied upon [2004(22)LCD 486 Brahma Lal versus Union of India and others, [2004(22)LCD 490] State of U.P. Versus Kalu, (1994)2 SCC 521 Shyam Babu Verma and others versus Union of India and others, [1998(16) LCD - 1277] Dr. Shitla Prasad Nagendra versus Gorakhpur University and others, (1994)6 SCC 589 R. Kapur versus Director of Inspection (Painting and Publication) Income Tax and another, (1981)1 SCC 449 Som Prakash Rekhi versus Union of India and another and submits that the respondents have got no right to recover the amount paid during the course of employment, that too after lapse of almost three years. Submission is that the calculation with regard to payment of higher pay-scale was done by the respondents and their staff themselves with due communication to the petitioner. Accordingly, it has been submitted that no recovery could have been made from the petitioner's gratuity by the respondents while passing the impugned order.

4. On the other hand, learned Standing Counsel submits that since incorrect calculation was done the State has got right to recover the dues from the post-retiral benefits.

5. In the case of Brahma Lal (supra), relying upon earlier judgments, it has been held that the retiral benefits including the gratuity and provident fund cannot be stopped as a 'set off' for outstanding dues against the employee.

6. In the case of Shyam Babu Verma(supra), Hon'ble Supreme Court held that higher pay scale erroneously given to the employee with no fault on his or her part will not entitle the State to recover any excess amount already paid to the employees.

7. In R. Kapur's case(supra), Hon'ble Supreme Court has provided interest on account of delayed payment of retiral dues.

8. In the case of Som Prakash Rekhi (supra), Hon'ble Supreme Court held that the State does not have got right to recover the amount from the receipt of gratuity and provident fund. To reproduce relevant portion :

"65.....But if he draws PF or gratuity that pension will be pared down

by a separate rule of deduction from the pension. It follows that there is no straining of the language of the regulations to mean, firstly, a right to pension quantified in certain manner and, secondly, a right in the management to make deduction from out of that pension if other retiral benefits are drawn by the employee. There appears to be the pension scheme. If this be correct, there is no substance in the argument that the pension itself is automatically reduced into a smaller scale of pension on the drawal of provident fund or gratuity. Pension is one thing, deduction is another. The latter is independent of pension and operates on the pension to amputate it, as it were. If a law forbids such cut or amputation the pension remains intact.

67. We must realise that the pension scheme came into existence prior to two beneficial statutes and Parliament when enacting these legislations must have clearly intended extra benefits being conferred on employees. Such a consequence will follow only if over and above the normal pension, the benefits of provident fund and gratuity are enjoyed. On the other hand, if consequent on the receipt of these benefits there is a proportionate reduction in the pension, there is no real benefit to the employee because the Management takes away by the left hand what it seems to confer by the right, making the legislation itself left-handed. To hold that on receipt of gratuity and provident fund the pension of the employee may be reduced pro tanto is to frustrate the supplementary character of the benefits. Indeed, that is why by Sections 12 and 14 overriding effect is imparted and reduction in the retiral benefits on account of provident fund and gratuity derived by the employee is frowned upon. We, accordingly, hold that it is not open to the second respondent to deduct from the full pension any sum based upon Regulation 16 read with Regulation 13."

9. In another case, reported in **2004 ESC(All) 455 Union of India versus Rakesh Chandra,** a Division Bench of this Court after considering catena of judgments of Hon'ble Supreme Court held that incorrect calculation of pay scale and payment thereof of no fault on the part of the employee shall not make out a ground to recover the same.

In view of settled proposition of law, it appears that once the amount is paid for no fault on the part of the government employee, then at later stage, that too after retirement, the same cannot be recovered. Of course, in case higher pay-scale is paid because of collusive act between the office and the employee concerned, then in such situation, it will be open for the State to recover the same.

In view of above, the writ petition is liable to be and is hereby allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 12.5.2008, passed by opposite party No.2 with consequential benefits. In case already recovery has been made, the same may be refunded to the petitioner forthwith.

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

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 16.05.2011

BEFORE
THE HON'BLE SHRI NARAYAN SHUKLA,J.

Criminal Misc. Case No.843 of 2011

Roshan Lal Yadav and others ...Petitioners
Versus
State of U.P. and others ...Opp.parties

Code of Criminal Procedure-Section 178 (c)-offence continue to be committed in more local areas-court of concerned area has jurisdiction-Power of Magistrate to take cognizance-not controlled by territorial jurisdiction-part of offence committed at Lucknow not denied-application to quash proceeding-rejected.

Held: Para 9 and 10

Upon perusal of the contents of the First Information Report I find that the complainant has stated that the petitioners have abused and tortured her at several times at Lucknow and also threatened to divorce her. In continuation of it, he has also filed a suit for divorce at Varanasi, which has been stayed by this court. When she received information about the second marriage of her husband with another lady, namely, Renu Yadav, daughter of Shri Sudama Yadav, resident of district Ghazipur, she being at Lucknow asked about it from her husband through mobile phone, who accepted it very anxiously and again by threatening that whatever she wants to do, she may do. Thus, from the facts of the case part of offence committed at Lucknow, cannot be denied. It also establishes that the offence continued at several times at several places including Lucknow. Thus, this case very much attracts the provisions of Section 178 (c) of the Code of Criminal Procedure, therefore, the cases cited by the petitioners in their favour do not come in the way of learned Magistrate to proceed with the case at Lucknow.

Apart from above, the learned Additional Government Advocate pointed out the decisions of the Hon'ble Supreme Court rendered in the case of Trisuns Chemical Industry versus Rajesh Agarwal and others, reported in (1999) 8 SCC 686, in which the Hon'ble Supreme Court has held that the jurisdictional aspect becomes relevant only when the question of enquiry or trial arises, the Magistrate's power to take cognizance of offence is not impaired by territorial restriction. After taking cognizance he may have to decide as to the court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post-cognizance stage and not earlier.

Case law discussed:
(1997) 5 SCC 30; 2007 (1) JIC 269 (SC); 2007 (3) JIC 436 (All); (1999) 8 SCC 686

(Delivered by Hon'ble S.N. Shukla,J.)

1. Heard Mr.M.K.Srivastava, learned counsel for the petitioners and Mr.Mohd.Tabrez Iqbal, learned counsel for the opposite party No.3 as well as Mr.Rajendra Kumar Dwivedi, learned Additional Government Advocate for the opposite parties 1 and 2.

2. Counter affidavit as well supplementary counter affidavit filed by the State is taken on record.

3. The petitioners have challenged the proceedings of case No.949 of 2010, pending before the court of Special Chief Judicial Magistrate, Customs, Lucknow for trial of offences committed under Sections 498-A, 506 of the Indian Penal Code and ¾ Dowry Prohibition Act, Police Station Ghazipur, district

Lucknow, arising out of case crime No.1070 of 2009.

4. The learned counsel for the petitioners invited the attention of this court towards the contents of the First Information Report and submitted that no offence has been reported to have been committed within the territorial jurisdiction of Lucknow, rather allegedly it took place at Bilaspur, Chattisgarh, therefore, the learned Magistrate at Lucknow lacks jurisdiction.

5. In support of his submission he cited some decisions of the Hon'ble Supreme Court as well as of this court, which are referred to hereunder:-

(1) **Sujata Mukherjee (Smt.) versus Prashant Kumar Mukherjee reported in (1997) 5 SCC 30.**

6. In the aforesaid case the appellant claimed the cruel treatment by the respondents persistently at Raigarh and also at Raipur, consequential to the series of the incidents taking place at Raigarh. The High Court held that several isolated events had taken place at Raigarh and one isolated incident had taken place at Raipur, hence, the criminal case, which was filed at Raipur was only maintainable against the respondent husband against whom some overt act at Raipur was alleged, but such case was not maintainable against the other respondents. The Hon'ble Supreme Court held that it appears that the complaint reveals a continuing offence of maltreatment and humiliation meted out to the appellant in the hands of all the accused respondents and in such continuing offence, on some occasions all the respondents had taken part and on other occasion, one of the respondents had taken part. Therefore, clause (c) of Section 178 of the Code of Criminal Procedure is clearly attracted. Section 178 clause (c) contemplates that "where an offence is a continuing one, and continues to be committed in more local areas" then such offence can be tried by a court having jurisdiction over any of such local areas.

(2) **Manish Patan & others versus State of M.P. And another, reported in 2007 (1) JIC 269 (SC).**

7. In this case also the question of jurisdiction arose. The Hon'ble Supreme Court after dealing with the facts of the case ultimately found that no part of cause of action arose within the territorial limits of the jurisdiction of Datia court, therefore, it set aside the order passed by the High Court and transferred the criminal case pending in the court of Chief Judicial Magistrate, Datia to the court of Chief Judicial Magistrate, Jabalpur.

(3) **Dr.(Mrs.) Sarojini Arawattigi and another versus State of U.P. And another, reported in 2007 (3) JIC 436 (All).**

8. In the aforesaid case the Hon'ble Supreme Court discussed the scope of Section 177 of the Code of Criminal Procedure, which lays down the place where the criminal case can be prosecuted. According to it, every offence shall be inquired into and tried by a court within whose local jurisdiction it was committed. The Hon'ble Supreme Court also discussed Section 178(c) of the Code of Criminal Procedure. The Hon'ble Supreme Court observed that at no stage

the applicants demanded any dowry or harassed the lady at Kanpur for non-fulfillment of dowry, therefore, it quashed the proceedings pending in the court of Chief Metropolitan Magistrate, district Kanpur Nagar and opened to the complainant to take necessary legal action against the applicant in appropriate forum.

9. Upon perusal of the contents of the First Information Report I find that the complainant has stated that the petitioners have abused and tortured her at several times at Lucknow and also threatened to divorce her. In continuation of it, he has also filed a suit for divorce at Varanasi, which has been stayed by this court. When she received information about the second marriage of her husband with another lady, namely, Renu Yadav, daughter of Shri Sudama Yadav, resident of district Ghazipur, she being at Lucknow asked about it from her husband through mobile phone, who accepted it very anxiously and again by threatening that whatever she wants to do, she may do. Thus, from the facts of the case part of offence committed at Lucknow, cannot be denied. It also establishes that the offence continued at several times at several places including Lucknow. Thus, this case very much attracts the provisions of Section 178 (c) of the Code of Criminal Procedure, therefore, the cases cited by the petitioners in their favour do not come in the way of learned Magistrate to proceed with the case at Lucknow.

10. Apart from above, the learned Additional Government Advocate pointed out the decisions of the Hon'ble Supreme Court rendered in the case of **Trisuns Chemical Industry versus Rajesh Agarwal and others, reported in (1999) 8 SCC 686,** in which the Hon'ble Supreme Court has held that the jurisdictional aspect becomes relevant only when the question of enquiry or trial arises, the Magistrate's power to take cognizance of offence is not impaired by territorial restriction. After taking cognizance he may have to decide as to the court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post-cognizance stage and not earlier.

11. In light of the aforesaid facts as well as the law laid down by the courts dealing with the same question as well as the provisions of the Code of Criminal Procedure, I find that the learned Magistrate at Lucknow has very much jurisdiction to try with the case. Therefore, no interference is warranted.

The petition lacks merit and is dismissed.

12. However, it is provided that if the petitioners appear before the court below and move an application for bail within four weeks, the same shall be considered and disposed of by the courts below expeditiously. Since the petitioner No.2 is a lady her application for bail shall be considered under the privilege clause provided under Section 437 of the Code of Criminal Procedure and disposed of, if possible on the same day by the courts below.

13. For four weeks, no coercive action shall be taken against the petitioners.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 25.05.2011

BEFORE
THE HON'BLE RAJIV SHARMA,J.

Misc. Single No. - 1558 of 2010

Ishtiyaq Khan ...Petitioner
Versus
Commissioner Lucknow Division Lucknow and another ...Respondents

Counsel for the Petitioner:
Arun Kumar Shukla

Counsel for the Respondents:
C.S.C.

Arms Act, 1959-Section-13 and 14- Licence of Non Prohibited Fire Arms- revenue as well as Police Authorities submitted report with recommendation to grant of Licence-rejected on ground the Petitioner not disclosed the name of anti-social elements and eminent danger of life-held-wholly misconceived-except the grounds mention in Section 14 there can not be basis for refusal beyond statutory provision-Licensee as well as appellate authorities committed great illegality-orders set-a-side-with consequential direction.

Held: Para 14 and 15

It may be noted that in Abdul Kafi versus District Magistrate, Allahabad and another [2003 (21) LCD 299] the petitioner filed a writ petition when his application was rejected although the report of the concerned authorities were in favour of the petitioner. The application was rejected by the Licensing Authority on the ground that the petitioner has not stated in his application form as to from whom he has danger to his life

The aforesaid citation is fully applicable in the instant case as here also, as averred above, the application has been rejected simply on the ground that the petitioner has not indicated that what type of danger he apprehends and why the arms license is required by him.

Case law discussed:
[2003 (21) LCD 299]

(Delivered by Hon'ble Rajiv Sharma,J.)

1. Heard Mr. Arun Kumar Shukla, learned counsel for the petitioner and Mr. Rakesh Kumar Srivastava, learned Standing Counsel.

2. Brief facts of the present case are that the petitioner is resident of Village Andapur, Police Station Phardhan, District Kheri and by profession, he is a contractor registered as such with Bharat Sanchar Nigam Ltd. On 4.6.2008, the petitioner applied for non-prohibited Revolver (Firearm) license in the requisite format before the Licensing Authority. Licensing Authority call for the reports as required under Section 13 of the Arms Act. The authorities, namely, Station House Officer and In-charge DCRB, Kheri submitted their respective reports dated 8.7.2009 and 11.8.2009. On the basis of the said report, Superintendent of Police, Kheri also submitted the report dated 26.9.2009 recommending for issuance of Arms License.The revenue authorities, i.e. Sub-Divisional Magistrate, Lakhimpur Kheri also vide report dated 25.6.2008 forwarded the application for grant of Arms License.When no action was taken on his application, he filed a writ petition No. 2434 (MS) of 2009 which was disposed of finally vide order dated 7.5.2009 with a

direction to the Licensing Authority to decide the application for granting arms license. In compliance of this Court's Order dated 7.5.2009, the case of the petitioner was considered and the same was rejected vide orders dated 1.10.2009. Being aggrieved, he filed an appeal which too was dismissed.

3. Petitioner has assailed the aforesaid orders inter alia on the grounds that the Licensing Authority and the Appellate Authority have overlooked the police report furnished by the Superintendent of Police, Kheri based on the report of Station House Officer, Police Station Phardhan, District Kheri as well as the recommendations made by the Sub-Divisional Magistrate, Lakhimpur Kheri submitted in favour of the petitioner for granting fire arm license and thus committed manifest error in law in rejecting the application for granting arm license for his personal safety insofar as the petitioner has specifically shown his urgent need of the fire arm license as he mostly travels with huge amount in connection with his business. For the purposes of safety of his personal life, he is in dire need of license. It has been clarified that he has no criminal antecedents, yet the Licensing Authority has rejected the application for grant of license.

4. Learned Standing Counsel submits that vide Government Order dated 5.6.1999, the State Government directed the District Authorities to be cautious in issuing arms license and while considering the applications for grant of license, the same should be issued only after satisfying that there is immense danger to life to the applicant and he meets all requirements and other stipulations. Learned Standing further submits that Section 13 (3) (b) specifically deals with the conditions for issuing the arms license. In the police report and the report of Revenue Department, no actual danger of life or the requirement of any personal security to the applicant has been reported. Further, in the application for Arms License, no reason has been mentioned, therefore, the nature of danger could not be substantiated and as such, the District Magistrate did not find sufficient ground for granting arms license to the petitioner which was rejected vide order dated 1.10.2009. According to him, the appeal has also rightly been rejected by the order dated 7.1.2010.

5. In rebuttal, learned counsel for the petitioner submits that in the police and revenue reports, it is clearly mentioned that the petitioner is in need of fire arms license for safety and security of his life as he is a contractor by profession. Further, he asserts that in the Arms Act, nowhere it is mentioned that specific reason should be disclosed in the application form.

6. Considered the submissions made by the learned counsel for the parties and perused the record including the impugned orders. In order to adjudicate the matter, provisions of Sections 13 and 14 of the Arms Act, 1959 are necessary which are reproduced hereunder:-

13. Grant of licenses -- (1) An application for the grant of a license under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.

(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2A) The licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same:

Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.

(3) The licensing authority shall grant --

(a) a license under Section 3 where the license is required --

(i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or spot or in respect of a muzzle loading gun to be used for boan fide crop protection:

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection; or

(ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licensed or recognized by the Central Government;

(b) a license under section 3 in any other case or a license under sub 4, section 5, section 6, section 10 or section 12, if the licensing authority is satisfied that the person by whom the license is required has a good reason for obtaining the same.

14. Refusal of license -- (1) Notwithstanding anything in section 13, licensing authority shall refuse to grant --

(a) a license under section 3, section 4 or section 5 where such license is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter II, --

(i) where such licence is required by a person whom the licensing authority has reason to believe --

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or

(2) to be of unsound mind, or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) The licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

(3) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

7. Under Section 3 of the Arms Act, 1959, it is essential to obtain an arms possession license issued by a competent licensing authority by any person for acquisition, possession or carrying any firearms or ammunition. Section 13 of the Arms Act, 1959 contains provisions relating to grant of arms licenses by the licensing authority concerned. On receipt of an application, the licensing authority is required to call for a report from the officer in-charge of the nearest police station and such officer is required to send his report about the bona fide of the antecedent of the applicant to the licensing authority, within the prescribed time. The licensing authority is required to take a decision whether to grant or to refuse to grant the arms possession license, based on the report of the police authorities and subject to fulfilment of other conditions stipulated under the Arms Act. However, there is a provision to Section 13 (2A), which empowers the licensing authority to grant an arm license where the report of the police authorities has not been received within the prescribed time.

8. It is relevant to point out that the quantum of prescribed time referred to in Section 13 of the Arms Act, 1959 has not been specifically defined under the said At. This being so, the chances of invoking proviso may be easy, which may lead to grant of an arms license to a person whose antecedents, may not be clear.

9. Considering the importance of the police verification report in the grant of arms licenses to any person, the Government of India by way of amendment decided to delete the proviso to Section 13 (2A) of the Arms Act, 1959 and prescribe a period of 60 days for the police authorities to send their report, to obviate chances of discretion being used by the licensing authority to issue any arms license without police verification report.

10. Now, the position is that the licensing authority will be obliged to take into consideration the report of the police authorities before grant of arms license in each case, with the deletion of the proviso to Section 13 (2A) of the Arms Act, 1959.

11. In view of the prescription provided under Section 14 of the Act, it is obligatory upon the District Magistrate/Licensing Authority to record the reasons in writing, in case he refused to grant a license and communicate the same to the applicant.

12. In this instant case, while rejecting the application, the Licensing Authority stated that the applicant did not mention the reason that what type of danger he apprehends and why the arms license is required by him. Further, he has relied upon the aforesaid provisions heavily. A careful perusal of the aforesaid Sections, it reveals that no where it is mentioned that specific reason should be disclosed in the application for obtaining

arms license. The only condition is that report should be obtained from the police authorities concerned. Here, the police authorities submitted the report in favour of the petitioner. Even, the revenue authorities have also submitted that the petitioner may be granted arms license. Though two reports are in favour of the petitioner and further the reason for obtaining the arms license is mentioned in the application itself i.e. being a contractor he mostly travels with huge amount, yet the District Magistrate had stated in the impugned order that the petitioner has not mentioned specific immense threat to his life for obtaining arms license.

13. It is well settled law that right to life is the fundamental right guaranteed under Article 21 of the Constitution of India. In case, a citizen feels that he requires fire arm for his personal security, then it is bounden duty of the authority concerned to consider and decide the application in accordance with law, within a reasonable time, but neither the Licensing Authority nor the Appellate Authority considered the facts and circumstances of the case and simply rejected the application and the said order was uphold. In the writ petition, the petitioner has specifically averred that the petitioner is in urgent need of the fire arm license as he mostly travels with huge amount in connection with his business and there is great possibility of robbery or loot. which may endanger his life. In all probabilities, the impugned orders are liable to be quashed.

14. It may be noted that in ***Abdul Kafi versus District Magistrate, Allahabad and another [2003 (21) LCD 299]*** the petitioner filed a writ petition when his application was rejected although the report of the concerned authorities were in favour of the petitioner. The application was rejected by the Licensing Authority on the ground that the petitioner has not stated in his application form as to from whom he has danger to his life. The Court after examining the various provisions of the Arms Act observed in paragraph 7 as under:-

"7. Learned Standing Counsel appearing for the respondents tried to justify the order passed by the licensing authority, which has been challenged in the present petition but, in my opinion, he failed to substantiate and support the reasoning given in the order. Learned Standing Counsel also could not point out any provision under the Arms Act on the basis whereof the reasoning given by the licensing authority for rejecting the petitioner's application for grant of firearm license can be justified."

15. The aforesaid citation is fully applicable in the instant case as here also, as averred above, the application has been rejected simply on the ground that the petitioner has not indicated that what type of danger he apprehends and why the arms license is required by him.

16. In view of the aforesaid discussion and legal position, the writ petition is allowed and the impugned order passed by the Licensing Authority dated 1.10.2009 and the Appellate Authority's order dated 7.1.2010 are hereby quashed. On the application of the petitioner for grant of license, the District Magistrate shall pass fresh appropriate orders in light of the observations made here-in-above.

ORIGINAL JURISDICTION
CIVILSIDE
DATED: LUCKNOW 31.05.2011

BEFORE
THE HON'BLE SUDHIR AGARWAL,J.

Service Single No. - 2099 of 2001

Rajendra Singh {N-State} ...Petitioner
Versus
State of U.P.Through Secy.Home and 7 others ...Respondents

Counsel for the Petitioner:
Sri V.K.Shukla
Sri Nishi Agarwal

Counsel for the Respondents:
C.S.C.

Constitution of India, Article 22-Revision and gravity-father of Petitioner-working as Police constable retired on 08.06.1967 died on 11.08.1981-mother also died 22.01.94 without pension even after expiry of 13 years and 11 years in litigation-no plausible amount made in Courts affidavit except process going on-held-shocking-pension attained the status of Fundamental Right considering extraordinary delay exumplory cost of Rs. 2,50000/- imposed with direction to pay entire amount with 10% interest-within 3 month.

Held: Para 19

In view of the above, I have no hesitation in holding that non payment of retiral benefits and others to petitioner is wholly arbitrary and unreasonable. There was no justification at all for respondents to delay payment thereof.

Case law discussed:
AIR 1983 SC 130; 1972 AC 1027; 1964 AC 1129; JT 1993 (6) SC 307; JT 2004 (5) SC 17; (1996) 6 SCC 530; (1996) 6 SCC 558; AIR 1996 SC 715; Shamal Chand Tiwari Vs. State of U.P. & Ors. (Writ Petition No.34804 of 2004) decided on 6.12.2005; (1987) 4 SCC 328; (1994) 6 SCC 589; AIR 1997 SC 27; (1999) 3 SCC 438; (2008) 3 SCC 44; 2011 (2) ADJ 608; (2008) 119 FLR 787; AIR 2005 SC 2755;

(Delivered by Hon'ble Sudhir Agarwal,J.)

1. List revised. None appeared on behalf of the petitioner. However, I have perused the record.

2. The petitioner's father retired on 8th July, 1967 from the post of constable and died on 11th August, 1981 leaving his widow i.e. mother of the petitioner and children. The family pension to widow was not paid by the respondents though the petitioner and his mother approached respondents repeatedly. Ultimately the widow also died on 22nd January, 1994. Thereafter the respondents continued to make correspondence from one to another authorities. The fact however remains that family pension from 11.08.1981 to 22.01.1994 was not paid to the unfortunate widow of the deceased employee and even after her death to the legal heirs i.e. the petitioner till 2001 when this writ petition was filed and even thereafter.

3. In the counter affidavit respondents have given details of various letters issued from one authority to another but the fact remains that even in counter affidavit there is not a single averment, by the time it was filed, that family pension has already been paid to the petitioner. It only says that proceeding have been initiated and are pending.

4. This is really a very unfortunate case where old widow of a deceased employee continued to suffer and starve for not receiving family pension for almost 13 years and ultimately died without getting it. The legal heirs of the ex deceased employee

is/are still contesting the matter for the last 11 years in this Court and prior thereto about 7 years were pursuing in the Department.

5. Today, one cannot dispute that pension has attained the status of fundamental right, a facet of right to earn livelihood enshrined under Article 21 of the Constitution. Pension and retiral benefits have been held deferred wages which an employee earn by rendering service for a particular length of time. This is what was held by Apex Court in **D.S.Nakara Vs. Union of India AIR 1983 SC 130.** This proposition is almost settled. To defer this right of an employee for an unreasonably long period, one must have an authority in law which more or the less must be specific and clear. On the mere pretext of caution or procedural jargon, such right cannot be made to suffer for infinite in any manner. Whenever such an occasion is brought to notice, this Court has risen to protect the poor and helpless retired employee and their family. The Apex Court in **D.S. Nakara** (supra) has observed:

"pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion." (Para 20).

"In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability, State obligation to provide security in old age, an escape from underserved want was recognized and as a first steps pension was treated not only as a reward for past service but with a view to helping the employee to avoid destitution in old age. The quid pro quo was that when the employee was physically and mentally alert, he rendered not master the best, expecting him to look after him in the fall of life. A retirement system therefore exists solely for the purpose of providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal retirement receives the same amount." (Para 22).

"Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past." (Para 28).

"Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered." (Para 29)

6. Withholding of pension and other retiral benefits of retired employees for years together is not only illegal and arbitrary but a sin if not an offence since no

law has declared so. The officials, who are still in service and are instrumental in such delay causing harassment to the retired employee must however feel afraid of committing such a sin. It is morally and socially obnoxious. It is also against the concept of social and economic justice which is one of the founding pillar of our constitution.

7. The respondents being "State" under Article 12 of the Constitution of India, its officers are public functionaries. As observed above, under our Constitution, sovereignty vest in the people. Every limb of constitutional machinery therefore is obliged to be people oriented. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour. It is high time that this Court should remind respondents that they are expected to perform in a more responsible and reasonable manner so as not to cause undue and avoidable harassment to the public at large and in particular their ex-employees and their legal heirs like the petitioner. The respondents have the support of entire machinery and various powers of statute. An ordinary citizen or a common man is hardly equipped to match such might of State or its instrumentalities. Harassment of a common man by public authorities is socially abhorring and legally impressible. This may harm the common man personally but the injury to society is far more grievous. Crime and corruption, thrive and prosper in society due to lack of public resistance. An ordinary citizen instead of complaining and fighting mostly succumbs to the pressure of undesirable functioning in offices instead of standing against it. It is on account of, sometimes, lack of resources or unmatched status which give the feeling of helplessness. Nothing is more damaging than the feeling of helplessness. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match inaction in public oriented departments gets frustrated and it erodes the credibility in the system. This is unfortunate that matters which require immediate attention are being allowed to linger on and remain unattended. No authority can allow itself to act in a manner which is arbitrary. Public administration no doubt involves a vast amount of administrative discretion which shields action of administrative authority but where it is found that the exercise of power is capricious or other than bona fide, it is the duty of the Court to take effective steps and rise to occasion otherwise the confidence of the common man would shake. It is the responsibility of Court in such matters to immediately rescue such common man so that he may have the confidence that he is not helpless but a bigger authority is there to take care of him and to restrain arbitrary and arrogant, unlawful inaction or illegal exercise of power on the part of the public functionaries.

8. In our system, the Constitution is supreme, but the real power vest in the people of India. The Constitution has been enacted "for the people, by the people and of the people". A public functionary cannot be permitted to act like a dictator causing harassment to a common man and in particular when the person subject to harassment is his own employee.

9. Regarding harassment of a common man, referring to observations of **Lord Hailsham in Cassell & Co. Ltd. Vs. Broome, 1972 AC 1027 and Lord Devlin in Rooks Vs. Barnard and others 1964 AC 1129,** the Apex Court in **Lucknow**

Development Authority Vs. M.K. Gupta JT 1993 (6) SC 307 held as under:

"An Ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law..... A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it.....Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous." (para 10)

10. The above observations as such have been reiterated in **Ghaziabad Development Authorities Vs. Balbir Singh JT 2004 (5) SC 17.**

11. In a democratic system governed by rule of law, the Government does not mean a lax Government. The public servants hold their offices in trust and are expected to perform with due diligence particularly so that their action or inaction may not cause any undue hardship and harassment to a common man. Whenever it comes to the notice of this Court that the Government or its officials have acted with gross negligence and unmindful action causing harassment of a common and helpless man, this Court has never been a silent spectator but always reacted to bring the authorities to law.

12. In **Registered Society Vs. Union of India and Others (1996) 6 SCC 530** the Apex court said:

"No public servant can say "you may set aside an order on the ground of mala fide but you can not hold me personally liable" No public servant can arrogate in himself the power to act in a manner which is arbitrary".

13. In **Shivsagar Tiwari Vs. Union of India (1996) 6 SCC 558** the Apex Court has held:

"An arbitrary system indeed must always be a corrupt one. There never was a man who thought he had no law but his own will who did not soon find that he had no end but his own profit."

14. In **Delhi Development Authority Vs. Skipper Construction and Another AIR 1996 SC 715** has held as follows:

"A democratic Government does not mean a lax Government. The rules of procedure and/or principles of natural justice are not mean to enable the guilty to delay and defeat the just retribution. The wheel of justice may appear to grind slowly but it is duty of all of us to ensure that they do grind steadily and grind well and truly. The justice system cannot be allowed to become soft, supine and spineless."

15. Now, coming to another aspect of the matter, if retiral benefits are paid with extra ordinary delay, the Court should award suitable interest which is compensatory in nature so as to cause some solace to the harassed employee. No Government official should have the liberty of harassing a hopeless employee or his heirs by withholding his/her lawful dues for a long time and thereafter to escape from any liability so as to boast

that nobody can touch him even if he commits an ex facie illegal, unjust or arbitrary act. Every authority howsoever high must always keep in mind that nobody is above law. The hands of justice are meant not only to catch out such person but it is also the constitutional duty of Court of law to pass suitable orders in such matters so that such illegal acts may not be repeated, not only by him/her but others also. This should be a lesson to everyone committing such unjust act.

16. Interest on delayed payment on retiral dues has been upheld time and against in a catena of decision. This Court in **Shamal Chand Tiwari Vs. State of U.P. & Ors. (Writ Petition No.34804 of 2004)** decided on 6.12.2005 held:

"Now the question comes about entitlement of the petitioner for interest on delayed payment of retiral benefits. Since the date of retirement is known to the respondents well in advance, there is no reason for them not to make arrangement for payment of retiral benefits to the petitioner well in advance so that as soon as the employee retires, his retiral benefits are paid on the date of retirement or within reasonable time thereafter. Inaction and inordinate delay in payment of retiral benefits is nothing but culpable delay warranting liability of interest on such dues. In the case of ***State of Kerala and others Vs. M. Padmnanaban Nair, 1985 (1) SLR-750,*** *the Hon'ble Supreme Court has held as follows:*

"Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following months. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasized and it would not be unreasonable to direct that the liability to pay panel interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."

In this view of the matter, this Court is of the view that the claim of the petitioner for interest on the delayed payment of retiral benefits has to be sustained."

17. It has been followed and reiterated in **O.P. Gupta Vs. Union of India and others (1987) 4 SCC 328, R. Kapur Vs. Director of Inspection (1994) 6 SCC 589, S.R. Bhanrate Vs. Union of India and others AIR 1997 SC 27, Dr. Uma Agarwal Vs. State of U.P. & another (1999) 3 SCC 438 and S.K. Dua Vs. State of Haryana and another (2008) 3 SCC 44.**

18. A Division Bench of this Court has also considered the question of award of interest on delayed payment of retiral benefits recently in **Rajeshwar Swarup Gupta Vs. State of U.P. & others 2011 (2) ADJ 608** and, relying on the Apex Court decision in **M. Padmnanaban Nair (supra)** and its several follow up as also an earlier Division Bench judgement of this Court in **Smt. Kavita Kumar Vs. State of U.P. & others (2008) 119 FLR**

787, has awarded 12% interest in the said case.

19. In view of the above, I have no hesitation in holding that non payment of retiral benefits and others to petitioner is wholly arbitrary and unreasonable. There was no justification at all for respondents to delay payment thereof.

20. In a case where the person who has invoked extraordinary equitable jurisdiction satisfying the Court that in the hands of authorities of state instrumentality, individual has suffered grievously, the Court, while deciding the matter, can also pass an order of exemplary cost compensatory in nature so that such authorities may not recur the similar negligence in future. In **Gurpal Singh Vs. State of Punjab and another AIR 2005 SC 2755** it was held that the Court must do justice by promotion of good faith and prevent law from crafty invasion. The predicament of the petitioner is evident from the fact that for thirteen years his mother continued to pursue to department in the hope of getting family pension and died unsuccessfully and then for seven years, the petitioner so struggled and now for eleven years is contesting the matter in this Court. In this case respondents have compelled the helpless poor widow of the deceased employee to run from pillar to post for 13 years unsuccessfully and to die, may be of starvation or for some other reasons, since admittedly, she was not paid family pension, frustrating the very object of making provisions for such pension. In the old days, particularly after death of husband, Department ought to have shown much more concern and sympathy to the old widow and instead of helping her by extending a benevolent hand providing family pension to her, which was not a charity but her right, respondents and their officials in a most arrogant and apathetic manner continued to defy their obligation and duty and were successful in the rottening of the petitioner's destitute mother penniless. The petitioner, the legal heir, also made to run for almost 7 years after the death of mother and till the filing of the writ petition by not making such payment, which was his right, this matter is pending before this Court for almost 10 years yet learned Standing Counsel could not tell this Court that respondents have wake up and wait of petitioner is now over. This journey of 30 years from the angle of the petitioner and his deceased mother after the death of petitioner's father is a long telltale story which one can easily visualize. There cannot be a better case than this one, where respondents must be saddled with an exemplary cost so that in future one may not venture to repeat this kind of attitude. It is in the fitness of the things that this writ petition should be allowed with exemplary cost.

21. The writ petition is accordingly allowed. Respondents are directed to pay entire arrears of family pension, if not already paid, to the petitioner within three months from the date of production of a certified copy of this order.

22. The petitioner shall also entitled to interest which shall be paid at the rate of 10% p.a. from the date family pension fell due to the legal heirs of the deceased employee till the payment is actually made.

23. The petitioner shall also be entitled to cost which is quantified to Rs.2,50,000/-. However, at the first

instance it shall be paid by respondent No.1 along with arrears of family pension, as directed above, but respondent No.1 shall have liberty to recover cost as well as amount of interest paid to the petitioner under this order(s) from the official concerned, who is/are found responsible for such extra ordinary delay in payment of aforesaid dues, after making enquiry in accordance with law.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.05.2011

BEFORE
THE HON'BLE SHRI NARAYAN SHUKLA,J.

Criminal Misc. Case No. 3994 of 2007
(U/S 482, Cr.P.C.)

Dr. B. Sahu ...Petitioner
Versus
State of U.P. and others ...Respondents

Code of Criminal Procedure, Section 482- Quashing of complaint case-allegation disclosed that certain employees were selected but not given appointment letter-as some of them stolen secret formula and using the same for the benefits of another company-at the most it can be violation of Patent Act or Copyright Act-can be properly adjudicated by Civil Court-complaint quashed

Held: Para 4

Upon perusal of the record, I find that there is allegation to disclose the secrecy of the respondent company as well as stealing of some secret formulas, which are used by the respondent company by the selected candidates, in which the petitioner is alleged to be conspired with them, whereas I am of the view that such allegation is the subject matter of civil suit. If there is a violation of Patent Act or Copyright Act, it is open for the respondent to take necessary action therein, but once the respondent-company's employees were selected through the open recruitment by the petitioner, it cannot be said that he has committed any fraud, as alleged.

Case law discussed:
A.I.R. 1955 Patna 288 (Vol. 42, C.N. 52)

(Delivered by Hon'ble S.N. Shukla,J.)

1. Heard Mr. Sunil Kumar Shukla, learned counsel for the petitioner, Mr. Kunwar Mridul Rakesh, learned senior Advocate for the respondent no. 2 as well as learned A.G.A.

2. The petitioner has challenged the complaint registered as complaint case no. 4984 of 2006 as well as the order passed therein on 25th of January, 2007. The petitioner is an Executive Director and President of Futura Polyesters Limited. He recruited some Laboratory Assistant. Under the process of recruitment, six persons were interviewed out of whom four candidates namely Mr. Raghvendra Singh, Dr. Ajit Singh, Mr. Ashish Srivastava and Mr. Jay Shukla were selected. It appears that some of the employee of the respondent company has been selected in the petitioner's company. The petitioner denies from any such agreement as is entered between those selected candidates and respondent. It is further stated that if there is a violation of any agreement, that is the subject matter of civil dispute, but for that, the petitioner cannot be prosecuted. He also informs that respondent company had filed a civil suit for recovery of money against its employees i.e. Civil Suit No. 711 of 2006 and Civil Suit No. 713 of 2006. The respondent company alleges that those selected candidates have stolen the secrets formula from its Company. It is also the

allegation that the petitioner is using the formula of the respondent company for his benefit to cause loss to the respondent company's business. The petitioner is alleged to have conspired along with other accused.

3. In reply, it is stated by the petitioner that if the allegation leveled against the petitioner is accepted maximum, the case may be of the violation of Patent Act or Copyright Act, but not to steal any secret documents or information. Therefore, the complaint as well as the summoning order passed therein deserves to be quashed. In support of his submission, he also cited a decision rendered in the case of **Amarnath Bihari v. Uma Shanker reported in A.I.R. 1955 Patna 288(Vol. 42, C.N.52),** in which it has been held that whether the contract dealing with the assignment of the copyrights has or has not been in fact infringed will be the subject matter of discussion in a civil suit properly constituted for that and is not relevant to the decision of criminal case on a charge under Section 489 of the Indian Penal Code.

4. Upon perusal of the record, I find that there is allegation to disclose the secrecy of the respondent company as well as stealing of some secret formulas, which are used by the respondent company by the selected candidates, in which the petitioner is alleged to be conspired with them, whereas I am of the view that such allegation is the subject matter of civil suit. If there is a violation of Patent Act or Copyright Act, it is open for the respondent to take necessary action therein, but once the respondent-company's employees were selected through the open recruitment by the petitioner, it cannot be said that he has committed any fraud, as alleged.

5. Therefore, I hereby quash the complaint case no. 4984 of 2006 as well as the order passed therein on 25th of January, 2007 pending before the Judicial Magistrate 1st Lucknow.

The petition is allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 05.05.2011

BEFORE
THE HON'BLE RAJIV SHARMA, J.

Writ Petition No. 4011 (M/S) of 2010

Ram Kripal Yadav ...Petitioner
Versus
State of U.P. and others ...Respondents

(A) Constitution of India, Article 226-maintainability-cancellation of the licence of Fair Price Shop-whether can Writ Court empowered to judicial review?-held-"yes"-Fair Price Shop being a creation of statutory provision for Public Distribution System-can not be taken lightly-without following Principles of Natural Justice without supplying the copy of preliminary enquiry report-being basis of impugned cancellations.

Held: Para 8,10,11,13 and 16

From the legal proposition reproduced herein above, it is evident that there is no blanket ban in entertaining the writ petitions. It is true that ordinarily the remedy for breach of contract is a suit for damages or for specific performance and not a writ petition under Article 226 of the Constitution. However, where the contractual dispute has a public law element, the power of judicial review under Article 226 may be invoked. In

civil suit, emphasis is on the contractual right whereas the emphasis in writ petition is only the validity of the exercise of power by the authority.

Thus the consistent view of the court is that actions and the orders of public officers are amenable to judicial review even if they may arise out of a contract or any scheme of the Government, and therefore, the writ petition cannot be thrown out simply on the technical ground that it is not maintainable.

In view of the above discussion, I am of the considered opinion that the order passed by the Sub Divisional Magistrate/District Magistrate cancelling the licence and the Commissioner, who rejected the appeal preferred against the order of cancellation are public servant and decision taken by them in the garb of a legislation cannot escape judicial review under Article 226 of the Constitution and, therefore, a writ against such an order would lie at the behest of the person aggrieved, irrespective of the nature of his service rendered by him. Moreover, by entering into an agreement, a civil right in favour of the petitioners which cannot be taken away on the whims of the authorities.

Here, it is not in dispute that in all the aforesaid writ petitions, petitioners have complained that the order of cancellation has been passed in blatant disregard of the principles of natural justice as the copies of the documents utilized against them were not furnished. Against the order of cancellation, the petitioners have approached the Commissioner by filing appeals but the appellate authority also dismissed their appeals. Petitioners, after rejection of their appeals, have no other statutory remedy except to invoke the jurisdiction of this Court under Article 226 of the Constitution questioning the validity of the appellate order including the order of cancellation.

In the backdrop of the aforesaid facts, the order of cancellation of license to run fair price shop under the public distribution system subject to appeal, is ultimately amenable to writ jurisdiction as statutory authority cannot claim immunity from judicial review in respect of its functions vis-a-vis public distribution system. Thus the argument advanced by the State Counsel regarding maintainability of writ petition is wholly misconceived and it is held that the writ petitions are maintainable.

(B) Constitution of India ,Article 226- "Natural Justice" and "Legal Justice" distinction between the two-explained wherever legal justice fails-Natural Justice called to aid the Legal Justice-Role of Natural Justice in contractual obligation-explained.

Held: Para 20 and 31

The expressions "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice, which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

After peeping into the contentions of both the parties and the series of case laws, referred to above, I am of the considered opinion that the cancellation of a agreement/licence of a party is a serious business and cannot be taken lightly. In order to justify the action taken to cancel such an agreement/licence, the authority concerned has to act fairly and in complete adherence to the rules/guidelines framed for the said purposes including the principles of natural justice. The non-supply of a document utilized against the aggrieved

person before the cancellation of his allotment of fair price shop licence/agreement offends the well-established principle that no person should be condemned unheard.

Case law discussed:

1991 All.L.J.498; [2008 (6) ADJ 443 (DB)]; [2000 (18) LCD 321]; 1993 (1) ALR 121; 2008(3) ADJ 36; AIR 1964 SC 72; (1999) 1 SCC 741; 2009 (1) ADJ 379 (DB); (1863) 143 ER 414; (1993) 3 SCC 259; (1998) 7 SCC 66; JT 1996 (3) SC 722; 2001(19) LCD 513; 2006 (24) LCD 1521; 2008 (16) LCD 891; [2011 (29) LCD 626]

(Delivered by Hon'ble Rajiv Sharma, J.)

1. In all the afore-captioned writ petitions, the petitioners are Fair Price Shop licencees and the question involved is as to whether non-furnishing the copy of the complaint or preliminary enquiry report or the inspection report or any other document, which has been utilized against the Fair Price Shop licencee while cancelling the licence, amounts to violation of principle of natural justice or not. The assertion of the petitioners is that the plea of opportunity of hearing and non-supply of relevant documents, which were taken into consideration by the Licensing Authority, was raised before the appellate authority but the same has not been dealt with in its correct perspective.

Heard learned Counsel for the parties.

2. According to State Counsel, to ensure proper distribution of essential commodities, which are bare need of the public they are to be distributed through the public distribution system for which Essential Commodities Act, 1955 was enacted by the Central Government. Pursuant to the powers conferred by the Public Distribution System (Control) Order, the State Government for maintaining the supplies of the food grains and other essential commodities and to secure equitable distribution and availability at fair price vide notification dated 20.12.2004, notified U.P. Schedule Commodities Distribution Order, 2004. This Distribution Order was notified by the State Government in exercise of the powers conferred under Section 3 of the Act of 1955 read with provisions contained in Public Distribution System (Control) Order, 2001. Apart from the U.P. Schedule Commodities Distribution Order, 2004 (in short referred to as the Distribution Order of 2004) which is w.e.f. 30.12.2004, the State Government issued a Government Order dated 29.7.2004 on the subject of monitoring/regulating various kind of procedures.

3. Elaborating his arguments, State Counsel submitted that Clause-4 of the Distribution Order provides that a person granted fair price shop is to sign an agreement under sub-clause(3) for running the fair price shop before the competent authority prior to the coming into effect of the said appointment. Clause 25 provides observance of the conditions as the State Government stipulates whereas Clause 28(3) of the Order provides filing of appeal against the order of suspension or cancellation of the agreement. Thus a person appointed to run a fair price shop acts as an agent of the State Government, who is under an obligation to sign an agreement. The agent so appointed is under an obligation to maintain record of supply and distribution of scheduled commodities, maintenance of accounts, keeping of the registers filing returns and issue of receipt

to Identity Card holder and other matters. In some of the writ petitions, it has been indicated in the counter affidavit that the cancellation of agreement relating to fair price shop is a non-statutory agreement and the orders regarding cancellation of non-statutory agreement are not amenable to writ jurisdiction before this Court. In this regard reliance has been placed on **Gopal Das Sahu and another vs. State of U.P. and others;** 1991 All.L.J.498 and **Kallu Khan vs. State of U.P. and another** [2008(6) ADJ 443 (DB)] and other cases.

4. Sri Rakesh Srivastava, Standing Counsel also contended that when a fair price shop licence holder committs irregularities or is found to have indulged in the activities in contravention to the licence of Fair Price shop dealer, his agreement/licence is suspended. Before passing order of suspension of the licence, there is no contemplation of any notice and opportunity.

5. Adverting to the present cases, he submitted that the order of cancellation was passed after providing the licence holder an opportunity of hearing which would tantamounts to passing the order after observing the principles of natural justice and as such it cannot be said that there was any infirmity. He further submitted that the appeal has also been dealt with by the Appellate Authority in a proper manner and after recording cogent and plausible findings and only then, it was dismissed. Therefore, the writ petitions are liable to be dismissed on the aforesaid grounds.

6. In **Sri Pappu vs. State of U.P. and others** [2000(18) LCD 321] the question for consideration before the Division Bench was as to whether the writ petition is maintainable against the order of cancellation of fair price shop in view of the Full Bench decision of the Court in the **U.P. Sasta Galla Vikreta Parishad vs. State of U.P. and others** 1993(1) ALR 121. The Division Bench presided over by Hon'ble N.K.Mitra, Chief Justice (as he then was) while examining the amended provisions of U.P. Panchayat Raj Act in view of the Article 243-G of the Constitution under which Gram Panchayat has been entrusted with the function of performing public distribution system, the Court while holding that writ petition is maintainable and observed in paragraph 9 of the report as under:-

"...Allotment of fair price shop or its cancellation is now a statutory function of the Gram Panchayat Exercise of statutory power by Gram Panchayat for collateral purposes is interdicted by Article 14 of the Constitution. Arbitrary grant or cancellation of fair price shop is open to judicial review under Article 226. The Full Bench decision, reliance on which has been placed by the learned Single Judge in dismissing the writ petition as not maintainable, in our opinion, has been rendered obsolete in view of the constitutional and statutory amendments referred to above."

7. After issuance of various other Government Orders, the matter again gaized attention of this Court inre:**Kallu Khan vs. State of U.P. and another** [supra] before the Division Bench of this Court an objection was raised by the Standing Counsel placing reliance on the Full Bench judgement in U.P. Sasta Galla Vikreta parishad (supra) that the right of petitioner being contractual in nature and not statutory, the remedy, if any lies,

either by filing appeal before the appropriate authority as provided under the relevant Government Orders and for alleged breach of contract, the writ petition under Article 226 of the Constitution is not maintainable. The Division Bench after considering the Full Bench decision in **U.P. Sasta Galla Vikreta Parishad, Sri Pappu vs. State of U.P.** [supra], **Harpal vs. State of U.P. and others** 2008(3) ADJ 36 and various other cases, which has been relied by the State Counsel, observed in para 59 of the report as under:-

" In view of the above discussion even if we come to the conclusion that as such the petitioner may not be non-suited on the ground that the writ petition is not maintainable yet it cannot be said that the Writ Court must entertain the writ petition whenever there is any complaint of breach of certain contractual rights. The legal position is otherwise. As observed by the Apex Court in Swapan Kumar Pal (supra) the scope of judicial review is only limited to interfere when there is any error in decision-making process and not otherwise. Even if the writ petition, as such , may not be dismissed on the ground that it is not maintainable yet we are of the view that in such matters exercise of discretion under Article 226 of the Constitution by entertaining writ petition would not be prudent unless it is shown that there is any violation of statutory provisions particularly when alternative remedy is available to the petitioner."

8. From the legal proposition reproduced herein above, it is evident that there is no blanket ban in entertaining the writ petitions. It is true that ordinarily the remedy for breach of contract is a suit for damages or for specific performance and not a writ petition under Article 226 of the Constitution. However, where the contractual dispute has a public law element, the power of judicial review under Article 226 may be invoked. In civil suit, emphasis is on the contractual right whereas the emphasis in writ petition is only the validity of the exercise of power by the authority.

9. It is pertinent to add that issue whether the writ petition is maintainable or the person aggrieved is entitled to invoke the writ jurisdiction was considered by the Apex Court in following cases:-

In **Pratap Singh Keron v. State of Punjab** AIR 1964 SC 72, the Supreme Court observed as under:-

" The Rule of law and Article 226 is designed to ensure that each and every authority in the State including Government of India acts bonafide and within the limits of its power and we consider that when the Court is satisfied that there is an abuse and misuse of power and its jurisdiction is invoked, it is incumbent on the Court to afford justice to the individual."

In the case of **U.P.State Co-operative Bank Limited v. Chandra Bhan Dubey** *(1999) 1 SCC 741*, the Supreme Court has laid down the following proposition:-

"... The Constitution is not a statute. It is a fountainhead of all statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would

limit their jurisdiction. When any citizen or person is wronged, the High Court will step into to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a co-operative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under part Part III of the Constitution or any other right which the law validly made might confer upon him."

A Division Bench of this Court in the case of **Meena Srivastava v. State of U.P.** 2009(1)ADJ 379(DB) held as under:-

" In the facts of the present case writ petition has been filed against an action of a Government Officer, who is public authority. The writ petition under Article 226 of the Constitution of India is maintainable against a public authority. The public authorities, who are State authorities and instrumentalities are not to act arbitrarily, irrationally or unreasonably. Any action of public authority can always be impugned in the writ petition and it cannot be said that the writ petition is not maintainable in such case."

10. Thus the consistent view of the court is that actions and the orders of public officers are amenable to judicial review even if they may arise out of a contract or any scheme of the Government, and therefore, the writ petition cannot be thrown out simply on the technical ground that it is not maintainable.

11. In view of the above discussion, I am of the considered opinion that the order passed by the Sub Divisional Magistrate/District Magistrate cancelling the licence and the Commissioner, who rejected the appeal preferred against the order of cancellation are public servant and decision taken by them in the garb of a legislation cannot escape judicial review under Article 226 of the Constitution and, therefore, a writ against such an order would lie at the behest of the person aggrieved, irrespective of the nature of his service rendered by him. Moreover, by entering into an agreement, a civil right in favour of the petitioners which cannot be taken away on the whims of the authorities.

12. At this juncture, it would be relevant to point out that in ***Rajendra Prasad vs. State of U.P. and others*** [decided on 9th February, 2009 by the Apex Court] the grievance of the appellant before the High Court was that allotment of Fair Price shop at village Kanakpur, district Bhadohi was cancelled by the authority without giving him opportunity of hearing. The High Court summarily dismissed the writ petition. Hence, the appeal by Special leave was preferred by the appellant. The Apex Court after examining the matter and finding that the opportunity of hearing was not afforded, allowed the appeal and quashed the order cancelling the allotment of Fair Price Shop of the appellant and the order passed by the High Court in the writ petition. This case has been referred to show that the Apex Court did not decline to interfere in the matter on the ground that allotment of fair price shop is a contractual agreement or said that it is not amenable to writ jurisdiction. On the other hand, from this judgement of the Apex Court, it clearly emanates that when there is violation of principles of natural justice, the court can very well interfere in

exercise of its discretionary power under Article 226 of the Constitution.

13. Here, it is not in dispute that in all the aforesaid writ petitions, petitioners have complained that the order of cancellation has been passed in blatant disregard of the principles of natural justice as the copies of the documents utilized against them were not furnished. Against the order of cancellation, the petitioners have approached the Commissioner by filing appeals but the appellate authority also dismissed their appeals. Petitioners, after rejection of their appeals, have no other statutory remedy except to invoke the jurisdiction of this Court under Article 226 of the Constitution questioning the validity of the appellate order including the order of cancellation.

14. It may be clarified that the appeal against the cancellation of allotment of fair price shop is creation of the statute. The order of Appellate Authority has also been assailed on various grounds. Therefore, the proceedings of an authority adjudicating upon question affecting the rights are amenable to writ jurisdiction of the High Court under Article 226 of the Constitution.

15. To clarify further, it may be mentioned that it is well recognised law that any authority or body of persons constituted by law or having legal authority to adjudicate upon question affecting the rights of a subject and enjoined with a duty to act judicially or quasi-judicially is amenable to the certiorari jurisdiction of the High Court.

16. In the backdrop of the aforesaid facts, the order of cancellation of license to run fair price shop under the public distribution system subject to appeal, is ultimately amenable to writ jurisdiction as statutory authority cannot claim immunity from judicial review in respect of its functions vis-a-vis public distribution system. Thus the argument advanced by the State Counsel regarding maintainability of writ petition is wholly misconceived and it is held that the writ petitions are maintainable.

17. Next, the precise ground though not taken in the counter affidavit but argued by Sri Rakesh Srivastava, State Counsel is that it is not mandatory to furnish copy of the preliminary inquiry report or other material relied upon by the licensing authority for cancelling the licence of the fair price shop agreement/licence of the petitioner. Rules of natural justice are not applicable in the matter of cancellation of fair price shop agreement/licence as is required under the service jurisprudence and other matters. The authority concerned under law is not required to furnish copy of the preliminary enquiry report or other documents, therefore, as asserted by the petitioners, there is no violation of principles of natural justice. He clarified that the proceedings in question regarding inquiry, suspension and cancellation of fair price shop allotment of the petitioner have been conducted in consonance with the provisions contained in G.O. dated 29.7.2004, which is self contained and as such there was no question of providing copy of enquiry report to the petitioner.

18. Natural justice has a prime role to play in the matter where the justice has

to be secured. Natural justice is another name for common-sense justice.

19. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense/ liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

20. The expressions "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice, which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

21. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. After all, it is an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of **Cooper V. Wandsworth Board of Works (1863) 143 ER 414** the principle was thus stated: (ER p.420)

"[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. "Adam' (says God), "where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?"

22. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. Inquiries which were considered administrative at one time are now being

considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than decision in a quasi-judicial enquiry. [emphasis supplied]

23. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statue or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil rights but of civil liberties, material deprivations and non-pecuniary damages in its wide umbrella comes everything that affects a citizen in his civil life.

24. In ***D.K. Yadav Vs. J.M.A. Industries;*** (1993) 3 SCC 259 the Apex Court while laying emphasis on affording opportunity by the authority which has the power to take punitive or damaging action held that orders affecting the civil rights or resulting civil consequences would have to answer the requirement of Article 14. The Hon'ble Apex Court concluded as under: -

"The procedure prescribed for depriving a person of livelihood would be liable to be tested on the anvil of Article 14. The procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. Article 14 has a pervasive procedural potency and versatile quality, equalitarian in its soul and principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable, and not arbitrary, fanciful or oppressive."

25. In ***National Building Construction Corporation v. S. Raghunathan;*** (1998) 7 SCC 66, the Apex Court in unequivocal words that a person is entitled to judicial review, if he is able to show that the decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he is informed the reasons for withdrawal and the opportunity to comment on such reasons.

26. At this juncture, it would be relevant to produce relevant portion of paragraph 34 of the judgment rendered in ***State Bank of Patiala and others v. S.K.Sharma,*** JT 1996(3) SC 722. Though this decision was given in a service matter but the Hon'ble Apex Court has dealt with the principles of natural justice and the result, if it is not followed:-

(1)Where the enquiry is not governed by any rules/regulations/ statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of

natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e. between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e. in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice, in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No.5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

(2)While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

27. In **M/s Mahatma Gandhi Upbhokta Sahkari Samiti vs. State of U.P. and others** 2001(19)LCD 513 the controversy involved was that the order of cancellation was passed on the basis of inquiry conducted by Sub Divisional Magistrate but the copy of the inquiry report on which reliance was placed was not furnished to the petitioner. A Division Bench of this Court held that when report of inquiry has been relied upon, that report has to be furnished to the person, who is affected by the same.

28. The said legal position has been reiterated and followed in a number of decisions rendered by this Court in the case of **Dori Lal vs. State of U.P. and others** 2006(24)LCD 1521, it has been held that the order cancelling the licence passed without the petitioner being provided the copy of the resolution of the village Panchayat as well as the enquiry report, if any and without being afforded opportunity of submitting explanation and hearing amounts to gross violation of principle of natural justice and hence the order is liable to be quashed.

29. In **Rajpal Singh vs. State of U.P. and others** 2008(16) LCD 891, it has been held by this Court that non-furnishing of the inspection report of the Supply Inspector, which was relied upon for cancellation of the licence, amounts to violation of principle of natural justice, hence, the order of cancellation as well as the appellate order was not sustainable in the eyes of law.

30. Recently, a co-ordinate bench of this Court in **Sita Devi vs. Commissioner, Lucknow & others [2011(29) LCD 626]** held that the action of the authority in passing the order of cancellation without supplying the copy of the preliminary enquiry report while proving the charges against the petitioner on the basis of said enquiry report is hit by the grave legal

infirmity and whole action of the authority is in great disregard of the principles of natural justice.

31. After peeping into the contentions of both the parties and the series of case laws, referred to above, I am of the considered opinion that the cancellation of a agreement/licence of a party is a serious business and cannot be taken lightly. In order to justify the action taken to cancel such an agreement/licence, the authority concerned has to act fairly and in complete adherence to the rules/guidelines framed for the said purposes including the principles of natural justice. The non-supply of a document utilized against the aggrieved person before the cancellation of his allotment of fair price shop licence/agreement offends the well-established principle that no person should be condemned unheard.

32. Thus from the series of decisions, referred to hereinabove, it clearly comes out that the preliminary enquiry report, inspection report or complaint or any other document which is utilized by the authority while cancelling the licence of a fair price shop licence, same has to be supplied to the licence holder and personal hearing is also to be afforded otherwise the proceedings would be in blatant disregard of the principles of natural justice.

33. In view of the above, the impugned orders passed by the appellate authority and the order of cancellation are hereby quashed. Needless to say that this order shall not preclude the competent authority from passing appropriate order in accordance with law.

34. All the writ petitions stand allowed in above terms.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.04.2011

BEFORE
THE HON'BLE ASHOK BHUSHAN, J.
THE HON'BLE RAN VIJAY SINGH, J.

Civil Misc. Writ Petition No. 4567 of 2011

Khem Singh Pachhara ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri Swarn Kumar Srivastava
Sri Anil Kumar Srivastava

Counsel for the Respondents:
Sri P.K.Mishra
Sri B.D. Madhyan
Sri Satish Mandhayan
Sri S.K. Tripathi
C.S.C.

Constitution of India Art. 226, 243-ZG- Writ Jurisdiction-Scope-Petition of Quo Warranto-Questioning the eligibility and election of Respondent No. 8 as member of Nagar Panchayat-argument that the petitioner is not a candidate-can not be forced to file election petition-held misconceived-in view of clear cut bar contained under Art. 243Z-G only remedy to file election Petition.

Held: Para 21

The Apex Court in the said judgment has also noticed the submission as to whether the writ of quo warranto can be issued when an incumbent is holding an elected office by virtue of election. The answer was given in negative. It was held that challenge essentially is to the election of the appellant and hence the bar under Article 243 ZG is attracted. The appeal was allowed and the judgement of the High Court was set-aside. The above judgment of the Apex Court applies in the facts of the present case

and in view of the law laid down by the Apex Court in Kurapati Maria Das case (supra), the writ petition cannot be entertained.

Case law discussed:

2010 (10) ADJ 484, JT (2009) 7 SCC 387, AIR 1982 SC 983, 1999 (4) SCC 526

(Delivered by Hon'ble Ashok Bhushan,J.)

1. Heard learned counsel for the petitioner, Shri B.D. Mandhyan, learned senior counsel for respondent no.8, Shri P.K. Mishra for respondent no.2 and the learned Sanding Counsel.

2. This writ petition, petitioner has prayed for a issue of writ, order or direction in the nature of quo warranto directing the District Election Officer/District Magistrate Mathura to quash the election of the respondent no.8, as Member of Kshettra Panchayat Raya Ward No. 72 Gram Panchayat Lohwan Block Raaya Tehsil Mahawan District Mathura.

3. Counter and rejoinder affidavits have been exchanged between the parties and with the consent of the parties this writ petition is finally decided.

4. Brief facts which emerge from the pleadings of the parties are:The petitioner claims to be a social worker and resident of Block Raaya Tehsil Maant, District Mathura. Election for Member of Kshettra Panchayat Raaya, Ward No.72 was held. The respondent no.8 filed her nomination and contested the election and was declared elected on 30/10/2010 as Member from Ward No.72. The petitioner who was not a contesting candidate in the election has come up in this writ petition challenging the election of the respondent no.8.

5. The petitioner's case in the writ petition is that the respondent no.8, being an Anganbari Karyakarti, was not eligible to contest the election as it is in violation of the order dated 28/6/2010, issued by the State Election Commission, U.P. The State Election Commission, U.P. by Government Order dated 28/6/2010, has informed all the District Magistrates that the Anganbari Worker/Sahayika, Asha Bahu, Kissan Mitra, Shiksha Mitra and Gram Rozgar Sewak etc. who received honorarium from the State Government cannot contest the election of Gram Panchayat and local bodies. The petitioner's case further is that the respondent no.8, submitted her resignation on 22/12/2010, much after she was elected as Member, Kshettra Panchayat Raaya, Ward No.72, which information has been provided under the Right to Information Act by Bal Vikas Pariyojana Adhikari, Mathura.

6. In the counter affidavit, filed by the respondent no.8, it has been stated that the petitioner neither being a candidate nor anyway connected with the election has no locus standi to challenge the election of the respondent no.8, by filing this writ petition. It has further been submitted that against the election of respondent no.8, two election petitions have already been filed in the Court of District Judge, Mathura one by Smt. Radha and another by Sri. Arvind Kumar. It has been stated that the remedy of challenging the election, if any is only by filing election petition and the election of respondent no.8, cannot be challenged by means of writ petition. It has further been submitted that the respondent no.8, before filing her nomination as Member Kshettra Panchayat has already submitted her

resignation as Anganbari Worker and was fully eligible for contesting the election. It has further been pleaded that her resignation was submitted in the office of District Programme Officer, Mathura which was received on 04/10/2010. The report submitted by the Bal Vikas Pariyojana Adhikari, that the respondent no.8 resigned on 22/12/2010, is not correct. It has further been submitted that the respondent no.8 has not received any honorarium after 04/10/2010.

7. Rejoinder affidavit has been filed by the petitioner reiterating that the respondent no.8 being an Anganbari Worker was disqualified from contesting the election. Reliance has been placed on the Division Bench judgment of this Court in **Srimati Sarita Devi Vs. State of U.P. & Ors, 2010 (10) ADJ 484.**

8. Learned counsel for the petitioner in support of the writ petition contended that the Anganbari worker holds the office of profit and is clearly disqualified from contesting the election as per the government Order dated 28/6/2010, issued by the State Government as has been laid down by the Division Bench judgment in **Srimati Sarita Devi's case (supra)**. It is submitted that the respondent no.8, being disqualified has no authority to hold the office of member of Kshettra Panchayat and a writ of quo warranto be issued. It is submitted that the petitioner being not a candidate in the election cannot file an election petition and the only remedy left to the petitioner is to challenge the election by means of filing the writ petition. It is submitted that the writ of quo warranto is clearly maintainable.

9. Shri B.D. Mandhyan, learned senior counsel appearing for respondent no.8, submitted that this writ petition is essentially a writ petition challenging the election of respondent no.8. He submits that this writ petition is clearly barred under the provisions of Article 243 ZG of the Constitution of India. He submits that the only remedy left to the petitioner was to challenge the election by filing an election petition in accordance with the Rules framed under the Uttar Pradesh Kshettra Panchayat and Zila Parishad Adhiniyam, 1961, hereinafter called the "Act, 1961".

10. Shri P.K. Mishra, learned counsel appearing for the respondent no.2, has also submitted that this writ petition is not maintainable. He has placed reliance on the judgment of the Apex Court in **Kurapati Maria Das Vs. Dr. Ambedkar Seva Samajan & Ors, JT (2009) 7 SCC 387.**

11 . We have heard the submissions of the learned counsel for the parties and have perused the record.

12. The petitioner who claims to be a social worker, by means of this writ petition is challenging the election of respondent no.8 as Member of Kshettra Panchayat Raaya Ward No. 72 Gram Panchayat Lohwan Block Raaya Tehsil Mahawan District Mathura. It is useful to refer to the pleadings of paragraphs 2 and 3 of the writ petition which are as follows:

"2. That by means of the aforesaid writ petition, the petitioner is challenging the election of the respondent no.8 as Member Kshettra Panchayat Raya Ward No. 72 Gram

Panchayat Lohwan Block Raaya Tehsil Mahawan District Mathura, the same being in violation of the directives issued by the State Election Commission U.P. Lucknow as contained in the Order dated 28.06.2010. For kind perusal of this Hon'ble Court, a true of the Order dated 28.06.2010 passed by the State Election Commission, U.P. is bein filed and marked as Annexure-1 to this writ petition.

3. That It is relevant to mention here that the petitioner is the social worker and is the resident of same Block e.g. Block Raaya Tehsil Maant, District Mathura and he was not the contesting candidate of Member Kshettra Panchayat Raya Ward No. 72 Gram Panchayat Lohwan Block Raaya Tehsil Mahawan District Mathura, upon which the respondent no.8 has been elected in violation of directives issued by the State Election Commission, U.P."

13. The first question which is to be considered is as to whether this writ petition is barred by provisions of Article 243 ZG of the Constitution of India as contended by the learned counsel for the respondents.

14. From the pleadings of the petitioner as noticed above, it is clear that the challenge in this writ petition is essentially the challenge to the election of the respondent no.8. The election of Member Kshettra Panchayat Raya Ward No. 72 Gram Panchayat Lohwan Block Raaya Tehsil Mahawan District Mathura was held in accordance with the Act, 1961 and according to the Rules framed under the said provision namely:U.P. Kshettra Panchayat (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules, 1994 (hereinafter referred to as the 1994, Rules), the election can be challenged by filing election petition. As pleaded by the respondent no.8, that two election petitions challenging the election have already been filed in accordance with the relevant rules which are pending consideration, whether election to an office of Kshettra Panchayat has to be challenged under the statutory rules and whether a writ of quo warranto should be entertained by this Court under Article 226 of the Constitution of India, are the questions to be answered.

15. The Apex Court **in *Jyoti Basu Vs. Debi Ghosal, AIR 1982 SC 983*,** has laid down following:-

"A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations

of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a strait- jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute. ....."

16. Thus, the election of a Member of Kshettra Panchayat has to be challenged in accordance with the statutory Rules, 1994 as quoted above.

17. Article 243ZG of the Constitution of India provides for Bar to interference by courts in electoral matters which is quoted below:

"Art.243ZG.Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

18. The judgment of the Apex Court relied on by the counsel for the respondents in **Kurapati Maria Das (supra)** fully supports the contention of the learned counsel for the respondents.

19. **In Kurapati Maria Das (supra)** a writ petition was filed under Article 226 of the Constitution challenging the election of appellant as a Councilor. The ground of challenge was that the appellant contested the election as a Scheduled Caste Candidate "Mala" whereas he did not belong to scheduled caste and had wrongly been elected as scheduled caste candidate. The learned single judge allowed the writ petition holding that the appellant was not entitled to contest the election as scheduled caste category candidate. The writ petition was allowed and the Special Appeal filed before the Division Bench was also dismissed. The appellant thereafter filed Special Leave Petition (C) No.15144 of 2007, in the Apex Court which was heard and decided.

20. In the aforesaid case, the question as to whether the election was barred under Article 243ZG (b) of the Constitution of India was also raised and gone into by the Apex Court. In the aforesaid case, the Apex Court judgment in **K. Venkatachalam Vs. A. Swamickan & Anr, 1999 (4) SCC 526**,

was also noted and distinguished. The Apex Court laid down following in paragraphs 27,29,31 and 34 which are quoted below:

"27. We are afraid, we are not in position to agree with the contention that K. Venkatachalam v. A Swamickan & Anr. (1999) 4 SCC 526 is applicable to the present situation. Here the appellant had very specifically asserted in his counter affidavit that he did not belong to the Christian religion and that he further asserted that he was a person belonging to the Scheduled Caste. Therefore, the Caste status of the appellant was a disputed question of fact depending upon the evidence. Such was not the case in K. Venkatachalam v. A Swamickan & Anr. (1999) 4 SCC 526. Every case is an authority for what is actually decided in that. We do not find any general proposition that even where there is a specific remedy of filing an Election Petition and even when there is a disputed question of fact regarding the caste of a person who has been elected from the reserved constituency still remedy of writ petition under Article 226 would be available.

29.Shri Gupta, however, further argued that in the present case what was prayed for was a writ of quo warranto and in fact the election of the appellant was not called in question. It was argued that since the writ petitioners came to know about the appellant not belonging to the Scheduled Caste and since the post of the Chairperson was reserved only for the Scheduled Caste, therefore, the High Court was justified in entering into that question as to whether he really belongs to Scheduled Caste.

31. It is an admitted position that Ward No.8 was reserved for Scheduled Cast and so also the Post of Chairperson. Therefore, though indirectly worded, what was in challenge in reality was the validity of the election of the appellant. According to the writ petitioners, firstly the appellant could not have been elected as a Ward member nor could he be elected as the Chairperson as he did not belong to the Scheduled Caste. We can understand the eventuality where a person who is elected as a Scheduled Caste candidate, renounces his caste after the elections by conversion to some other religion. Then a valid writ petition for quo warranto could certainly lie because then it is not the election of such person which would be in challenge but his subsequently continuing in his capacity as a person belonging to a particular caste.

34.Once it is held that the aforementioned case was of no help to the respondents, the only other necessary inference which emerges is that the bar under Article 243-ZG would spring in action. "

21. The Apex Court in the said judgment has also noticed the submission as to whether the writ of quo warranto can be issued when an incumbent is holding an elected office by virtue of election. The answer was given in negative. It was held that challenge essentially is to the election of the appellant and hence the bar under Article 243 ZG is attracted. The appeal was allowed and the judgement of the High Court was set-aside. The above judgment of the Apex Court applies in the facts of the present case and in view of the law laid down by the Apex Court in Kurapati

Maria Das case (supra), the writ petition cannot be entertained. The Division Bench judgement relied on by the learned counsel for the petitioner in the case of Srimati Sarita Devi (supra) does not help the petitioner in the present case. The said judgment is an authority that an Anganbari Workers are disqualified from contesting the election of Panchayat and they are not eligible to contest the Panchayat election, but the said case was not a case challenging any election, but the question which was considered in the said case was whether the State Election Officer has any right to debar the Shiksha Mitra/Anganbari Worker from contesting the Panchayat Election and, whether the honorarium received by Shiksha Mitra and/or Aanganbari workers for rendering their respective services falls within the purview of "office of profit." There cannot be any dispute to the propositions as laid down in the said case. However, the said judgment does not help the petitioner in the present case, and it is not an authority for the proposition to hold that election of an elected member of Kshettra Panchayat can be challenged by filing a writ of quo warranto.

22. In view of the foregoing discussion, we are satisfied that the petitioner cannot be allowed to challenge the election of respondent no.8, by means of this writ petition under Article 226 of the Constitution of India.

23. The writ petition has no merit and is dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 30.05.2011

BEFORE
THE HON'BLE SUDHIR AGARWAL,J.

Service Single no. - 5086 of 2005

Pradeep Kumar ...Petitioner
Versus
State of U.P. Thru Secy. Basic Education,Civil Sectt. and 2 others ...Respondents

Counsel for the Petitioner:
Sri Alok Mishra

Counsel for the Respondents:
C.S.C.
Sri Ghaus Beg

Constitution of India, Article 226- Compassionate Appointment-after 3 years of death-widow for the first time applied with stipulation that she is unable to work hence her minor son be given appointment-son of the deceased after completing graduation applied for compassionate appointment-neither the widow nor the son stated about financial crisis-rejection on ground of delay-held-from own showing no financial suppressing need established-compassionate appointment not an alternative nor reservation for appointment-not entitled for appointment.

Held: Para 22 and 32

In the case in hand, after the death of deceased employee on 18th July, 1993, his wife took three years in informing D.B.E.O. that she is not capable of service and her two children are minor. She did not refer to any factum of suffering any hardship etc.. On the contrary, she mentions only this much that when her children become major, they may be allowed to serve the

department. The entire application filed as Annexure 1 to the writ petition nowhere mentions anything about financial hardship or penury of the family.

In the circumstances, for mere sheer conjuncture and surmises, as argued orally, this Court find it difficult to hold that the impugned order is erroneous and deserve interference.

Case law discussed:

(2010) 4 UPLBEC 2776; (2011) 1 UPLBEC 494; 1997 (11) SCC 390; 1999 (I) LLJ 539; AIR 1998 SC 2230; AIR 2000 SC 2782; AIR 2004 SC 4155; 1995 (6) SCC 436; (1996) 8 SCC 23; 1998 SC 2612; JT 2002 (3) SC 485=2002 (10) SCC 246; AIR 2005 SC 106; AIR 2006 SC 2743; (2009) 13 SCC 122=JT 2009 (6) SC 624; 2009 (6) SCC 481; 2007 (6) SCC 162; 2011 (4) SCALE 308; 2011 (3) ADJ 91; Nagesh Chandra Vs. Chief Engineer, Vivasthan Ga Warg & Ors. decided on 7th January, 2011 in Special Appeal No.36 of 2011; 2011(1) ADJ 679; JT 2011 (4) SC 30s

(Delivered by Hon'ble Sudhir Agarwal,J.)

1. Heard learned counsel for the petitioner and perused the record.

2. The petitioner has sought compassionate appointment, which has been rejected by means of the impugned order dated 23rd February, 2006 passed by the State Government rejecting the claim of the petitioner on the ground of extra ordinary delay and laches and by observing that after such a long time there is no justification for providing compassionate appointment. Hence this writ petition.

3. Petitioner's father working as Assistant Teacher died on 18th July, 1993 when the petitioner was about 11 years of age. His mother send an application dated 09.06.1996 stating that she is not capable of performing any job but requested District Basic Education Officer, Unnao (hereinafter referred to as "D.B.E.O.") that on attaining majority, her children may be provided such employment. The petitioner thereafter claims to have submitted an application for compassionate appointment on 18th July, 2001 after completing education upto B.A. which was considered by the authorities concerned. Ultimately, by means of the impugned order, the same has been rejected. Relying on Division Bench decisions of this Court in **Vivek Yadav Vs. State of U.P. & Ors. (2010) 4 UPLBEC 2776** and **Subhash Yadav Vs. State of U.P. & Ors. (2011) 1 UPLBEC 494,** the learned counsel for the petitioner submitted that unless State Government apply its mind to financial hardships on the part of the family, denying compassionate appointment and rejection of claim merely on the basis of delay is not justified.

4. However, I find no force in the submission.

5. Repeatedly, it has been held that the purpose and object of compassionate appointment is to enable the members of family of the deceased employee in penury, due to sudden demise of the sole breadwinner, get support and succour to sustain themselves and not to face hardship for their bore sustenance.

6. In **Managing Director, MMTC Ltd., New Delhi and Anr. Vs. Pramoda Dei Alias Nayak 1997 (11) SCC 390** the Court said:

"As pointed out by this Court, the object of compassionate appointment is to enable the penurious family of the deceased employee to tied over the

sudden financial crises and not to provide employment and that mere death of an employee does not entitle his family to compassionate appointment."

7. In **S. Mohan Vs. Government of Tamil Nadu and Anr. 1999 (I) LLJ 539** the Supreme Court said:

"The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

8. In **Director of Education (Secondary) & Anr. Vs. Pushpendra Kumar & Ors. AIR 1998 SC 2230** the Court said:

"The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner which has left the family in penury and without any means of livelihood."

9. In **Sanjay Kumar Vs. The State of Bihar & Ors. AIR 2000 SC 2782** it was held:

"compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood"

10. In **Punjab Nation Bank & Ors. Vs. Ashwini Kumar Taneja AIR 2004 SC 4155,** the court said:

"It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis."

11. An appointment on compassionate basis claimed after a long time has seriously been deprecated by Apex Court in **Union of India Vs. Bhagwan 1995 (6) SCC 436, Haryana State Electricity Board Vs. Naresh Tanwar, (1996) 8 SCC 23.** In the later case the Court said :

"compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. ..... the very object of appointment of dependent of deceased-employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years."

12. In **State of U.P. & Ors. Vs. Paras Nath AIR 1998 SC 2612,** the Court said:

"The purpose of providing employment to a dependent of a government servant dying in harness in

preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case."

13. In **Hariyana State Electricity Board Vs. Krishna Devi JT 2002 (3) SC 485 = 2002 (10) SCC 246** the Court said:

"As the application for employment of her son on compassionate ground was made by the respondent after eight years of death of her husband, we are of the opinion that it was not to meet the immediate financial need of the family ...."

14. In **National Hydroelectric Power Corporation & Anr. Vs. Nanak Chand & Anr. AIR 2005 SC 106,** the Court said:

"It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crises."

15. In **State of Jammu & Kashmir Vs. Sajad Ahmed AIR 2006 SC 2743** the Court said:

"Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution."

16. Following several earlier authorities, in **M/s Eastern Coalfields Ltd. Vs. Anil Badyakar and others, (2009) 13 SCC 122 = JT 2009 (6) SC 624** the Court said:

"The principles indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over."

17. In **Santosh Kumar Dubey Vs. State of U.P. & Ors. 2009 (6) SCC 481** the Apex Court had the occasion to consider Rule 5 of U.P. Recruitment of

Dependents of Government Servants Dying in harness Rules, 1974 (hereinafter referred to as "1974 Rules") and said:

"The very concept of giving a compassionate appointment is to tide over the financial difficulties that is faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in Government service."

18. The Court considered that father of appellant Santosh Kumar Dubey became untraceable in 1981 and for about 18 years the family could survive and successfully faced and over came the financial difficulties. In these circumstances it further held:

"That being the position, in our considered opinion, this is not a fit case for exercise of our jurisdiction. This is also not a case where any direction could be issued for giving the appellant a compassionate appointment as the prevalent rules governing the subject do not permit us for issuing any such directions."

19. In **I.G. (Karmik) and Ors. v. Prahalad Mani Tripathi 2007 (6) SCC 162** the Court said:

"Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion."

20. The importance of penury and indigence of the family of the deceased employee and need to provide immediate assistance for compassionate appointment has been considered by the Apex Court in **Union of India (UOI) & Anr. Vs. B. Kishore 2011(4) SCALE 308.** This is relevant to make the provisions for compassionate appointment valid and constitutional else the same would be violative of Articles 14 and 16 of the Constitution of India. The Court said:

"If the element of indigence and the need to provide immediate assistance for relief from financial deprivation is taken out from the scheme of compassionate appointments, it would turn out to be reservation in favour of the dependents of an employee who died while in service which would be directly in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution."

21. It is thus clear that rule of compassionate appointment has an object to give relief against destitution. It is not a provision to provide alternate employment or an appointment commensurate with the post held by the deceased employee. It is not by way of giving similarly placed life to the dependents of the deceased. While considering the provision pertaining to relaxation under 1974 Rules, the very object of compassionate appointment cannot be ignored. This is what has been reiterated by a Division Bench of this Court in **Smt. Madhulika Pathak Vs. State of U.P. & ors. 2011 (3) ADJ 91.** The decision in **Vivek Yadav (supra)** has been considered later on by another Division Bench in **Nagesh Chandra Vs. Chief Engineer, Vivasthan Ga Warg & Ors.** decided on **7th January, 2011** in **Special Appeal No.36 of 2011 and Court said:**

"Though in the judgment it has been held that when the rules are prevailing for relaxation for making the application, a member of the family, on attaining majority, can file an application for due consideration but in the judgment itself it has been held that the law relating to compassionate appointment is no longer res integra. The right of compassionate appointment does not confer a right but it does give rise to the legitimate expectation in a person covered by the rules that his application should be considered, if otherwise he meets with the requirement."

22. In the case in hand, after the death of deceased employee on 18th July, 1993, his wife took three years in informing D.B.E.O. that she is not capable of service and her two children are minor. She did not refer to any factum of suffering any hardship etc.. On the contrary, she mentions only this much that when her children become major, they may be allowed to serve the department. The entire application filed as Annexure 1 to the writ petition nowhere mentions anything about financial hardship or penury of the family.

23. The petitioner Pradeep Kumar having his date of birth as 30.07.1982 passed High School in 1996 and Intermediate in 1998. He passed out B.A. (Final) in 2001 from D.S.M. College Unnao affiliated to Chhatrapati Sahuji Maharaj University, Kanpur. The application submitted by him on 18th July, 2001 neither mentions nor there is even a whisper about the existence or continued financial crisis or penury of the family though application was made after eight years. It only mentions that now he has passed B.A. (Final) and therefore, be appointed on compassionate basis in the quota meant for such appointment. It shows that he had an assumption that there is a specific quota meant for appointment and he has a vested right to get appointment thereagainst.

24. The D.B.E.O. vide letter dated 31st August, 2001 informed the petitioner that his application was not on the prescribed format and it has several discrepancies. Besides, application having been submitted after five years from the date of death, it ought to be addressed to the Secretary, U.P. Basic Education Board, Allahabad. It is said that formalities were completed and application was submitted thereafter by the petitioner on 4th September, 2001. Since no action was taken, a legal notice dated 24.12.2004 was served upon the

respondents. In the entire notice dated 24.12.2004 there is only one sentence that financial condition of the client of noticee's counsel was very bad and the family is at the verge of starvation. Nothing said as to how and in what manner petitioner's family was suffering financial hardship though getting family pension etc.

25. After petitioner's application was rejected by the impugned order dated 23rd February, 2006, he got his writ petition amended by adding paragraphs 14-A to 14-F wherein he has only referred to power of relaxation with respect to the period of five years but nothing has been said about penurious condition of the family and continued financial scarcity for such a long time during which he obtained his education and the family could sustain all difficulties. In the writ petition there is only one paragraph i.e. para 13 that the whole family of the deceased is on the verge of starvation as there is no earning member of the family and it is very difficult for them to mitigate hardship accrued due to the death of the deceased. Nothing has been said as to how and in what manner the family has maintained itself in the last eight years simultaneously providing education upto graduation to the petitioner also.

26. Learned counsel for the petitioner submitted that his application has been dismissed only on the ground of the fact that the application is submitted after five years. But this fact is also not correct, inasmuch as, in the impugned order, Secretary, Basic Education Board, has clearly observed that no material was supplied by the petitioner for considering the question of grant of relaxation in favour of the petitioner.

27. Before this Court also, the petitioner has not placed any such material. In a case where no such material is provided by a person seeking compassionate appointment after a long time, it cannot be said that respondents have exercised their power in a wholly illegal manner.

28. A similar contention has been examined by a Division Bench of this Court recently in **Om Prakash Pandey Vs. State of U.P. 2011 (1) ADJ 679** wherein after referring to the decision in **Vivek Yadav (supra),** the Court said :

"We have no quarrel with the proposition that when the relevant rule gives the scope of relaxation or dispensation of the period of five years, it cannot be rejected merely on the basis of the fact that the application was beyond the prescribed time. Similarly, each and every case has its own ground of acceptance or rejection. Facts vary from case to case. In the instant case, save and except the ground that the Appellant-writ Petitioner was not in a position to make the application in time since he was minor, no other ground is available from the order of the authority. Though there is a format/proforma for making application beyond the period giving details of landed properties, bank account/s and other relevant materials and though the Appellant-writ Petitioner has said that he has made the application but from the annexure we find that proforma is totally unfilled. No cause of any continuance of suffering or hardship has been indicated. In such circumstances, the rejection as made by the authority seems to be valid. Moreover, the widow of the deceased, even having no proper qualification, had not made any application before the

authority concerned for her appointment even in the lowest grade to meet the immediate need of the family. Therefore, the grounds, which have been taken by the Appellant herein, are vague in nature. Had it been the case of non-consideration of cause or of rejection without basis, the appellate Court would have interfered with it by sitting in a Court of Appeal, arising out of writ jurisdiction under Article 226 of the Constitution of India. But we cannot go into the reason of the reasonableness of rejection like regular Appellate Court."

29. In this case also the only application placed on record shows that petitioner having completed B.A. (Final) had sought appointment and nothing more than that. The format, in which he has alleged to have been applied, is not on record, in order to show that he has placed relevant material before the authority concerned justifying relaxation of the period of five years. The competent authority, in the impugned order, has clearly observed that no ground was made out by petitioner for relaxation. None has been disclosed in the entire writ petition.

30. In **Vivek Yadav (supra) and Subhash Yadav (supra)** the Court has clearly held that application was rejected only on the ground that it was moved after five years and it did not appear from the order challenged those cases that the authority concerned applied its mind on the question, whether the situation warrants relaxation or not. But that is not the case in hand. In the case in hand, the authority concerned has addressed itself to this aspect of the matter also and has found that no ground for relaxation has been made out by the petitioner. Challenging the said order, this finding recorded by respondent No.2 in the impugned order has not been shown to be perverse or contrary to record as discussed above.

31. In **Local Administration Department and Anr. v. M. Selvanayagam @ Kumaravelu JT 2011 (4) SC 30,** Apex Court considered almost a similar case arising out of a judgment of the Madras High Court. One Meenakshisundaram, a Watchman in Karaikal Municipality died on 22nd November, 1988 leaving behind a widow and two sons, one of whom was eleven years old at that time. The widow was thirty-nine years of age but immediately did not make any application for compassionate appointment. On 29th July, 1993, after about four and a half years and odd, she made an application for compassionate appointment of M. Selvanayagam @ Kumaravelu since he had passed S.S.L.C. Examination in April, 1993. However, the appointment could not have been granted since M. Selvanayagam @ Kumaravelu was minor at that time also. Another application thereafter was given after 7 years and 6 months from the date of death of Meenakshisundaram. Having receipt no reply, a writ petition was filed which was disposed of directing the Municipality to pass an order on the application for compassionate appointment. The claim for compassionate appointment ultimately rejected by the Municipality by order dated 19th April, 2000. The writ petition against the said order was dismissed by the learned Single Judge but in intra-court appeal, it was allowed vide judgment and order dated 30th April, 2004 and the Municipality was directed to provide compassionate appointment. It is this order, which was assailed before the Apex Court. The Municipality declined to give

compassionate appointment observing that wife of the deceased employee did not make any request immediately after the death for compassionate appointment which shows that she was not facing any financial crisis in the family at that time. This reasoning was negatived by the Division Bench of the High Court but the Apex Court did not approve the judgment of the High Court and said:

"....there is a far more basic flaw in the view taken by the Division Bench in that it is completely divorced from the object and purpose of the scheme of compassionate appointments. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succor to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

8. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time limit within which appointment on compassionate grounds must be made but what needs to be emphasized is that such an appointment must have some bearing on the object of the scheme.

9. In this case the Respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on July 2, 1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the Respondent did not come under the scheme of compassionate appointments."

32. In the circumstances, for mere sheer conjuncture and surmises, as argued orally, this Court find it difficult to hold that the impugned order is erroneous and deserve interference.

33. The writ petition therefore lacks merit. Dismissed.

34. Interim order, if any, stands vacated.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHAHAD 10.05.2011

BEFORE
THE HON'BLE AMAR SARAN,J.
THE HON'BLE S.C. AGARWAL,J.

Criminal Misc. Writ Petition No. - 8266 of 2011

Anil Kumar Jaiswal ...Petitioner
Versus
State of U.P. and others ...Respondent

Counsel for the Petitioner:
Sri Arvind Kumar Singh II
Sri K.K. Singh

Counsel for the Respondent:
Govt. Advocate

U.P. Gangster and Anti Social Activities (Prevention) Act 1986-Section 17-by show cause notice property acquired as result of commission of offence-matter referred to competent court for trail-it is for trail court to be consider-whether the property should be confiscated or released-not for writ court-petition dismissed.

Held: Para 9

For all these reasons, as the matter has now been referred to the Special Judge, it is for the Special Judge to consider the matter on merits whether the property is to be confiscated or released.

Case law discussed:
Smt. Kahkashan Parveen Vs. State of UP,1999 (39) 719; 2003 AIR SCW 2458; 2009 (1) ALJ 556; AIR 1981, SC 1363;

(Delivered by Hon'ble Amar Saran,J.)

1. Heard learned counsel for the petitioner and learned Additional Government Advocate.

2. This writ petition has been filed for quashing of orders dated 30.12.2010 and 15.4.2011 passed by the District Magistrate, Kushinagar whereby show cause notice was issued to the petitioner and thereafter his property was attached and the matter was referred to the competent Court having jurisdiction to try the offence under the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as "the Act").

3. Learned counsel for the petitioner contended that the said proceedings were initiated in a mala fide manner in view of a dispute with one Subhash Chandra Upadhyay because the latter had been allotted a petrol pump. The petitioner had only taken the property on lease from respondent No. 4 Smt. Sirjawati Devi, who was the wife of respondent No. 5 Shiv Kumar. He further submitted that the petitioner Anil Kumar Jaiswal and Smt. Sirjawati Devi, wife of the alleged gangster Shiv Kumar had made representations on 21.1.2011 before the District Magistrate, Kushinagar, wherein they had claimed that the property was acquired with the aid of one Prayag, the father-in-law of Smt. Sirjawati, who was a good carpenter and used to do the work of furniture and possessed a shop. He also had income from agricultural land as he possessed 2 acres of good agricultural land. The District Magistrate rejected this contention as the petitioner and Smt. Sirjawati Devi were unable to substantiate the income from other sources by any documentary or other evidence.

4. Admittedly, Shiv Kumar was facing prosecution in case crime No. 612 of 2007, under sections 41/411, 403, 413, 414, 419, 420, 467, 468 and 471 IPC and 3(1) of the Gangsters Act, P.S. Patherwa and case

crime No. 362 of 2007, under sections 41/411, 419, 420, 413 and 414 IPC, PS Patherwa, district Kushinagar and the District Magistrate, Kushinagar was prima facie satisfied that the property had been acquired as a result of commission of the offence triable under the Act. He, therefore attached the property and referred the matter to the competent court under section 16(1) of the Act.

5. Learned counsel for the petitioner has placed reliance on a Division Bench decision of this Court in *Smt. Kahkashan Parveen Vs. State of UP,1999 (39) 719.* However, in the said Division Bench decision, it was observed that no satisfaction was properly recorded by the District Magistrate that the property had been acquired as a result of the anti social activities of the petitioner. Furthermore, the District Magistrate had passed orders of confiscation and not merely of attachment and it was observed by the Division Bench that he has thus, overstepped his jurisdiction.

6. Reliance has also been placed by the learned counsel for the petitioner in the case of *State of Bihar Vs. Kalika Kuer alias Kalika Singh and others, 2003 AIR SCW 2458* for the proposition that a subsequent Division Bench is bound to follow the earlier Division Bench and not to simple declare the earlier decision as per incuriam, but the Court should refer the matter to a larger bench.

7. As we find that the facts of this case are completely different, there is no need to refer the matter to a larger bench. Moreover, in an earlier Division Bench decision in Manzoora and others Vs. State of UP and others, 2009 (1)ALJ 556, it has been observed as follows:

16.... The order of attachment by the D.M. is also not final, as he is required to refer the matter under Section 16(1) to the Court entitled to try the offence under the Gangster Act, which after conducting an inquiry as provided under Section 6(3), passes appropriate orders under Section 17 of the Gangsters Act This order is also subject to an appeal to the High Court under Section 18. Thus this writ petition must also fail on account of the availability of effective alternative remedies to the petitioners and because a complete code for dealing with such matters has been provided under the Gangsters Act.

17. Such a view has also been taken by the Division Bench in the case of Krishna Murari Agarwal v. District Magistrate, Jhansi and Ors. 2001 (1) JIC 236 (All) which is to the effect that the Special Judge, Gangsters Act is the appropriate authority to examine such questions of fact and that the Act and that a writ petition is not the appropriate forum for questioning such orders.

Paragraph 4 of the aforesaid judgement may be usefully extracted as under:

The question whether the property attached has been acquired by a gangster as a result of the commission of an offence under U.P. Gangsters & Anti-Social (Activities) Prevention Act, 1986 is a pure question of fact The claim of the petitioner that the property has not been acquired by commission of an offence or that it is an ancestral property can only be established by appraisal of the evidence. It will be open to the petitioner to lead oral and documentary evidence in support of his

claim before the Special Judge (Gangsters Act), where the matter has been referred. Such appraisal of evidence is not possible in the present proceedings under Article 226 of the Constitution of India. The act provides a complete machinery as against the decision of the court an appeal lies under Section 18 of the Act."

8. Reference was also made in Manzoora's case (Supra) to the decision of Supreme Court in *Badan Singh alias Baddo Vs. State of UP and others, AIR 1981, SC 1363* for the proposition that the Court cannot investigate into the adequacy or sufficiency of the reasons which weighed with the authority for having reason to believe something, but the Court could only examine whether the reasons were relevant and have a bearing on the matter in regard to which it was required to entertain this belief. It could not be said that in the present case, the District Magistrate could have no reason to believe that the said properties had been acquired as a result of the commission of the offences triable under the Gangsters Act.

9. For all these reasons, as the matter has now been referred to the Special Judge, it is for the Special Judge to consider the matter on merits whether the property is to be confiscated or released.

10. In view of what has been indicated herein above, the writ petition is dismissed.

11. It is made clear that the Special Judge should not be prejudiced by the observations made herein above, which were only for the purpose of disposal of the writ petition and he sould decide the matter on merits.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 30.05.2011

BEFORE
THE HON'BLE SUDHIR AGARWAL,J.

Service Single No. - 10303 of 2006

Shiv Ram Verma ...Petitioner
Versus
U.P.Cooperative Union Ltd. Thru Secy. and 2 others. ...Respondents

Counsel for the Petitioner:
Pt. D.R. Shukla

Counsel for the Respondents:
C S C
Sri Rakesh Kumar

Constitution of India, Article 226-Salary during suspension period-petitioner suspended on ground of pendency of Criminal Trail-after 15 years disciplinary authority passed reinstatement order subject to out come of criminal case-but except subsistence allowance-on ground of "No Work No Pay"-salary during suspension period denied-Criminal Trail given fair acquittal-held-Principle of "No work No pay" not applicable in case in hand-employer can not be allowed to take benefit of their own wrong if an employee not allowed to work-salary can not be denied in view of Brijesh Kumar Kushwaha case.

Held: Para 17 and 18

This Court in the case of Brijendra Prakash Kulshrestha Vs. Director of Education & others 2007 (3) ADJ 1 (DB) has considered the applicability of "no work no pay" and it has been held that an employer cannot deny salary to an employee, who is always willing and ready to work but was not allowed to do so by an act or omission directly attributable to the employer.

Considering the right of petitioner to claim full salary during the period of suspension for the reason that nothing has been found proved against petitioner, I find that from whatever angle the matter is considered, it results in giving a verdict in favour of petitioner. Consequently, the writ petition deserves to succeed.

Case law discussed:

AIR 1959 SC 1342; 2007 (3) ADJ 1 (DB)

(Delivered by Hon'ble Sudhir Agarwal,J.)

1. Heard learned counsel for the parties and perused the record.. As agreed by learned counsel for the parties, I proceeded to hear the matter finally at this stage under the Rules of the Court.

2. The only relief pressed before this Court is the salary for the period of suspension i.e. 1st August, 1968 to 22nd July, 1983 along with interest.

3. The petitioner has sought a writ of certiorari for quashing the order dted 23rd January, 2007 (Annexure 9 to the writ petition) whereby the above request of the petitioner has been turned down only on the ground that the petitioner has been found guilty of delay in disposal of the disciplinary proceedings and hence no salary is payable for the period of suspension. It is not in dispute that the petitioner was placed under suspension on 1st August, 1968 on account of certain irregularities allegedly committed by him while posted as Cooperative Supervisor, Gonda. A first information report was also lodged against him. While placing under suspension vide order dated 1st August, 1968 the petitioner was attached with the office of Assistant Registrar, Cooperative Societies, Gonda where he submitted his joining on 9th February, 1970. A charge sheet was issued to the petitioner on 7th February, 1972 which was replied by the petitioner on 9th March, 1972 stating that the matter is pending investigation by the police and therefore there is no occasion for holding a simultaneous enquiry by the Assistant Registrar. Thereafter the matter remained pending since trial was continuing in the Court.

4. The District Level Committee of the Society passed a resolution on 20.12.1982 that disposal of criminal trial in the Court would take time and therefore the petitioner may be reinstated in the meantime. It appears that against the charge sheet was served upon the petitioner on 19th January, 1982 which was replied by him on 22nd January, 1982. Additional District Cooperative Officer was appointed as enquiry officer by order dated 29th January, 1982 but later on the respondents decided to reinstate the petitioner tentatively as a consequence thereof the Deputy Registrar (Cooperative) by order dated 16th July, 1983 reinstated the petitioner observing that reinstatement shall not adversely affect the matter pending before the Court, the petitioner shall not be posted on a post of responsibility and no amount beyond one fourth of the subsistence allowance shall be paid.

5. In the criminal case i.e., Case No. 1309 of 1981 the Court of Additional Chief Judicial Magistrate, Faizabad acquitted the petitioner vide judgment dated 25.02.1986. Thereafter the petitioner requested the respondents to take a final decision in the matter of salary but no decision was taken. It appears that inquiry officer in the meantime had also submitted a report wherein he did not find any charge proved

against the petitioner. The petitioner aggrieved by inaction on the part of respondents in taking final decision regarding payment of salary and other consequential benefits, approached this Court in Writ Petition No. 6845(S/S) of 1987 wherein an order was issued directing the competent authority to take a final decision in the matter within two months. Pursuant thereto the Deputy Registrar passed an order on 18.07.1988 closing the matter with recommendation for fixation of salary, increment, continuance of service, promotion etc. except full salary for the period of suspension which was directed to be confined only to the extent of subsistence allowance already paid. In taking this decision, the Deputy Registrar observed that it is the petitioner who was responsible for delay in proceedings.

6. The order dated 16.07.1988 was placed before this Court in the aforesaid pending writ petition which came to be finally decided on 15.03.2005 and this Court passed the following order:

"Sri Rakesh Kumar learned counsel for opposite party no.1 has fairly submitted that that this Court may provide that the opposite parties be allowed to issue show cause notice against the petitioner and pass appropriate orders after considering the reply of the petitioner to the said show cause notice.

In view of above, the writ petition is finally disposed of with the liberty to opposite party no.1 to issue such show cause notice regarding payment of salary to the petitioner for the period suspension. However, it is made clear that in the present case petitioner was suspended because of pendency of criminal trial which had resulted in clean and honorable acquittal of the petitioner. It will be for the employer to consider taking such a recourse as the petitioner was under suspension due to continuance of departmental enquiry. This Court is not interfering with the order of reinstatement and the benefits which accrued to the petitioner by issuance of such order. The petitioner has already retired on attaining the age of superannuation.

7. Pursuant to the above, a show cause notice dated 03.06.2005 was issued requiring the petitioner to show cause as to why applying the principle of "no work no pay", full salary during suspension period be declined. The petitioner submitted his reply on 25.07.2005 whereafter the impugned order dated 23.01.2007 has been passed.

8. Learned counsel for the petitioner submitted that no charge has been found proved against petitioner. His suspension was continued for about 15 years for the reasons beyond his control. For pendency of criminal case for more than a decade he was not responsible. It was always open to respondents to hold departmental inquiry and pass appropriate order therein but they chose not to do so. He also submitted where no charge has been found proved, there is no provision under which full salary for the period of suspension can be denied to an employee since during period of suspension though an employee is not asked to perform any duty but relationship of employer and employee continue to subsist, the employee cannot take up any other employment and, therefore, in absence of any statutory provision full salary for period of suspension cannot be denied

unless it is found that the suspension was not wholly unjustified.

9. Sri Rakesh Kumar, learned counsel appearing for the respondents submitted that the petitioner himself was responsible for delay in proceedings inasmuch as he was attached with the office of Assistant Registrar by means of order of suspension but he joined the office of Assistant Registrar after almost two years and thereafter also did not cooperate in departmental inquiry and hence for this entire prolonged suspension, petitioner himself has to be blamed. He cannot be given any benefit and, therefore, full salary has rightly been denied by respondents.

10. The short question up for consideration needs to be adjudicated in this case in what circumstances full salary can be denied to an employee for the period he remained under suspension. In respect to the employees of the State Government the matter is governed by the statutory provisions like Fundamental Rule and Fundamental Rules 54, 54-A and 54-B takes care of such a situation. The cumulative effect of the aforesaid provision is where the suspension of the employee has resulted in a punishment, whether the employee would be entitled for full salary during the period of suspension would be decided by the competent authority after giving a show cause notice to him. But where the competent authority found that the suspension was wholly unjustified, or the employee is exhonerated in the disciplinary enquiry and reinstated, he would be entitled for full salary for the period of suspension.

11. In the case in hand, no provision similar or acin to Fundamental Rule 54, 54-A or 54-B have been shown. The counsels for the parties submitted that the said principles may be followed in the case in hand. However, even without adverting to the aforesaid provision, this Court proceeded to look into the question considering the nature of suspension and its influence on the relationship of employer and employee.

12. The nature and effect of suspension has been considered by Apex Court in The Management of **Hotel Imperial, New Delhi & Ors. Vs. Hotel Workers' Union AIR 1959 SC 1342.** The Apex Court said that the order of suspension only makes the contract of service between the employer and employee in abeyance but neither it results in cessation of said relation nor the parties would be free inasmuch as the employee cannot seek any employment and employer cannot make a substantive recruitment on the post treating the post vacant since the employee placed under suspension, continue to hold lien on the post he was holding. With respect to subsistence allowance the principle is well settled that unless regulated by the statutory rules or terms of contract otherwise, an employee placed under suspension would be entitled for full salary.

13. The contention of counsel for the petitioner that there is no provision under which full salary can be denied to petitioner when no charge against him has been found proved, which shows that suspension was wholly unjustified, could not be contradicted by learned counsel for the respondents since he could not place any provision authorizing respondents to deny full salary to petitioner even if no charge has been proved against him and he has

been exonerated with all benefits except full salary for the period of suspension.

14. It appears that the respondents employer in this case got influenced in taking a decision on this aspect against petitioner on account of long period for which suspension had continued. No justification on the part of respondents has come forward for such prolonged suspension. It is a matter of common knowledge that a criminal trial would take much longer time and, therefore, what respondents had done in July, 1983, i.e., reinstatement of petitioner subject to decision in criminal case, could have been done even much earlier but for the reasons best known to them they took almost fifteen years to take such a decision and throughout this period kept the petitioner under suspension. Obviously, this venture on the part of respondents could be on their own risk and responsibility which they cannot shift or divert towards the petitioner. In the criminal case also petitioner has been acquitted. In so called departmental inquiry also nothing has been found proved against petitioner.

15. The suspension of petitioner, therefore, ex facie was wholly justified. In absence of any provision empowering and authorizing the respondents to deny full salary during the period of suspension, in my view, it cannot be denied to petitioner. Respondents cannot be allowed to take advantage of their own wrong. Petitioner cannot be penalized or victimized for a prolonged suspension by denying him full salary for the period even though neither on the question of delay he has any control nor he could have got the aforesaid suspension curtailed on his own volition. The periodical review ought to have been made by respondents which they admittedly have failed.

16. So far as the aspect of "no work no pay" is concerned, it has no application to the case in hand. Here the petitioner never shirked away from his responsibility or obligation to work but the respondents on their own made him incapable of performing any job by placing him under suspension.

17. This Court in the case of **Brijendra Prakash Kulshrestha Vs. Director of Education & others 2007 (3) ADJ 1 (DB)** has considered the applicability of "no work no pay" and it has been held that an employer cannot deny salary to an employee, who is always willing and ready to work but was not allowed to do so by an act or omission directly attributable to the employer.

18. Considering the right of petitioner to claim full salary during the period of suspension for the reason that nothing has been found proved against petitioner, I find that from whatever angle the matter is considered, it results in giving a verdict in favour of petitioner. Consequently, the writ petition deserves to succeed.

19. In the result the writ petition is allowed. The impugned order dated 23rd January, 2001 (Annexure 9 to the writ petition) is hereby quashed. The respondents are directed to pay full salary to petitioner for the period of suspension but while computing and making payment of full salary, as directed above, respondents shall be entitled to adjust the amount, if any, they have already paid towards subsistence allowance during the aforesaid period.

20. The petitioner shall also be entitled to cost which is quantified to Rs. 20,000/-.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.04.2011

BEFORE
THE HON'BLE SHEO KUMAR SINGH, J.
THE HON'BLE SABHAJEET YADAV, J.

Civil Misc. Writ Petition No. 12500 of 2010

Mahesh Narain Gupta ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri R.P. Tiwari

Counsel for the Respondent:
C.S.C.

Civil Services Regulation-Rule-351-A- Dismissal order-Punishment inflicted without proper opportunity to defend without indicating time place and date of inquiry-order not sustainable - punishment order quashed with liberty to proceed as fresh.

Held: Para 22

On the facts and in the light of analysis so made, we are of the considered view that the impugned order of punishment is liable to be quashed with the directions that Enquiry Officer is to provide opportunity to the petitioner to file reply in respect of charges and then to proceed with the enquiry proceeding after opportunity in the manner so permissible in law.

Case law discussed:
1995 SCC Supp.(3), 212, AIR 1960 SC 160, 1960(4)AWC 3227, 2008(1)ADJ; 284(DB(LB))1964AC40

(Delivered by Hon'ble Sheo Kumar Singh, J.)

1. Heard Shri R.P. Tiwari learned counsel in support of this writ petition and learned Standing Counsel who appears for the respondents.

2. Prayer in this petition is for quashing the impugned order dated 26.11.2009 delivered to the petitioner on 17.12.2009 (Annexure No. 3 to the writ petition) passed by the State Government by which the disciplinary proceeding against the petitioner has been concluded by giving two directions i.e. (i) recovery of a particular amount by way of suit; (ii) deductions from the pensionary benefit to the tune of 10% .

3. As pleadings inter-se parties are exchanged, both side requested for the hearing and decision and, thus, we have heard the matter.

For disposal of the writ petition, facts in brief will suffice.

4. Petitioner was in service in the Public Works Department and on 31.1.2006 he retired from the post of Executive Engineer. During the entire service period, the petitioner claims, that he was neither charge sheeted nor any complaint against him ever came. It is only vide letter dated 5.5.2008, the petitioner was informed that pursuant to the order dated 6.6.2006, disciplinary proceedings against him has been initiated under C.S.R. Rule 351(A) and the Chief Engineer P.W.D. Kanpur was appointed as an enquiry officer. Enquiry Officer submitted its report on 18.3.2008 by which the petitioner was called upon to file objection which he filed, and it is thereafter, by the

impugned order dated 26.11.2009, punishment was awarded to the petitioner, upon which this petition.

5. Submission of the learned counsel for the petitioner is that besides challenging various charges on merit, the challenge is the entire enquiry proceedings and report submitted by the Enquiry Officer being in violation of principle of natural justice. It is submitted that neither any date, place and time of enquiry, has been fixed nor the petitioner has been provided the relevant document so asked for by him nor he has been given reasonable opportunity to file reply and evidence in support of his version.

6. Argument is that apart from some earlier letters written by the Enquiry Officer, he wrote a letter to the petitioner on 25.2.2008 granting one week's time to file reply and evidence but that letter was dispatched to the petitioner on 14.3.2008 which he received on 19.3.2008 but the Eqnuiry Officer had already submitted report on 18.3.2008 and, therefore, it is a case of lack of opportunity to file reply/ evidence, lack of opportunity to participate in the enquiry proceedings, lack of opportunity to meet out the evidence if any collected by the Enquiry Officer.

7. It is pointed out that the Enquiry Officer has not recorded any evidence and no witness was examined under intimation to the petitioner so as to have an opportunity to meet the facts and cross examine them.

8. It is then submitted that even from the report of the Enquiry Officer it is clear that he has submitted a report solely on the ground that the petitioner has not submitted any reply and papers in support of his defence. It was then submitted that irrespective of non filing of response/participation of the petitioner, even if the enquiry officer was to proceed with ex parte enquiry, he was supposed to collect oral and documentary evidence in respect of the charges and thus, the report of the enquiry officer which states that on account of non filing of response and evidence, charges against the petitioner will be deemed to have been proved automatically, is totally erroneous and wrong approach and, thus, by placing reliance on that report, impugned order of punishment is liable to be quashed. Hence the petitioner is liable to be provided an opportunity to file objection to the charges as stated in the charge sheet and otherwise to led evidence by giving him opportunity to participate in the fresh enquiry proceedings in accordance with law.

9. In response to the aforesaid, learned Standing Counsel submits that time and again letter was written to the petitioner to file response and to participate in the enquiry and, therefore, if Enquiry Officer submitted ex parte enquiry reort by stating the fact that the charges are proved then and no exception can be taken to it.

10. Submission is that although it is mentioned in the enquiry Officer's report that on account of non submission of the reply charges against the petitioner will be deemed to have been proved but in the earlier portion of the report a reference to some document on record has been given and thus, no

fault in the the enquiry proceeding and about the report of the Enquiry Officer can be found. Submission is that on the facts and material on record, Enquiry Officer has rightly submitted the ex-parte report which has been accepted by the competent authority and punishment has been given to the petitioner.

11. In view of the aforesaid, we are to decide the matter.

There is no dispute about the fact that the petitioner stood retired on 31.1.2006 and it is only vide letter dated 5.5.2008, he was informed that pursuant to the order dated 6.2.2006, disciplinary proceeding against him, has been started. It has specifically been stated in paragraph 57 of the writ petition that vide letter dated 25.8.2008, the petitioner was given one week's time to submit his defence but that letter was dispatched on 14.3.2008 and was delivered to the petitioner on 19.3.2008 whereas the enquiry officer submitted a report on 18.3.2008 itself. It has further been stated in paragraph 72 of the writ petition that the Enquiry Officer never fixed any date time and place of the enquiry and the petitioner was never informed recording his appearance before the Enquiry Officer nor required documents were supplied to him. Averments as made in paragraph no. 57 and 72 of the writ petition is quoted below:

57. *That the admitted fact by the department is that vide letter dated 25.2.2008 enquiry officer gave one week time to submit the defense, the letter dated 25.2.2008 was dispatched on 14.3.2008 by the department, and it was delivered to the petitioner on 19,.3.2008, but the enquiry officer submitted the report on 18.3.2008, hence even the respondent denied the said opportunity, the enquiry report is liable to be quashed. ."*

72. *That the enquiry officer never fixed any date, time and place of enquiry. Petitioner was never informed regarding his appearance before the enquiry Officer, nor the required documents were supplied to him, hence the entire proceedings held and culminated in impugned order against sub Rule X of Rule 7 of the Service Rules."*

12. Reply to the specific averments made in paragraphs 57 and 72 of the writ petition, are contained in paragraphs 38 and 39 of the counter affidavit. On perusal of averments made in paragraphs 38 and 39 of the counter affidavit, it is clear that reply is too vague and evasive and in fact there is no denial of specific averment of non fixing date, place and time of the enquiry and at the same time despatching of letter dated 25.2.2008 on 14.3.2008 and its delivery to the petitioner on 19.3.2008.

13. On these facts , it is clear that Enquiry Officer submitted report on 18.3.2008 without providing opportunity to the petitioner to participate in the enquiry proceeding if any and at the same time, without proper opportunity even to file objection/evidence. It is a case of awarding of punishment against retired employee.

14. In all 19 charges were mentioned in the charge sheet. Although

in the charge sheet certain evidence in support of the charges are shown but perusal of the enquiry Officer's report dated 18.3.2008 which has been pressed for awarding punishment to the petitioner, makes it clear that no evidence whatsoever was collected/recorded by the enquiry officer to get those charges proved. Report of the Enquiry Officer is of two pages and just after narrating the facts that letters were sent but the petitioner did not respond and filed any evidence , it has been concluded that all the charges against the petitioner(Charges 1 to 19) are found to be proved.

15. On earlier dates learned Standing Counsel was asked to obtain the record so as to confirm the averment as made in paragraph 57 and 72 of the writ petition besides other facts. On perusal of the record also, the averment as made by the petitioner about the lack of providing of opportunity as observed in detail in preceding paragraphs, has been found to be correct.

16. As it is a case of non recording of any evidence either oral or documentary in the enquiry proceedings and submission of the enquiry report justifying all the charges only on the ground of non filing of the reply/evidence from the petitioner's side, we are of the view that going into merit of the charges and to record own finding may be neither proper nor justified as that will be again exercise in ex parte manner behind the back of the petitioner i.e. without opportunity to him.

17. At this stage, we are to observe that in the disciplinary proceedings against a delinquent, the department is just like a plaintiff and initial burden lies on the department to prove the charges which can certainly be proved only by collecting some oral evidence or documentary evidence, in presence and notice of charged employee. Even if the department is to rely its own record/document which are already available, then also the enquiry officer by looking into them and by assigning his own reason after analysis , will have to record a finding that those documents are sufficient enough to prove the charges.

18. In no case, approach of the Enquiry Officer that as no reply has been submitted, the charges will have to be automatically proved can be approved. This will be erroneous. It has been repeatedly said that disciplinary authority has a right to proceed against delinquent employee in ex parte manner but some evidence will have to be collected and justification to sustain the charges will have to be stated in detail. The approach of the enquiry officer of automatic prove of charges on account of non filing of reply is clearly misconceived and erroneous. This is against the principle of natural justice, fair play, fair hearing and, thus, enquiry officer has to be cautioned in this respect.

19. Here we may refer to certain decided cases in support of our view that without an opportunity to the delinquent employee to participate in the enquiry proceedings and without collecting evidence in presence of charged employee, the enquiry proceeding and consequent action will be held to be vitiated.

20. In the decision given by this Court in the case of Sanghoo Ram Arya Vs. The Chief Secretary, State of U.P. and others, following observations will be useful to be quoted here:

"17. It has been repeatedly held by this Court as well as the Apex Court that completion of the of the enquiry without giving opportunity to cross-examine the witness is vitiated. Reference can be made to the decision as given in S.C. Girotna V. United Commercial Banim, **1995 SCC Supp.(3) , 212,** Punjab National Bank Vs. A.I.P.N.B.E. Federation, **AIR 1960 SC 160**, Subhash Chandra Sharma Vs. Managing Director U.P. Co-operative Spining Mills Federation Ltd., **1960(4) AWC, 3227**."

In another decision given by this Court in Mohd. Javed Khan Vs. State of U.P. and others[2008(1) ADJ 284(DB(LB)] following observations were made:

"5. Learned Counsel for the petitioner has specifically argued that the enquiry proceedings were without jurisdiction and that the enquiry report was back dated. The fact, however, is that in this enquiry, the petitioner was not afforded any opportunity to participate therein by the enquiry officer, as no date, time and place was ever fixed nor was communicated to him.

7. In view of the fact that the petitioner was not afforded any opportunity by the enquiry officer while holding him guilty of the charges levelled against him and submitted his enquiry report to the appointment authority, who did not look into the said matter and passed the order of dismissal from service, the entire proceedings as well as the order impugned, are liable to be set aside.

8. Under the facts and circumstances aforesaid, that the petitioner was not afforded any opportunity to participate in the enquiry, we do not find it necessary to address ourselves to other questions which have been raised by the petitioner. The order of dismissal from service is liable to be set aside only on the aforesaid ground."

In recent judgment given by this Court i.e. Writ Petition No. 36973 of 2010- Vijai Kumar Sinha Vs. State of U.P. and others in respect of rule of hearing and opportunity following observations were made:

"At this stage some more observation in the old cases relating to the rule of hearing and opportunity as has been quoted in the recent judgment of the Apex Court dated 15.4.2011 in Civil Appeal No. 3261 of 2011 will be useful to be quoted here:

"In the celebrated case of Cooper V. Wandsorth Board of Works(1863) 143 ER 414, the principle was stated thus:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence"Adam" says God, " where art thou? Has thou not eaten of the tree whereof I commanded thee that thou shouoldest not eat."

"Perhaps the best known statement on the right to be heard has come from

Lord Lorebum, L.C. In Board of Education V. Rice (1911 AC 179 at 182), where he observed:

"Comparatively recent statues have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of deciding or determining questions of various kinds.....In such cases.....they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything. But i do not think they are bound to treat such questions as though it were a trial.....they can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial in their view."

21. In Ridge V. Baldwin 1964 AC 40 Lord Reid emphasized on the universality of the right to a fair hearing whether it concerns the property or tenure of an office or membership of an institution. In O'Reilly V. Macman 1983 2 AC 237, Lord Diplock said that the right of a man to be given a fair opportunity of hearing, what is alleged against him and of presenting his own case is so fundamental to any civilized legal system that it is to be presumed that Parliament intended that failure to observe the same should render null and void any decision reached in breach of this requirement. In Lloyd V. Memahon 1987 AC 625 Lord Bridge said:

"My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."

22. On the facts and in the light of analysis so made, we are of the considered view that the impugned order of punishment is liable to be quashed with the directions that Enquiry Officer is to provide opportunity to the petitioner to file reply in respect of charges and then to proceed with the enquiry proceeding after opportunity in the manner so permissible in law.

23. For the reasons given above, we quash the impugned order of punishment dated 26.11.2009 (annexure no. 3 to the writ petition and at the same time enquiry officer's report dated 18.3.2008 is also hereby quashed.

24. The disciplinary authority will be free to get the enquiry proceeding proceeded after providing opportunity to the petitioner from the stage of filing response to the charge sheet in the manner so provided in law.

25. Accordingly , this writ petition succeeds and is allowed in the light of directions as given above.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.04.2011

BEFORE
THE HON'BLE SUDHIR AGARWAL,J.

Civil Misc. Writ Petition No. 15202 of 2004

Shri Balji Tewari ...Petitioner
Versus
State of U.P. and others ...Respondent

Counsel for the Petitioner :
Rahul Chaturvedi

Counsel for the Respondent:
C.S.C.

U.P. Public Service Tribunal Act, 1976-Section 2(b)-Public Servant-Asst. Teacher in recognized Private School-even getting salary from Public exchor is not Public Servant-as the appointing and controlling authority is the management-Civil Suits for arrears of salary-dismissed as not maintainable-held-Trail as well as Revisional Court misdirected-order quashed matter remitted back for decision on merit subject to other objection if any.

Held: Para 5

It talks of a public servant in the service or pay of the State Government. The salary paid to a teacher of an aided institution is actually salary paid by the College itself pursuant to the aid received from State Government. By virtue of the provision of Payment of Salary Act, the responsibility to ensure salary to teaching staff is on the Government for which tuition fee to the extent provided in the Act is deposited by the College in the State Exchequer. The employer of the teacher is Committee of Management of the School and salary is paid to the teacher by the College and not by Government. The revisional Court has completely misdirected itself in holding the petitioner a 'public servant'. Therefore the impugned order cannot sustain.

(Delivered by Hon'ble Sudhir Agarwal,J.)

1. Heard learned counsel for the parties and perused the record.

2. The order impugned in this writ petition is passed by the Addl. District Judge, Mathura holding that petitioner suit No.292 of 1990 is not maintainable in view of Section 6 of U.P. Public Service Tribunal Act, 1976 (hereinafter referred to as "Act 1976")on the ground that the petitioner is a teacher in an aided private school but since the liability for payment of salary lie upon State Government, therefore, is a holder of a civil post and is a "public servant" as defined under Section 2(b) of the Act therefore the suit is not maintainable.

3. It is contended that the logic and reasoning assigned by revisional court is wholly misconceived and is contrary to law.

4. In my view, the submission is well founded and the impugned order cannot be sustained. The term "public servant" as defined in Section 2(b) of the Act, reads as under:

'Public servant' means every person in the service or pay of-

(i) the State Government; or

(ii) a local authority not being a Cantonment Board; or

(iii) any other corporation owned or controlled by the State

Government (including any company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty per cent of paid up share capital is held by the State Government) but does not include-

(1) a person in the pay or service of any other company ; or

(2) a member of the All India Services or other Central Services."

5. It talks of a public servant in the service or pay of the State Government. The salary paid to a teacher of an aided institution is actually salary paid by the College itself pursuant to the aid received from State Government. By virtue of the provision of Payment of Salary Act, the responsibility to ensure salary to teaching staff is on the Government for which tuition fee to the extent provided in the Act is deposited by the College in the State Exchequer. The employer of the teacher is Committee of Management of the School and salary is paid to the teacher by the College and not by Government. The revisional Court has completely misdirected itself in holding the petitioner a 'public servant'. Therefore the impugned order cannot sustain.

6. The writ petition is allowed. The impugned order dated 15th November, 2003 passed by Addl. District Judge, Mathura (Annexure 9 to the writ petition) is set set aside.

7. However since the suit was filed in 1995, it needs be decided expeditiously. I order accordingly.

8. At this stage learned Standing Counsel stated that in the matter of educational institutions, even otherwise a civil suit is barred by the provisions of Intermediate Education Act, 1921 and other relevant statutes.

Since this aspect of the matter has not been considered and decided by the Court below, this Court is not expressing any opinion on the issue and leave it open to the trial Court to consider the maintainability of the suit in the light of the provisions of Intermediate Education Act, 1921 and such other provision, as may be referred to by the parties concerned before it. This judgment shall not be construed to expressing any opinion on this aspect of the matter.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.04.2011

BEFORE
THE HON'BLE SATYA POOT MEHROTRA,J.
THE HON'BLE RAJESH CHANDRA,J.

Civil Misc. Writ Petition No. 16311 of 2011

Chandra Prakash Agrawal ...Petitioner
Versus
Urban Cooperative Bank Ltd. and others ...Respondent

Counsel for the Petitioner:
Pradeep Saxena

Counsel for the Respondent:
C.S.C.

Constitution of India Article 226- Alternative Remedy-in default in payment of instalments-recovery proceeding initiated as per award given by arbitrator under Rule 229-(1)(c) of U.P. Cooperative Societies rules 1968-appellable under Section 98 (h) of the Act-petition can not

be entertained-without awaiting alternative statutory remedy.

Held: Para 6

In view of the submission made by Sri Sujit Kumar Rai , learned counsel for the Respondent no.1, Sri Pradeep Saxena, learned counsel for the petitioner states that the petitioner will pursue the alternative remedy available to him under the U.P.Cooperative Societies Act, 1965 and, therefore, the present writ petition may be dismissed as withdrawn.

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

1. The present writ petition has been filed, interalia, praying for directing the Tehsil authorities not to execute the citation/ notice dated 7.2.2011 (Annexure - 1 to the writ petition).

2. By order dated 17.3.2011, Sri Sujit Kumar Rai, learned counsel for the respondent no.1 was granted time to obtain instructions in the matter.

3. Sri Sujit Kumar Rai, on the basis of the instructions received by him, states that the petitioner had taken loan from the respondent no. 1. As the petitioner committed default in payment of loan the respondent no.1 referred the matter for arbitration under the U.P. Cooperative Societies Act, 1965 read with Rule-229 (1) (c) of the U.P. Cooperative Societies Rules, 1968. The arbitrator gave an award dated 16.8.2010.

4. Pursuant to the said award, recovery proceedings have been initiated against the petitioner.

5. Sri Sujit Kumar Rai further states that the petitioner has got an alternative remedy of filing appeal under Sections 98(1) (h) of the U.P.Cooperative Societies Act, 1965.

6. In view of the submission made by Sri Sujit Kumar Rai , learned counsel for the Respondent no.1, Sri Pradeep Saxena, learned counsel for the petitioner states that the petitioner will pursue the alternative remedy available to him under the U.P.Cooperative Societies Act, 1965 and, therefore, the present writ petition may be dismissed as withdrawn.

7. In view of the statement made by Sri Pradeep Saxena, learned counsel for the petitioner, the present writ petition is dismissed as withdrawn without prejudice to the right of the petitioner to pursue the alternative remedy as may be available to the petitioner under law, if the petitioner is so advised.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.04.2011

BEFORE
THE HON'BLE ASHOK BHUSHAN,J.
THE HON'BLE RAN VIJAI SINGH,J.

Civil Misc. Writ Petition No. 16921 of 2011

Om Prakash ...Petitioner
Versus
State of U.P. and others ... Respondent

Counsel for the Petitioner:
Sri Dhirendra Kumar Srivastas

Counsel for the Respondent :
C.S.C.
Sri V.B. Maurya

Constitution of India-Article 226-caste certificate-cancellation by the authority who had granted-no allegation of fraud or concealment-held-authority granting the certificate no doubt possess

authority to cancel the same-but in impugned order nothing whisper regarding fraud or concealment by petitioner-order set-a-side with liberty to place entire material before Disst. Scrutiny of cost committee-with right of appeal before commission to aggrieved party.

Held: Para 18

In the facts and circumstances of the present case, on a complaint, submitted by respondent no. 4, the Tehsildar has cancelled the caste certificate by order dated 28th February, 2011. No finding has been recorded by Tehsildar that caste certificate was obtained by the petitioner by playing fraud on the authority. The facts of this case are fully covered by the division bench judgment of this court in the case of Hizwana Bano (supra).

Case law discussed:

1994(6) SCC 241; Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribe and Other Backward Classes) Act, 1994; Writ Petition No. 1611 (MB) of 2008 Taramuni Tharu Vs. State of U.P. and others.; Public Interest Litigation (PIL) No. 1396 of 2011 Tharu Shakti Samiti and Another Vs. State of U.P. and others; 2011 (1) ADJ 440

(Delivered by Hon'ble Ashok Bhushan,J.)

1. Heard learned counsel for the petitioner, learned standing counsel appearing for respondents no. 1 to 3 and Sri Siddharth Verma, learned counsel for respondent no. 4.

2. By consent of the learned counsel for the parties, the writ petition is being finally disposed of.

3. By this writ petition, the petitioner has prayed for quashing the order dated 28th February, 2011 passed by Tehsildar, Tehsil Sakaldiha, District Chandauli cancelling the scheduled caste certificate granted to the petitioner dated 20th August, 2001 and 25th September,2010 on complaint filed by respondent no. 4. The petitioner, who is the resident of District Chandauli, made an application for issuing a caste certificate of scheduled caste category i.e. 'Gond'. The caste certificate was issued by Tehsildar Sakaldiha Chandauli. A complaint was filed by respondent no. 4 to the effect that petitioner does not belong to scheduled caste. A notice dated 4th January, 2011 was issued to the petitioner to show-cause as to why the caste certificate be not cancelled. The Tehsildar, after hearing the petitioner and the materials brought before him, passed an order dated 28th February, 2011 cancelling the scheduled caste certificate granted to the petitioner. The petitioner, aggrieved by the said order, has filed this writ petition.

4. Learned counsel for the petitioner contends that the Tehsildar had no jurisdiction to pass the impugned order. He submits that in event the respondent no. 4 was aggrieved with the scheduled caste certificate granted to the petitioner, it was open for him to request for verification of the caste certificate by Caste Scrutiny Committee constituted by the State Government.

5. Refuting the submissions of learned counsel for the petitioner, learned counsel appearing for respondent no. 4 contends that the Tehsildar had every jurisdiction to cancel the certificate. He has also referred and relied the government order dated 5th January, 1996 as well as government order dated 27th January, 2011 filed as Annexure C.A. 1 and C.A.2.

6. Before we proceed to consider the submissions of learned counsel for the parties and facts of the present case, it is necessary to note the relevant provisions and the government order issued from time to time by the State of Uttar Pradesh regulating the issuance of caste certificate and mechanism for verification of such caste certificate.

7. The Apex Court, while considering the issue of caste certificate and its verification, has issued certain general directions in ***1994 (6) SCC 241 Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others.*** The Apex Court, in the said judgment, has issued general directions for issuance of social status certificates (caste certificate, their scrutiny and approval).

8. In the State of Uttar Pradesh, an enactment has been passed namely ***Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribe and Other Backward Classes) Act, 1994.*** Section 9 of the said Act provides for caste certificate, which is the following effect.

"For the purposes of reservation provided under this Act, caste certificate shall be issued by such authority or officer in such manner and form as the State Government may, by order, provide."

9. The State Government, taking into consideration the general directions issued by the Apex Court in ***Madhuri Patil's case (supra)*** as well as power given under Section 9 of the Act, has issued the detail government order dated 5th January, 1996 providing for procedure for issuance of caste certificate and procedure for verification of caste. By the said government order, a Scrutiny Committee, headed by Principal Secretary Social Welfare Department, was constituted to verify the caste certificates.

10. A Division Bench of this Court, while considering a challenge to an order of District Magistrate rejecting the claim of issuance of caste certificate, issued certain directions in ***Writ Petition No. 1611 (MB) of 2008 Taramuni Tharu Vs. State of U.P. and others.*** Following observations made by the Division Bench of this Court, which is quoted as under.

"Considering the submissions made during the course of arguments and looking to the fact that this Court is flooded with the cases, where the caste certificates issued by the District Magistrate are in question, we find that there is no appropriate forum, where such a grievance can be raised by the persons who approach this Court under Article 226 of the Constitution.

Writ jurisdiction does not allow us to enter into the disputed questions of fact or to reassess or re-appreciate the findings recorded by the District Magistrate, unless, of course, it is established that the finding is perverse or absolutely arbitrary. We also take notice of the fact that in the matters like the present one, suit for declaration would also not be maintainable, in view of the ratio of the judgment in the case of Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others, (1994) 6 SCC 241.

In the similar circumstances, this Court had earlier in some cases, required the

Chief Standing Counsel, to take instructions as to why an appellate forum be not provided but for one reason or the other, the instructions could not be made available.

We, under the circumstances, provide that the State Government may consider this question and it does not appear to be very difficult to provide a forum for the purpose, may be the Commissioner of the Division itself.

Let this order be communicated to the Chief Secretary, Government of U.P. for taking appropriate action for providing appellate forum for the purpose of deciding the disputes regarding issuance of caste certificates, against the orders passed by the concerned issuing authority."

11. In pursuance of the aforesaid observations of the Division Bench, the State government issued a government order dated 27th January,2011 providing for appellate forum headed by Divisional Commissioner to scrutinize the caste certificates and to provide a forum to aggrieved persons from the decision of Collector, Sub-Divisional Officer/Tehsildar regarding caste certificate to file an appeal within 90 days.

12. Another, the Division Bench while hearing the ***Public Interest Litigation (PIL) No. 1396 of 2011 Tharu Shakti Samiti and Another Vs. State of U.P. and others,*** again issued directions on 12th January, 2011. The Division Bench of this Court has made the following directions.

"In the State of U.P., it appears that there is only one Committee to consider the caste certificates. There appears to be no mechanism by which caste certificate issued by the Tehsildar/Deputy Collector/ District Magistrate is to be verified. The reserved post or admission in professional colleges are only meant for those who are entitled to. Utmost care should be taken to see that a person who claims admission/appointment is a genuine person and not a person who has got admission/appointment on a certificate which may be false or fabricated. It is impossible to accept that in the State of U.P. that one committee will do the entire exercise.

Considering the above, the respondents to produce the following materials before this Court :

Firstly, as to whether the Committees had been constituted in terms of the Government Order dated 5.1.1996 for SC/ST/OBC and the Constitution of the Members, including the nominated members.

Secondly, whether the Vigilance Cell has been attached to the Committee, the strength of the Vigilance Cell and the persons selected for the Vigilance Cell.

Thirdly, since the inception, the number of caste certificates which have been scrutinized by the Scrutiny Committee.

Apart from that, the State Government also to place before this Court, considering the population of SCs, STs and OBCs in the State of U.P., the need to have such Scrutiny Committees at District Level so that all caste certificates

issued in respect of which admissions have been obtained against reserved category posts/seats that these persons who occupy are genuine persons."

13. The State government again came with government order dated 28th February, 2011 which has been produced before us by learned standing counsel by which for scrutiny of caste certificate a Committee at District Level has been constituted under the Chairman-ship of the Collector.

14. The government order dated 28th February, 2011 also noticed that large number of disputes come before the High Court with regard to caste certificates in which directions are issued for deciding the matter, the District Level Committee has been constituted for the aforesaid purpose.

15. Another, Division Bench decision of this Court which is to be noted is the case of ***Hizwana Bano Vs. State of U.P. and others reported in 2011 (1) ADJ 440*** where the Division Bench considered in detail the entire mechanism regarding verification of caste certificate. The government order dated 5th January, 1996 has been extracted in the said division bench judgment as well as the judgment of the Apex Court in ***Madhuri Patil's case (supra).***

16. In paragraph no. 8 of the said judgment, it has also been observed that the authority issuing the caste certificate, may not assume jurisdiction to cancel the caste certificate except in the cases of fraud on the face of the record. Following observations was made in paragraph nos.8, 9 and 11.

"In Kumari Madhuri Patil (supra), the relevant directions of the Supreme Court are contained in direction nos. 4 to 9. In other words, the caste certificate issued in terms of direction no. (1) to be valid, can only be verified by the Committee and not by the Revenue Officers, like Sub-Divisional Officers, Deputy Collector or Deputy Commissioner, in the present case, the respondent no. 2.

The respondent no. 2, for the purpose of granting a caste certificate, has to consider what has been set out in para 3 of the Government Order, which is in consonance with the direction no. 2 of the directions issued by the Supreme Court in Kumari Madhuri Patil (supra). It is only in the event, the respondent no. 2 is satisfied, based on the material produced before him that the applicant belongs to the caste / tribe, then only the certificate would be verified. Once that be the procedure, it is not open to the respondent no. 2 to assume jurisdiction to cancel the caste certificate except may be in a case of fraud on the face of the record, as fraud vitiates all actions. Respondent no. 2, therefore, ordinarily would have no jurisdiction to reconsider the issuance of the caste certificate and pass orders cancelling the certificate or otherwise.

When a complainant contends that a caste certificate was wrongly issued or obtained by suppressing facts or the like, then in that event, it would be open to the complainant, even if the complainant is a stranger as long as his rights are affected, to move the Caste Scrutiny Committee, to verify the caste certificate by setting out the reasons and objections as to why the caste certificate should not be verified.

Para 3 of the Government Order would show that verification is not only with regard to admission in any educational institution or appointment in any service but also for other reasons. Therefore, whenever a person seeks to rely on a caste certificate for claiming any benefits, he would be entitled to, then in that event, if a complainant intervenes to oppose the verification of such caste certificate or independently applies before the Caste Scrutiny Committee, the procedure for verification shall be followed and necessary orders shall be passed by the Committee after following due procedure.

If the issue is now considered in the light of the above discussions, it would be clear that the respondent no. 2 would cease to have jurisdiction, once the caste certificate was issued. The Tehsildar in these circumstances would have no authority to recall or cancel the same, except may be in a case of fraud. Respondent no. 2, however, would have the power to correct clerical or artificial mistakes. The jurisdiction to verify the caste certificate and whether it should be validated or invalidated is of the Caste Scrutiny Committee."

17. In view of the foregoing discussions, it is clear that a person aggrieved by issuance of caste certificate has remedy to approach the Caste Scrutiny Committee in event the matter has not come before the Scrutiny Committee in normal course. Now in view of the government order dated 27th January, 2011 and 28 February, 2011 as noticed above a Committee has been constituted for scrutiny of caste certificate. An aggrieved person as well may approach the said Scrutiny Committee raising his grievance. However the authority issuing the caste certificate has also jurisdiction to cancel a caste certificate which has been obtained by playing fraud or concealing the relevant facts. An order issued by the authority can always be recalled where it has been obtained by practising fraud.

18. In the facts and circumstances of the present case, on a complaint, submitted by respondent no. 4, the Tehsildar has cancelled the caste certificate by order dated 28th February, 2011. No finding has been recorded by Tehsildar that caste certificate was obtained by the petitioner by playing fraud on the authority. The facts of this case are fully covered by the division bench judgment of this court in the case of ***Hizwana Bano (supra).***

19. In the result, the order dated 28th February, 2011 is set aside. However, liberty is given to respondent no. 4 to submit a detail application along with relevant materials before the Committee headed by Collector of the District as per the government order dated 28th February. 2011 within one month from today. The Collector after receiving the appropriate complaint against issuance of caste certificate, may issue notice to respondent no. 4 and give opportunity to him to file his representation and thereafter take a final decision regarding the entitlement of the petitioner to the caste certificate of scheduled caste.

20. It goes without saying that caste certificate issued to the petitioner dated 20th August, 2001 and 25.9.2010 shall abide by the decision of the District Committee and aggrieved person from the such decision shall have also right to file an appeal before the appellate forum

constituted by the government order dated 27th January, 2011.

With the aforesaid direction, the writ petition is disposed of.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.04.2011

BEFORE
THE HON'BLE PANKAJ MITHAL,J.

Civil Misc. Writ Petition No. 17472 of 2009

Atul Kumar ...Petitioner
Versus
State of U.P. and others ...Respondent

Counsel for the Petitioner:
Smt. Archana Tyagi
Sri Pankaj Kumar Tyagi

Counsel for the Respondent:
C.S.C.

(A) Uttar Pradesh Stamp (Valuation of Property) Rules 1997-Rule 4 and 5-Mode of calculation of valuation of commercial building-argument that on monthly rent only 300 time would be valuation-while the authorities valued the Building including structure also-held-misconceived-undisputedly building standing on land-being subject matter of transaction-order passed by authorities-held justified.

Held: Para 16

In view of the aforesaid facts and circumstances, the authorities have rightly determined the minimum market value of the property covered by the sale deed dated 21.106 by adding the minimum market value of the land and the building together. The submission that in case of a commercial building only the minimum market value of the building as determined under Rule 5 of the Rules is to be considered and not the land cannot be accepted as the land also had formed part of the sale.

(B) Constitution of India, Article 226-valuation of commercial property fixed-as per valuation assessed by the authority-including commercial to structure as well as the land covered by such structure-proper-but penalty can not be imposed without assigning any reason.

Held: Para 18 & 19

A perusal of the impugned orders reveal that the authorities have not assigned any reason for imposing penalty. No finding has been recorded that the petitioner willfully and deliberately had disclosed lower market value with the intention to evade stamp duty.

In the case of Smt. Sonia Jindal Vs. State of U.P. and others, Writ Petition No.20357 of 2011 decided on 7.4.2011, I have already held that the order of penalty cannot stand unless some reason is assigned and a finding of intentional evaision of stamp duty is recorded. In the absence of any reasoning and a finding to the above effect makes the order of penalty unsustainable in law.

Case law discussed:
Writ Petition No.20357 of 2011 decided on 7.4.2011,

(Delivered by Hon'ble Pankaj Mithal,J.)

1. Heard Smt. Archana Tyagi, learned counsel for the petitioner and Sri Nimai Das, learned Standing Counsel for the respondents.

2. Pleadings have been exchanged between the parties and they agree for final disposal of the writ at the admission stage itself.

3. The petitioner by means of the above writ petition challenges the order dated 31.10.08 passed by the Assistant Commissioner (Stamp) Muzaffarnagar and the appellate order thereto dated 24.2.09 passed by Assistant Commissioner (Administration) Saharanpur Division, Saharanpur.

4. The first argument of learned counsel for the petitioner is that market value of the commercial building is to be determined strictly in accordance with Rule 5 of the Uttar Pradesh Stamp (Valuation of Property) Rules 1997. The said Rule prescribes that the market value of a commercial building is to be determined by taking the minimum rent of the building fixed by the Collector in accordance with Rule 4 of the Rules and multiplying it with the constructed area. Therefore, the value of the land on which the building exist is not to be taken and it stands excluded.

5. The document in question is a sale deed of a shop having an area of 47.18 sq. meter. Stamp duty on the aforesaid sale deed is payable on the market value of the property transferred.

6. In exercise of the Rule making power contained in Section 75 of the Indian Stamp Act, 1899, the State Government has framed the Uttar Pradesh Stamp (Valuation of Property) Rules 1997.

7. The said Rules vide Rule 4 empowers the Collector to fix minimum rate for valuing land, construction of non-commercial building and the rate of rent of commercial building. The said Rule thus provides for fixing separate rate for the valuation of the land, constructed portion of the non-commercial buildings and the rate of rent for commercial buildings by the Collector for the purposes of determining the market value of any property which may be the subject matter of conveyance.

8. At the same time Rule 5 of the Rules provides for the mode of calculation of the minimum market value of land and building. Separate mode of calculation has been made for determining the market value of a non-commercial building and of a commercial building.

In the present case, we are concerned with the determination of the market value of a non commercial building.

9. The said Rule provides that the minimum market value of a commercial building is to be determined on the basis of 300 times the minimum monthly rent of the building fixed by the Collector under Rule 4 and by multiplying it by the constructed area.

10. In other words, the minimum rent of a commercial building fixed by the Collector under Rule 4 multiplied by the area of the building and increasing it to 300 times would be the minimum market value of the commercial building.

11. The aforesaid provision which is contained in Rule 5-C(ii) of the Rules provides for determining the minimum market value of a building only. It does not lay down the method of determining the minimum market value of the land occupied by the building.

12. The method of determining the market value of any land is provided in

Rule 5(a) of the Rules. It provides that the area of the land multiplied by the minimum rate for valuation of land fixed by the Collector in Rule 4 of the Rules will be the minimum market value.

13. A conjoint reading of Rules 4 and 5 of the Rules would make it clear that for the purposes of determining the market value of a commercial property the market value of the land as well as the minimum market value of the building as prescribed under Rule 5 of the Rules are to be taken together. Both the values taken together would ultimately determine the market value of the property.

14. It is well settled that constructions existing on a land forms part of it and as such the two have to be valued together unless proved otherwise as in cases where super structure is transferred separately and not along with the land.

15. In the present case, the petitioner had admittedly purchased a single storied shop along with the land having an area of 47.18 sq. meters as is evident from the sale deed dated 21.1.06 itself. It is not the case of the petitioner that he had purchased only the super structure and not the land.

16. In view of the aforesaid facts and circumstances, the authorities have rightly determined the minimum market value of the property covered by the sale deed dated 21.106 by adding the minimum market value of the land and the building together. The submission that in case of a commercial building only the minimum market value of the building as determined under Rule 5 of the Rules is to be considered and not the land cannot be accepted as the land also had formed part of the sale.

17. The other submission of Smt. Tyagi, is that the imposition of penalty under the facts and circumstances of the case cannot be justified.

18. A perusal of the impugned orders reveal that the authorities have not assigned any reason for imposing penalty. No finding has been recorded that the petitioner willfully and deliberately had disclosed lower market value with the intention to evade stamp duty.

19. In the case of Smt. Sonia Jindal Vs. State of U.P. and others, Writ Petition No.20357 of 2011 decided on 7.4.2011, I have already held that the order of penalty cannot stand unless some reason is assigned and a finding of intentional evaision of stamp duty is recorded. In the absence of any reasoning and a finding to the above effect makes the order of penalty unsustainable in law.

20. Accordingly, writ petition is partly allowed and while upholding the validity of the orders determining the deficiency in stamp duty, the other part of the order which imposes penalty is quashed. In all other respects the impugned orders will remain intact and would stand modified to the extent indicated above.

21. Writ Petition allowed in part with no order as to costs.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.04.2011

BEFORE
THE HON'BLE SATYA POOT MEHROTRA,J.
THE HON'BLE RAJESH CHANDRA,J.

Civil Misc. Writ Petition No. 19717 of 2011

Jai Bahadur Singh ...Petitioner
Versus
Union Bank of India ...Respondent

Counsel for the Petitioner :
Avinash Kumar

Counsel for the Respondent :
A.T. Kulshrestha

U.P. Public Money Recovery of Dues Act, 1972-Recover Certificate-Loan advanced for purchase of Mahindra Bolero-default in payment of installments-can not be recovered as arrears of land revenue-Recovery Certificate quashed-with liberty to recover the same in accordance with law.

Held: Para 7

In view of the statement made by Shri A.T. Kulshrestha, learned counsel for the respondent-Union Bank of India, it is evident that the recovery proceedings initiated against the petitioner by issuance of Recovery Certificate dated 4.1.2011 for making recovery as arrears of land revenue under the U.P. Public Money Recovery of Dues Act, 1972 are without jurisdiction.

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

1. The present Writ Petition has been filed, inter-alia, praying for quashing the Recovery Certificate dated 4.1.2011 sent by the respondent-Union Bank of India to the Collector, District Azamgarh for recovering the amount as arrears of land revenue under the U.P. Public Money Recovery of Dues Act, 1972.

2. In paragraph 4 of the Writ Petition, the petitioner has, inter-alia, stated that the loan was taken "in the scheme of P.M.R.Y to instal Motor Vehicle".

3. As the purpose for grant of loan and also the scheme, if any, under which the same was granted, was not clear from the averments made in the Writ Petition, we granted time to Shri A.T. Kulshrestha, learned counsel for the respondent-Union Bank of India to obtain instructions in the matter.

4. Shri A.T. Kulshrestha, learned counsel for the respondent-Union Bank of India has obtained instructions in the matter, and on the basis of the said instructions, he states that the loan was given to the petitioner for purchasing Motor Vehicle, namely, Mahindra Bolero.

5. Shri A.T. Kulshrestha further states that such loan cannot be recovered as arrears of land revenue, and the Recovery Certificate has been sent by the respondent-Union Bank of India to the Collector, District Azamgarh under misconception.

6. We have heard Shri Avinash Kumar, learned counsel for the petitioner and Shri A.T. Kulshrestha, learned counsel for the respondent-Union Bank of India.

7. In view of the statement made by Shri A.T. Kulshrestha, learned counsel for the respondent-Union Bank of India, it is evident that the recovery proceedings initiated against the petitioner by issuance of Recovery Certificate dated 4.1.2011 for making recovery as arrears of land revenue

under the U.P. Public Money Recovery of Dues Act, 1972 are without jurisdiction.

8. In view of the above, the Recovery Certificate dated 4.1.2011 sent by the respondent-Union Bank of India to the Collector, District Azamgarh (Annexure-3 to the Writ Petition) is liable to be quashed.

9. The Writ Petition is accordingly allowed. The Recovery Certificate dated 4.1.2011 sent by the respondent-Union Bank of India to the Collector, District Azamgarh (Annexure-3 to the Writ Petition) is quashed.

10. This order will, however, not come in the way of the respondent-Union Bank of India to proceed against the petitioner to make recovery in respect of the loan in question in accordance with law.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.05.2011

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

Civil Misc. Writ Petition No. 21194 of 2011

Smt. Sunita Singh ...Petitioner
Versus
Hindustan Petroleum Corporation Ltd. and others ... Respondents

Counsel For the Petitioner:
Mr. Wasim Alam
Mr. Anil Kumar Tiwari.

Counsel For the Respondents:
Mr. Vikas Budhwar.

Constitution of India Article 226-Natural Justice-cancellation of candidature for selection of distributionship of L.P.G. Rajiv Gandhi Gramin Vitarak Scheme-petitioner submitted her deed of title with joint affidavit of other co-sharer including her husband-if dealership granted having no objection-petitioner awarded 81% marks before participation of draw of lots- candidature canceled as the title deed on verification not found exclusive with name of her husband-without affording opportunity to the petitioner-held not proper if within days explanation filed the authorities to take appropriate decision in mean time no letters of appointment be issued

Held: Para 10

Against this background, factually when we find that the cancellation order was passed on 10th March, 2011 and the same was sent to the petitioner through registered post on 15th March, 2011, and in between these two dates news item was published on 11th March, 2011 and subsequent selection was held on 14th March, 2011 by selecting the respondent no. 3 herein, such exercise appears to be contrary to the interest of a selected candidate. No specified time has been given to the petitioner to explain the position as mentioned in the order of cancellation dated 10th March, 2011 pursuant to such Paragraph 12.10, the petitioner is entitled to file her grievance before the concerned redressal system within seven days from the date of obtaining certified copy of this order to get an opportunity of hearing and if she does so, the authority concerned will consider the cause and finalise the issue within a period of seven days thereafter. Only after consideration of the grievance of the petitioner, the authority concerned will be entitled to call upon the respondent no. 3 to verify her record too to evaluate her right over the land. However, no letter of intent will be issued, if not already issued, to any candidate. In case letter of intent has already been issued, no letter of appointment will be issued for such period.

(Delivered by Hon'ble Amitava Lala,J.)

1. **Amitava Lala, J.--** In this writ petition, the petitioner has challenged the order dated 10th March, 2011, whereby her application for grant of LPG distributorship under the Rajiv Gandhi Gramin LPG Vitrak Scheme (hereinafter in short called as "RGGLV") in respect of the place, known as Village Dharampur Vishunpur, District Mau, Uttar Pradesh, has been cancelled, and has further prayed for quashing the selection process held on 14th March, 2011 pursuant to the news item dated 11th March, 2011 in respect of such place, along with other incidental prayers.

2. Petitioner's contention is that she was selected as first empanelled candidate for grant of LPG distributorship under the RGGLV in respect of the concerned place. However, after being successful in the respective process of selection, her selection was cancelled as per Paragraph 12.10 of the Brochure on Selection of Rajiv Gandhi Gramin LPG Vitrak (RGGLV) (hereinafter in short called as "Brochure'). Therefore, let us go through the facts of the case to understand the position.

3. Briefly stated facts of the case, according to the petitioner, are that pursuant to the advertisement dated 17th October, 2009 for grant of LPG distributorship under the RGGLV the petitioner applied for the same in respect of the concerned place. Such application of the petitioner was accompanied with the required documents including extract of Khasra/ Khatauni in respect of the clear title over the land, which is to be used for construction of LPG cylinder storage godown. Such land, as proposed by the petitioner, is in the joint ownership of the petitioner's husband and other family members. The petitioner's husband is one of the co-sharers along with others of the said land and is recorded as such in the records. The husband of the petitioner and other co-sharers submitted their joint affidavit in favour of the petitioner that in case the petitioner is selected for distributorship and she constructs godown/showroom over such land, they will have no objection. Share of the petitioner's husband in the land is more than the area required for the purpose of construction of LPG godown/showroom. The eligibility criteria of a candidate are the first step in the process of selection. As per the brochure, a Committee consisting of two officers of the concerned Oil Company will make scrutiny of the application and award marks to the applicants based on the information given in the application. Accordingly, the petitioner was awarded 81% marks and was declared qualified along with five other candidates for the purpose of participating in the further selection process. Thereafter, the petitioner was called upon by a letter dated 28th July, 2010 to participate in the draw on 20th August, 2010, wherein the petitioner has been selected. However, subsequently by the impugned order dated 10th March, 2011 her candidature has been cancelled on the ground of non-availability of land as per the requirement and thereafter selection has been made in favour of the respondent no. 3.

4. The petitioner has contended that at the time of eligibility test the title of the petitioner's husband over the land was found clear along with other co-sharers, who submitted their no objection as per the requirement under the rules as unless she crosses the basic eligibility test, she is not supposed to face further process of selection. Therefore, when the petitioner was made eligible on the basis of the

materials prior to the process of selection, she can not be made ineligible subsequently. The petitioner further contended that a field verification was conducted as per Paragraph 12.9 of the brochure, but at that juncture it was not pointed out that petitioner's husband has no clear title over the land. Apart from that, the order impugned was passed on 10th March, 2011 but before that neither any notice was given nor any opportunity of hearing was provided to the petitioner. Further selection was ordered on 10th March, 2011 when news item was published on 11th March, 2011 and ultimately selection of other candidates was held on 14th March, 2011. The order of cancellation was sent to the petitioner on 15th March, 2011 i.e. after the selection made on 14th March, 2011, wherein the respondent no. 3 has been selected.

5. The respondents-Hindustan Petroleum Corporation have come with a case that the petitioner does not come in the purview of "family unit' as defined in Paragraph 4 (e) of the brochure, which gives meaning of the "family unit', as follows:

" "Family Unit' in case of married person/applicant, shall consist of individual concerned, his/her Spouse and their unmarried son(s)/daughter(s). In case of unmarried person/applicant, "Family Unit' shall consist of individual concerned, his/her parents and his/her unmarried brother(s) and unmarried sister(s). In case of divorcee, "Family Unit' shall consist of individual concerned, unmarried son(s)/ unmarried daughter(s) whose custody is given to him/her. In case of widow/widower, "Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s)."

6. By showing such paragraph, the respondents wanted to establish before us that since the applicant is a married person, she should be exclusive owner of the land or as co-sharer with her spouse, son and daughter. For the sake of such paragraph, right of her husband as co-sharer with other brothers can not be treated as "family unit'. Hence, no right can be derived to the petitioner from her husband. Therefore, when by field verification the petitioner's husband was found to be co-sharer of the property along with other brothers, selection of the petitioner was cancelled.

7. According to us, the word "family unit' is used loosely in the brochure and contrary to the law of succession. It can not override the law. One can be co-sharer of a family property and his right in the share devolves upon his wife, son and daughter. If wife starts a business on an immovable property with the consent of husband and other co-sharers, no objection can be raised by the Corporation. It can only verify locale/site for the sake of their business promotion, protection from any dispute out of such land and evaluation between others' land. Our general observation is that sometimes site selection is made by the authority on the leasehold land. In the process, appropriate evaluation is required to be made. The authority should not show any vindictiveness to suit any oblique purpose.

8. We find from the brochure that there is a paragraph, being Paragraph 12.10, which speaks as follows:

"12.10 In case of rejection of selected candidate due to findings in the Field Investigation or if selected candidate is unable to develop facilities for Rajiv Gandhi Gramin LPG Vitrak within the specified

time, then his candidature will be cancelled and draw will be held again from the remaining qualified eligible candidates to select the next candidate following the procedure as mentioned above in para 12.3 to 12.6."

9. There is another paragraph, being Paragraph 15, in the brochure, which provides for consideration of the grievance or complaint by the redressal system of the oil company itself.

10. Against this background, factually when we find that the cancellation order was passed on 10th March, 2011 and the same was sent to the petitioner through registered post on 15th March, 2011, and in between these two dates news item was published on 11th March, 2011 and subsequent selection was held on 14th March, 2011 by selecting the respondent no. 3 herein, such exercise appears to be contrary to the interest of a selected candidate. No specified time has been given to the petitioner to explain the position as mentioned in the order of cancellation dated 10th March, 2011 pursuant to such Paragraph 12.10, the petitioner is entitled to file her grievance before the concerned redressal system within seven days from the date of obtaining certified copy of this order to get an opportunity of hearing and if she does so, the authority concerned will consider the cause and finalise the issue within a period of seven days thereafter. Only after consideration of the grievance of the petitioner, the authority concerned will be entitled to call upon the respondent no. 3 to verify her record too to evaluate her right over the land. However, no letter of intent will be issued, if not already issued, to any candidate. In case letter of intent has already been issued, no letter of appointment will be issued for such period.

11. Accordingly, the writ petition is disposed of.

No order is passed as to costs.

12. Let the copies of the necessary documents and/or written notes of argument, as submitted by the parties before this Court, be kept with the record.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.05.2011

BEFORE
THE HON'BLE SATYA POOT MEHROTRA,J.
THE HON'BLE MRS. JAYASHREE TIWARI,J.

Civil Misc. Writ Petition No. 21243 of 2011

Dr. Munni Lal ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri R.K. Dubey

Counsel for the Respondent:
C.S.C.
Sri Mridul Tripathi

U.P. Electricity Supply-Code-2005-Section-8.1 (b) (iii) readwith U.P. Government Electrical (under-taking)-(Dues recovery)-Act 1958-Section-3-checking note of the Premises of petitioner does not bear signature of consumer-notice presiding 7 days for objection-ignoring statutory period of 15 days-without specifying date, place and time of hearing -without final order of assessment-No demand notice be issued-demand notice quashed with necessary direction.

Held: Para 18, 19 and 20

No Final Order of Assessment was passed in the case of the petitioner. Instead, a Demand Notice dated 26th

October, 2010 was also enclosed with the Show Cause-Notice dated 29th October, 2010. The occasion for issuance of Demand Notice under Section 3 of the U.P. Government Electrical Under-Taking (Dues Recovery) Act, 1958 would have arisen only after the Final Order of Assessment were passed in respect of the petitioner.

It will thus be noticed that the respondent nos. 2 and 3 have not followed the procedure as laid down in the Electricity Act, 2003 and the U.P. Electricity Supply Code, 2005 before issuing the Demand Notice dated 26th October, 2010.

In view of the above, the Demand Notice dated 26th October, 2010 (appearing at page 27 of the Paper-Book of the Writ Petition) issued under Section 3 of the U.P. Government Electrical Under-Taking (Dues Recovery) Act, 1958 is liable to be quashed, and the same is hereby quashed.

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

1. The petitioner has filed the present Writ Petition under Article 226 of the Constitution of India, inter-alia, praying for quashing the Demand Notice dated 29th October, 2010 (Annexurre 5 to the Writ Petition) issued by the respondent no.3 requiring the petitioner to deposit an amount of Rs. 1,84,892/-.

2. It appears that checking was allegedly made in the premises of the petitioner on 22nd October, 2010, and theft of electricity was allegedly detected. Copy of the Checking Report dated 22nd October, 2010 has been filed as Annexure 4 to the Writ Petition. The said Checking Report does not bear the signature of the consumer (petitioner).

3. It further appears that a Notice dated 29th October, 2010 (appearing at page 26 of the Paper-Book of the Writ Petition) was sent to the petitioner, inter-alia, stating that an amount of Rs. 1,84,892/- was provisionally assessed against the petitioner, and in case the petitioner wanted to file any objections, the same be done within seven days of the issuance of the said Notice dated 29th October, 2010. A Demand Notice dated 26th October, 2010 (appearing at page 27 of the Paper-Book of the Writ Petition) under Section 3 of the U.P. Government Electrical Under-Taking (Dues Recovery) Act, 1958 was also enclosed with the said Notice dated 29th October, 2010. A Bill dated 26th October, 2010 (appearing at page 28 of the Paper-Book of the Writ Petition) showing the calculation in respect of the Provisional Assessment was also enclosed with the said Notice dated 29th October, 2010.

4. The petitioner has thereupon filed the present Writ Petition seeking the reliefs as mentioned above.

5. We have heard Shri R.K. Dubey, learned counsel for the petitioner, the learned Standing Counsel appearing for the respondent no.1 and Smt. Mridul Tripathi, learned counsel for the respondent nos. 2 and 3, and perused the record.

6. Smt. Mridul Tripathi, learned counsel for the respondent nos. 2 and 3 has obtained instructions in the matter.

7. Shri R.K. Dubey, learned counsel for the petitioner has referred to various provisions contained in the Electricity Act, 2003 and the U.P.

Electricity Supply Code, 2005, and has submitted that the procedure laid down in the said provisions has not been followed in case of the petitioner.

8. It is submitted that the Notice dated 29th October, 2010 was issued to the petitioner giving only seven days time for filing objections while the provisions contained in Clause 8.1 (b) (iii) require Show Cause-Notice giving 15 working days time for filing objections.

9. It is further submitted that the Demand Notice under Section 3 of the U.P. Government Electrical Under-Taking (Dues Recovery) Act, 1958 was issued on 26th October, 2010 even without waiting for the objections to be filed by the petitioner against the Provisional Assessment and disposing of the same in accordance with the relevant provisions of the Electricity Act, 2003 and the U.P. Electricity Supply Code, 2005.

10. In reply, Smt. Mridul Tripathi, learned counsel for the respondent nos. 2 and 3 submits that the procedure as laid down in the Electricity Act, 2003 and the U.P. Electricity Supply Code, 2005 has been followed in the present case.

11. We have considered the submissions made by the learned counsel for the parties.

Section 126 of the Electricity Act, 2003 lays down as follows:

"126. Assessment.-*(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.*

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom a notice has been served under subsection (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, it shall be presumed that such unauthorized use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to twice the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b)" unauthorised use of electricity" means the usage of electricity-

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorised."

Section 127 of the Electricity Act, 2003 lays down as follows:

"127. Appeal to Appellate Authority.- *(1) Any person aggrieved by a final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.*

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent per annum compounded every six months."

Clause 8.1 (b) (iii) (iv) & (v) of the U.P. Electricity Supply Code, 2005 laid down as under:

"(iii). If the Assessing Officer of the licensee suspects that theft of Electricity has taken place (as defined under

Section 135 of the Act), he will serve the provisional assessment bill alongwith show cause notice to the consumer for hearing, giving 15 working days, under proper receipt. The notice shall invite objections in writing from the consumer, if any, against the charges and provisional assessment and require the presence of the consumer to answer to all the charges imposed by the licensee.

(iv) If, after hearing, the authorized officer finds that a case of theft has been established, the assessment shall be done for the energy consumption for past period as per the assessment formula given in Annexure 6.3 on (two) times the rates as per applicable normal tariff to the purpose for which the energy is abstracted, used or consumed or wasted or diverted, whichever is higher and demand and collect the same by including the same in a separate bill. This is in addition to any civil/criminal proceedings that may be instituted as provided by the Act, and described in clause 8.2 (vii).

(v) A copy of the order shall be served to the consumer under proper receipt and in case of refusal to accept the order or in absence of the consumer, shall be served on him under Registered Post/Speed Post. The Authorized officer may extend the last date of payment or approve the payment to be made in instalments on a consideration of the financial position and other considtions of the licensee. The amount, the extended last date and/ or time schedule of payment/instalments should be clearly stated in the speaking order."

12. From the above-quoted provisions of Clause 8.1(b) (iii), (iv) and (v) of the U.P. Electricity Supply Code, 2005, it will be noticed that the Assessing Officer is required to serve the Provisional Assessment Bill along with Show Cause-Notice to the consumer for hearing, giving 15 working days, under proper receipt. The notice shall invite objections in writing from the consumer, if any, against the charges and Provisional Assessment and require the presence of the consumer to answer to all the charges imposed by the licensee. If, after hearing, the authorized officer finds that a case of theft has been established, the assessment shall be done for the energy consumption in accordance with the provisions contained in Clause 8.1 (b) (iv), and the authorized officer shall demand and collect the same by including the same in a separate bill. A copy of the order shall be served to the consumer under proper receipt, and in case of refusal to accept the order or in absence of the consumer, shall be served on him under Registered Post/Speed Post.

13. From the provisions contained in Section 126 of the Electricity Act, 2003 also, it follows that the Assessing Officer to required to provisionally assess the electricity charges payable by the person concerned in case of unauthorized use of electricity. The order of Provisional Assessment is required to be served on the person concerned. The person concerned, on whom the Provisional Assessment is so served, is entitled to file objections. The Assessing Officer is required to give reasonable opportunity of hearing to such person and pass a Final Order of Assessment in respect of such person.

14. The person concerned, in case he is aggrieved by such Final Order of Assessment, is entitled to file Appeal under Section 127 of the Electricity Act, 2003 against the said Order.

15. In the present case, it will be noticed that Show Cause-Notice dated 29th October, 2010 gave only seven days' time to file objections against the Provisional Assessment.

16. As noted above, Clause 8.1 (b) (iii) of the U.P. Electricity Supply Code, 2005 requires that Show Cause-Notice will be given giving 15 working days for filing objections.

17. The Show Cause-Notice dated 29th October, 2010 also did not fix any date for hearing as contemplated in Clause 8.1 (b) (iii) of the U.P. Electricity Supply Code, 2005.

18. No Final Order of Assessment was passed in the case of the petitioner. Instead, a Demand Notice dated 26th October, 2010 was also enclosed with the Show Cause-Notice dated 29th October, 2010. The occasion for issuance of Demand Notice under Section 3 of the U.P. Government Electrical Under-Taking (Dues Recovery) Act, 1958 would have arisen only after the Final Order of Assessment were passed in respect of the petitioner.

19. It will thus be noticed that the respondent nos. 2 and 3 have not followed the procedure as laid down in the Electricity Act, 2003 and the U.P. Electricity Supply Code, 2005 before issuing the Demand Notice dated 26th October, 2010.

20. In view of the above, the Demand Notice dated 26th October, 2010 (appearing at page 27 of the Paper-Book of the Writ Petition) issued under Section 3 of the U.P. Government Electrical Under-Taking (Dues Recovery) Act, 1958 is liable to be quashed, and the same is hereby quashed.

21. It is further directed as under:

(1) Within 15 days from the date of issuance of a certified copy of this order, the petitioner may submit his objections before the respondent no.3 against the Provisional Assessment dated 29th October, 2010 (appearing at pages 26 and 28 of the Paper-Book of the Writ Petition) along with a certified copy of this order.

(2) On receipt of such objections from the petitioner, the respondent no. 3 will proceed to dispose of the same in accordance with law by passing a speaking and reasoned order in the matter after giving reasonable opportunity of being heard to the petitioner expeditiously, preferably within a period of six weeks of the receipt of the above documents.

22. The Writ Petition is accordingly allowed with the aforesaid observations and directions.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.05.2011

BEFORE
THE HON'BLE ASHOK BHUSHAN, J.
THE HON'BLE RAN VIJAI SINGH, J.

Civil Misc. Writ Petition No. 22769 of 2011

Smt. Krishna Upadhyay ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri Jamwant Maurya

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

Constitution of India, Article 226, 243ZG-writ of Quo-warranto readwith Uttar Pradesh Panchayat Raj (Settlement of Election Dispute) Rules 1994-Rule 5-A-Election of Gram Pradhan under rule-R-6 declared elected-Election Petition against R-6 pending-by present Petition question of disqualification of R-6 as being below than 21 years age-not eligible to hold the post-hence continuance of R-6 on office of Gram Pradhan amounts to usurping the post without having legal right-held admittedly the same facts under consideration in election Petitioner-such question of facts and law can not be decided by writ court-petition can not be entertained.

Held: Para 15

In view of the foregoing discussion, it is clear that when the challenge in the petition is essentially the challenge to the election of an elected candidate for which remedy is to file an election petition, this court normally does not entertain a writ of quo-warranto. In the present case, the petitioner herself has filed Election Petition No. 2 of 2010 challenging the election of respondent no. 6 which is pending consideration. After filing the election petition, the petitioner has come up by praying for a writ of quo-warranto. The issue which has been raised in the writ petition that respondent no. 6 was not eligible to contest the election is the issue in the election petition which can very well be gone into in the election petition and decided. In the facts of the present case and in view of the Division Bench judgement in the case of Khem Singh Pachhara (supra), we are of the view that the present writ petition for a writ of quo-warranto need not be entertained.

Case law discussed:
2001 Vol. 7 SCC Pg. 231; 2010 (111) RD 467; 2010 (109) RD 432; W.P. No. 4567 of 2011 Khem Singh Pachhara vs. State of U.P. And others; AIR 1999 SC 1723; JT 2009 Vol. SCC 287

(Delivered by Hon'ble Ashok Bhushan, J.)

1. Heard Sri Jamwant Maurya, learned counsel for the petitioner and learned Standing Counsel.

2. By this writ petition, the petitioner has prayed for a writ in the nature of quo-warranto commanding and directing respondent no. 6 to vacate the post of Gram Pradhan of Gram Sabha/Gram Panchayat, Hetampur, Block Sakaldeeha, District Chandauli forthwith and to restrain functioning of Gram Pradhan. Further mandamus has been sought directing the respondent no. 2 to conduct fresh election of Gram Pradhan, Gram Sabha/Gram Panchayat, Hetampur, Block Sakaldeeha, District Chandauli.

3. Respondent No. 6 filed her nomination for the Office of Pradhan and was declared elected on 25.10.2010 and took charge on 03.11.2010. The petitioner

had also filed her nomination and was one of the contesting candidates. After declaration of the result of election, the petitioner filed Election Petition No. 2 of 2010 u/s 12C of U.P. Panchayat Raj Act, 1947 challenging the election of respondent no. 6 which election petition is pending consideration.

4. Petitioner's case in the writ petition is that respondent no. 6 does not fulfill the qualification for election as Pradhan, she being less than 21 years of age on the date of filing nomination as well as on the date of election. The petitioner's case is that respondent no. 6 was not eligible to contest the election and she having not fulfilling the qualification for election as Pradhan, was not entitled to be elected.

5. Learned counsel for the petitioner in support of the writ petition contended that respondent no. 6 having not fulfilling the qualification of age, i.e. 21 years, was ineligible and hence the petitioner has every right to pray for issue of a writ of quo-warranto against respondent no. 6.

6. Learned counsel for the petitioner has placed reliance on the judgement of Hon'ble Apex Court in the case of **B.R. Kapur vs. State of Tamil Nadu and Another** reported in 2001 Vol. 7 SCC Pg. 231 was well as two judgements of learned Single Judge of this court in the case of **Smt. Meena Devi vs. State of U.P. and Others** reported in 2010 (111) RD 467 and in the case of **Dhanai vs. State of U.P. and Others** reported in 2010 (109) RD 432.

7. Learned counsel appearing for respondent no. 2 Sri S.K. Singh contended that this writ petition for issue of a writ of quo-warranto is not maintainable since the petitioner who is virtually challenging the election of respondent no. 6 has already filed an election petition u/s 12C of U.P. Panchayat Raj Act, 1947, which is pending consideration. Reliance has been placed by respondent no. 2 on a Division Bench judgement of this court in W.P. NO. 4567 of 2011 **Khem Singh Pachhara vs. State of U.P. and Others** decided on 21.04.2011.

8. We have heard counsel for the parties and perused the record.

9. To get elected or to dispute the election is a statutory right which is governed by the statutory rules. The election on the Office of Pradhan is held in accordance with the provisions of U.P. Panchayat Raj Act 1947 and can be challenged in accordance with the rules namely Uttar Pradesh Panchayat Raj (Settlement of Election Disputes) Rules 1994. The allegations in the writ petition are to the effect that respondent no. 6 was disqualified and was not entitled to contest the election. Reference has been made to Section 5A of U.P. Panchayat Raj Act, 1947 which provides for disqualification for membership.

10. The petitioner as noted above has already challenged the election of respondent no. 6 in Election Petition No. 2 of 2010 which is pending consideration. After filing of the election petition, the petitioner has now come up in this writ petition praying for issue of a writ of quo-warranto. The judgement which has been relied by learned counsel for the petitioner in B.R. Kapur's case (supra), specifically paragraphs 52, 54, 78, 79, 80 and 81, was a case in which the appointment of

respondent Ms. J. Jayalalitha as the Chief Minister of Tamil Nadu was challenged. The respondent was convicted for offences punishable u/s 120B of I.P.C and under the Prevention of Corruption Act 1988 and was sentenced to undergo rigorous imprisonment and pay fine. Against the conviction, appeals were filed in which the sentence of rigorous imprisonment was suspended. The Governor appointed the second respondent as the Chief Minister which appointment was challenged on the ground that she was not qualified for appointment, she being already convicted. Hon'ble Apex Court in the said case had held that in the facts and situation of the said case, a writ of quo-warranto could be issued against respondent no. 2. Following was laid down in paragraph nos. 78 and 79 of the said case: -

78. Amongst other points, the learned counsel for the respondents submitted that the appointment of Respondent No. 2 as Chief Minister by the Governor, could not be challenged, in view of the provisions under Article 361 of the Constitution, providing that the Governor shall not be answerable to any court for the exercise and performance of the powers and duties of his office. It was also submitted that in appointing the Chief Minister, the Governor exercised her discretionary powers, therefore, her action is not justiciable. Yet another submission is that the Governor had only implemented the decision of the majority party, in appointing Respondent 2 as a Chief Minister i.e. she had only given effect to the will of the people.

79. Insofar as it relates to Article 361 of the Constitution that the Governor shall not be answerable to any court for performance of duties of his office as Governor, it may, at the very outset, be indicated that we are considering the prayer for issue of the writ of quo warranto against Respondent 2, who according to the petitioner suffers from disqualification to hold the public office of the Chief Minister of a State. A writ of quo warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature and is only a usurper of the office. It is the person, against whom the writ of quo warranto is directed, who is required to show, by what authority that person is entitled to hold the office. The challenge can be made on various grounds, including on the grounds that the possessor of the office does not fulfil the required qualifications or suffers from any disqualification, which debars the person to hold such office. So as to have an idea about the nature of action in the proceedings for writ of quo warranto and its original form, as it used to be, it would be beneficial to quote from Words and Phrases, Permanent Edn. Vol. 35-A p. 648. It reads as follows:

"The original common law writ of quo warranto was a civil writ at the suit of the Crown, and not a criminal prosecution. It was in the nature of a writ of right by the King against one who usurped or claimed franchises or liabilities, to inquire by what right he claimed them. This writ, however, fell into disuse in England centuries ago, and its place was supplied by an information in the nature of a quo warranto, which in its origin was a criminal method of prosecution, as well as to punish the usurper by a fine for the usurpation of the franchise, as to oust him or seize it for the Crown. Long before our revolution,

however, it lost its character as a criminal proceeding in everything except form, and was franchise, or ousting the wrongful possessor, the fine being normal only; and such, without any special legislation to that effect, has always been its character in many of the States of the Union, and it is therefore a civil remedy only. Ames v. State of Kansas, People v. Dashaway Assn.

11. There cannot be any dispute to the proposition as laid down by the Hon'ble Apex Court in the aforesaid case. In an appropriate case, a person usurping the public office can be asked to show his authority by issuing a writ of quo-warranto. The question to be considered in the present case is as to whether in the facts of the present case, the present writ petition for issuing a writ of quo-warranto can be entertained. The judgement in the case of Smt. Meena Devi (supra) relied by the petitioner was a case where the respondent was elected as Pradhan as a reserved category candidate. The caste certificate which was issued to the petitioner was cancelled. After cancellation of the caste certificate of Smt. Inder Bala, the elected Pradhan, the writ petitioner made a request to the District Magistrate that Inder Bala had no right to continue on the post of Pradhan and her continuance is liable to be stopped by issuing a writ of quo-warranto. This ocurt considered the several cases. Following was laid down in paragraph nos. 14, 15, 16 and 18: -

14. The view has been taken that election to the office of Pradhan can be challenged only by way of forum provided for to question the validity of election is by way of election petition under section 12-C of the Act, as provided for under Article 243-O of the Constitution, which has overriding effect. There is another facet of the matter and the said facet is that there are two stages of disqualification of a person elected as office bearer of Village Panchayat' (i) if it exists at the time of filing of nomination and continue to exist up to declaration of his result, then such disqualification is to be agitated by way of filing an election petition before the Election Tribunal under section 12-C of U.P. Panchayat Raj Act' (ii) but if such disqualification is earned by a person after filing of nomination paper and declaration of results, then State Legislation has authority to make law disqualifying such an incumbent as a member of Panchayat.

15. Hon'ble Apex Court in the case of Kurupati Maria Das v. M/s. Dr. Ambedkar Sewa Sansthan and Others, after taking into account the judgement of Hon'ble Apex Court in the case of K. Venkatchalam v. A. Swamickan, Jaspal Singh Arora v. State of M.P., Gurdeep Singh Dhillo v. Satpal and Others, has taken the view that election cannot be under challenge to a writ of quo-warranto, but subsequent continuance of such a person in his capacity as a person belonging to that particular caste can always be subject matter of challenge and writ of quo-warranto would lie, in paragraph 22 of judgement word of caution is there, that in the garb of writ petition of quo-warranto, question of caste and question of election which are so inextricably mixed, cannot be permitted, as in pith and substance, it is nothing but questioning the validity of election. High Court itself cannot take up the issue of deciding the question of caste. The law on the subject, thus, stands clarified that writ of quo-warranto would lie in a case

wherein subsequent continuance of such a person in his capacity as a person belonging to that particular caste is an issue and the same can always be subject matter of challenge. In paragraph 27 wherein inaction was complained of, on behalf of authorities enjoined upon to decide the issue of caste under section 5 of 1993 Act has been dealt with inclusive of the issue of consequence of cancellation certificate as follows: -

" That was done. If that application had been decided upon and concerned authority had found that appellant's caste certificate itself was false and fraudulent and he genuinely did not belong to Scheduled Caste, then that itself could have been enough for the appellant to loose the post that he was elected to. In our opinion, it is necessary to get examined the Caste certificates of all the elected persons from reserved constituencies within a time frame to avoid such controversies."

16. In the aforementioned judgement, a thin line of distinction has been drawn for challenging the election which was open till declaration of result, and qua the disqualification occurred subsequent to the same, i.e. after filing nomination papers and declaration of result, then certainly, situation cannot be left at the prerogative of the authority and in appropriate matters Court can always issue writ of quo-warranto, when it is established that the person who holds the post of an independent substantive public office, by what rights he holds the office, so that his title is duly determined, and in case, it is found that holder of the office has no title, he should be ousted from the office by a judicial order. Procedure of quo-warranto comes under judicial remedy, but control of executive from making appointment to public office cannot be taken away. It protects such persons from being deprived of the public office, who has right. A person can avail the remedy of writ of quo-warranto by satisfying the Court that the office in question is public office and the same is held by usurper without legal authority, and on inquiry as to whether the appointment of the said usurper had been made in accordance with law or not, the authority of quo-warranto is thus judicial remedy to undo a wrong when public office is involved and the incumbent who is holding the office, same is without any authority of law.

18. The larger question involved in the present case is that the candidate, Smt. Inder Bala claiming herself to be Scheduled caste, obtained certificate, contested the election and was declared elected. On subsequent inquiry by Tehsildar, it was found that the very foundation and basis of her caste certificate was incorrect and the same has been cancelled on 24.04.2008 by the Tehsildar. Tehsildar while proceeding to cancel the caste certificate has proceeded to mention that Smt. Inder Bala is from Kahar/Kamkar category which is recognized as O.B.C. in the State of U.P. and only in order to derive benefit of Scheduled Caste category she has been claiming herself to be from Kharwar in this background order has been passed. This Court also while deciding election petition in Poornmasi Dehati v. Shambhu Chaudhary, has taken the view that Kamkar is not sub-caste of Kharwar, which is the Scheduled caste. Kamkar is not mentioned in 1950 Scheduled Castes order. Can even in such a situation remedy of election petition be availed.

Such remedy could have been availed, had the order of cancellation been passed prior to the declaration of result, but here, in the present case, elections had taken place and result had been declared and the office was being held, then on inquiry it had been found that Smt. Inder Bala was not from Scheduled caste category candidate. Once Smt. Inder Bala was not from Scheduled caste category candidate, then it is not at all that her election is under challenge, but her subsequent continuance in the said capacity as a person not belonging to that particular caste is subject matter of challenge. Hon'ble Apex Court in the case of Kurupati Maria Das (supra), as quoted above, has itself proceeded to mention, if the application for cancellation of caste certificate had been found that appellants caste certificate itself was false and fraudulent and she genuinely did not belong to Scheduled caste, then that itself could have been enough for the appellant to loose the post that she was elected. Case in hand is falling in the said category as here certificate has been canceled by the competent authority. Hon'ble Apex Court in such a situation has taken the view that writ of quo-warranto would lie.

12. In the aforesaid case, it has been laid down that a writ of quo-warranto would lie in a case wherein subsequent continuance of a person in his capacity belonging to a particular caste is an issue. In paragraph 16 it has been laid down that when disqualification occurred subsequent to the filing of nomination, writ of quo-warranto shall lie. In another judgement in Dhanai's case (supra) which was a case of conviction of the elected candidate, the court issued writ of quo-warranto relying on the judgement of Hon'ble Apex Court in the case of **K. Venkatachalam Vs. Swamichan and another reported in AIR 1999 SC 1723**. The court held that writ petition under Article 226 of the Constitution of India shall be clearly maintainable even when there was a provision for filing of an election petition. Following was laid down in paragraph nos. 14, 17 and 18.: -

14. A perusal of the aforesaid decision leaves no room for doubt that the Article 226 of the Constitution of India would be clearly maintainable even if there was a provision for filing of an election petition.

17. In the instant case, there being no doubt about the admitted position of disqualification having been incurred by the respondent no. 7, there is no occasion for this Court to dismiss the writ petition on the ground of availability of any other alternative remedy. Apart from this, it is evident that the respondent no. 7 had been restrained by this Court by an interim order commanding the opposite parties not to allow the said respondent to function as Gram Pradhan. It is to be noted that the order was passed by this Court on 25th July, 2007 whereas the District Magistrate took 5 months to pass a consequential order. The aforesaid situation is absolutely unfortunate, inasmuch as, the authorities are required to obey the orders forthwith without any hesitation. It is not understood as to why the District Magistrate took 5 months to obey the command of this Court.

18. In view of the aforesaid conclusion drawn and in view of the fact that the respondent no. 7 admittedly suffers from an inherent disqualification as provided under Section 5-A, a declaration is hereby issued that the

election of the respondent no. 7 as Gram Pradhan was illegal and invalid and he shall not be construed to hold the public office of Gram Pradhan of Gram Panchayat Muriari, District Ghazipur forthwith as it stands accordingly annulled. The impugned order dated 30.03.2007 is also quashed.

13. The Division Bench judgement which has been relied by learned counsel for the respondent was also a case where writ of quo-warranto was prayed for against the elected member of Kshetriya Panchayat on the ground that she was not eligible to contest the election having been working as Anganbari Worker. A Division Bench of this court relying on the judgement of Hon'ble Apex Court in the case of **Kurupati Maria Das v. M/s. Dr. Ambedkar Sewa Sansthan and Others** reported in **JT 2009 Vol. 7 SCC 287** held that the remedy was to challenge the election by means of an election petition. The Division Bench also noticed that election petition was already filed against the election of the member of Kshetriya Panchayat which was pending. It is useful to quote the following observations of the Division Bench judgement: -

In Kurapati Maria Das (supra) a writ petition was filed under Article 226 of the Constitution challenging the election of appellant as a Councilor. The ground of challenge was that the appellant contested the election as a Scheduled Caste Candidate "Mala" whereas he did not belong to scheduled caste and had wrongly been elected as scheduled caste candidate. The learned single judge allowed the writ petition holding that the appellant was not entitled to contest the election as scheduled caste category candidate. The writ petition was allowed and the Special Appeal filed before the Division Bench was also dismissed. The appellant thereafter filed Special Leave Petition (C) No.15144 of 2007, in the Apex Court which was heard and decided.

In the aforesaid case, the question as to whether the election was barred under Article 243ZG (b) of the Constitution of India was also raised and gone into by the Apex Court. In the aforesaid case, the Apex Court judgment in K. Venkatachalam Vs. A. Swamickan & Anr, 1999 (4) SCC 526, was also noted and distinguished. The Apex Court laid down following in paragraphs 27,29,31 and 34 which are quoted below:

"27. We are afraid, we are not in position to agree with the contention that K. Venkatachalam v. A Swamickan & Anr. (1999) 4 SCC 526 is applicable to the present situation. Here the appellant had very specifically asserted in his counter affidavit that he did not belong to the Christian religion and that he further asserted that he was a person belonging to the Scheduled Caste. Therefore, the Caste status of the appellant was a disputed question of fact depending upon the evidence. Such was not the case in K. Venkatachalam v. A Swamickan & Anr. (1999) 4 SCC 526. Every case is an authority for what is actually decided in that. We do not find any general proposition that even where there is a specific remedy of filing an Election Petition and even when there is a disputed question of fact regarding the caste of a person who has been elected from the reserved constituency still remedy of writ petition under Article 226 would be available.

29.Shri Gupta, however, further argued that in the present case what was prayed for was a writ of quo warranto and in fact the election of the appellant was not called in question. It was argued that since the writ petitioners came to know about the appellant not belonging to the Scheduled Caste and since the post of the Chairperson was reserved only for the Scheduled Caste, therefore, the High Court was justified in entering into that question as to whether he really belongs to Scheduled Caste.

31. It is an admitted position that Ward No.8 was reserved for Scheduled Cast and so also the Post of Chairperson. Therefore, though indirectly worded, what was in challenge in reality was the validity of the election of the appellant. According to the writ petitioners, firstly the appellant could not have been elected as a Ward member nor could he be elected as the Chairperson as he did not belong to the Scheduled Caste. We can understand the eventuality where a person who is elected as a Scheduled Caste candidate, renounces his caste after the elections by conversion to some other religion. Then a valid writ petition for quo warranto could certainly lie because then it is not the election of such person which would be in challenge but his subsequently continuing in his capacity as a person belonging to a particular caste.

34. Once it is held that the aforementioned case was of no help to the respondents, the only other necessary inference which emerges is that the bar under Article 243-ZG would spring in action."

The Apex Court in the said judgment has also noticed the submission as to whether the writ of quo warranto can be issued when an incumbent is holding an elected office by virtue of election. The answer was given in negative. It was held that challenge essentially is to the election of the appellant and hence the bar under Article 243 ZG is attracted. The appeal was allowed and the judgement of the High Court was set-aside. The above judgment of the Apex Court applies in the facts of the present case and in view of the law laid down by the Apex Court in Kurapati Maria Das case (supra), the writ petition cannot be entertained. The Division Bench judgement relied on by the learned counsel for the petitioner in the case of Srimati Sarita Devi (supra) does not help the petitioner in the present case. The said judgment is an authority that an Anganbari Workers are disqualified from contesting the election of Panchayat and they are not eligible to contest the Panchayat election, but the said case was not a case challenging any election, but the question which was considered in the said case was whether the State Election Officer has any right to debar the Shiksha Mitra/Anganbari Worker from contesting the Panchayat Election and, whether the honorarium received by Shiksha Mitra and/or Aanganbari workers for rendering their respective services falls within the purview of "office of profit." There cannot be any dispute to the propositions as laid down in the said case. However, the said judgment does not help the petitioner in the present case, and it is not an authority for the proposition to hold that election of an elected member of Kshettra Panchayat can be challenged by filing a writ of quo warranto.

14. In view of the foregoing discussion, we are satisfied that the petitioner cannot be allowed to challenge the election of respondent no.8, by means of this writ petition under Article 226 of the Constitution of India.

The writ petition has no merit and is dismissed.

15. In view of the foregoing discussion, it is clear that when the challenge in the petition is essentially the challenge to the election of an elected candidate for which remedy is to file an election petition, this court normally does not entertain a writ of quo-warranto. In the present case, the petitioner herself has filed Election Petition No. 2 of 2010 challenging the election of respondent no. 6 which is pending consideration. After filing the election petition, the petitioner has come up by praying for a writ of quo-warranto. The issue which has been raised in the writ petition that respondent no. 6 was not eligible to contest the election is the issue in the election petition which can very well be gone into in the election petition and decided. In the facts of the present case and in view of the Division Bench judgement in the case of Khem Singh Pachhara (supra), we are of the view that the present writ petition for a writ of quo-warranto need not be entertained.

16. In view of the foregoing discussion, this writ petition praying for a writ of quo-warranto cannot be entertained and is **dismissed** accordingly.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.04.2011

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

Civil Misc. Writ Petition No. 23423 of 2011

Prahlad Kumar ...Petitioner
Versus
The District Magistrate, Allahabad and others ...Respondents

Counsel for the Petitioner:
Sri Satyaveer Singh

Counsel for the Respondent:
Smt. Archana Singh
C.S.C.

Constitution of India Art-226-Recovery Proceeding-House loan default in Payment of installment-questioned before Writ Court-in view of law developed by Apex Court on alternative remedy under Securitisation Act Writ Court generally not entertain Petition-Considering undisputed amount,willingness to pay entire amount with consent of parties-Petition disposed of with certain observation protecting the interest of bank of the petitioner.

Held: Para 6

The learned counsel appearing for the contesting respondents-Bank has no objection to the above prayer made on behalf of the petitioner provided the petitioner deposits an amount of Rs.75,000/- by 17.5.2011 and further deposits the balance amount in three equal quarterly instalments.

Case law discussed:
2010 (8) SCC 110.

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

1. As per the averments made in the Writ Petition, the petitioner took housing loan for construction of house from the respondent no.3-State Bank of India in the year 2002.

2. The petitioner committed default in respect of the said loan. Consequently, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short " the Securitisation Act") have been initiated against the petitioner.

3. We have heard Shri Satyaveer Singh, learned counsel for the petitioner, the learned Standing Counsel appearing for the respondent no.1 and Smt. Archana Singh, learned counsel for the respondent nos.2 and 3, and have perused the averments made in the Writ Petition.

4. ***In United Bank of India Vs. Satyavati Tandon & others reported in 2010 (8) SCC 110***, their Lordships of the Supreme Court have laid down that in view of the alternative remedy available under the Securitisation Act, the High Court in exercise of Writ Jurisdiction under Article 226 of the Constitution of India should normally not interfere in respect of the proceedings being taken under the said Act.

5. Shri Satyaveer Singh, learned counsel appearing for the petitioner, however, states that the petitioner does not want to question the merits of the proceedings being taken under the Securitisation Act and wants to pay the entire outstanding dues with interest and expenses on pro-rata basis in case reasonable time is given to him for making the deposit in instalments.

6. The learned counsel appearing for the contesting respondents-Bank has no objection to the above prayer made on behalf of the petitioner provided the petitioner deposits an amount of Rs.75,000/- by 17.5.2011 and further deposits the balance amount in three equal quarterly instalments.

7. In view of the above, we dispose of the Writ Petition with the consent of the learned counsel for the parties, without going into the merits of the controversy involved in the Writ Petition, by giving the following directions:

1. The petitioner will clear off the entire outstanding dues along-with interest, penal interest and expenses on pro-rata basis.

2. The entire outstanding dues shall be paid in four instalments. The first instalment of Rs. 75,000/- shall be paid by 17.5.2011, and thereafter, the remaining amount will be paid in three equal quarterly instalments.

3. Initially the recovery proceedings are stayed till 17.5.2011. On depositing the first instalment, impugned proceedings shall remain stayed up to the date of next instalment and the process shall continue until the last instalment has been paid.

4. If the petitioner deposits the entire amount as undertaken by the petitioner in the manner indicated above, the proceedings shall stand withdrawn.

5. If the petitioner fails to deposit the amount of any one instalment within the stipulated period, the Bank shall be at liberty to proceed in accordance with law.

6. The cost and recovery charges, if any, shall be paid along-with the last instalment.

8. It is made clear that this order has been passed on the statements made by the learned counsel for the petitioner as well as the learned counsel for the Bank, and we have not adjudicated the claim on merits.

9. The Writ Petition is disposed of with the aforesaid directions and observations.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.04.2011

BEFORE
THE HON'BLE KRISHNA MURARI, J.

Civil Misc. Writ Petition No. 24240 of 2011

Kshetrapal ...Petitioner
Versus
Central Recruitment & Promotion Department, State Bank of India and another ... Respondents

Counsel for the Petitioner:
Sri Sujeet Kumar
Sri Chhaya Gupta

Counsel for the Respondents:
C.S.C.

Constitution of India, Article 226-Service law-Petitioner appeared in clerical examination-written test obtained much more marks than the lowest selected candidate-but got only 10 marks in interview-as qualifying marks is only 12 marks-petitioner challenging in mode of examination-held-once participated in selection can not be allowed to Question the mode of selection.

Held: Para 10

Petitioner after having taken a chance of appearing in the selection proceedings, it is not open to him to challenge the selection proceedings or to challenge the rule or advertisement under which he has appeared. It is well settled that once a candidate has taken a chance of appearing in the proceedings for selection then it is not open for him to challenge the same or to challenge the rule or advertisement under which he appeared, as such, candidate has no locus standi.

Case law discussed:
(1995) 3 SCC 486; (1998) 3 SCC 694

(Delivered by Hon'ble Krishna Murari, J.)

1. Heard learned counsel for the petitioner.

2. Petitioner, an unsuccessful candidate in the recruitment on the post in the clerical cadre in different divisions of State Bank of India conducted by respondent no. 1, has approached this Court seeking the following reliefs.

"1. to issue a writ, order or direction in the nature of mandamus commanding and directing the respondent no. 2 to rearrange the interview of petitioner and decide his selection on the basis of fresh interview.

2. to issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to select the petitioner for the post of clerical cadre on the basis of marks secured by him.

3. to issue a writ, order or direction in the nature as this Hon'ble Court may deem fit and proper to meet the ends of justice under the facts and circumstances of the present case.

4. to award cost of writ petition to the petitioner."

3. Facts are that in pursuance to the advertisement issued by respondent no. 1 on 23.07.2009, petitioner was also an applicant. He appeared in the written examination and was declared successful and was called upon to appear in the interview scheduled to be held on 28.04.2010. However, he was not declared successful.

4. It is contended on behalf of the petitioner that he secured total 136 marks in written examination, but in the interview, he was awarded only 10 marks and because the minimum marks for scheduled caste category in the interview was prescribed as 12 marks, as such, he was not declared successful. It is further contended that since the petitioner has secured 136 marks in written examination, which is much more than the lowest selected candidate, who has secured 135 marks including the interview marks, he is liable to be selected.

5. The argument is totally misconceived.

In case, if separate minimum qualifying marks are prescribed for written examination and interview then the candidate has to secure the same for being declared successful. According to the own case set up by the petitioner, he secured 10 marks in interview which was less than 12, the minimum prescribed qualifying marks. Apparently, the petitioner failed in the interview, and thus, was not selected. Petitioner cannot claim selection merely on the basis that he secured more marks in written examination than the lowest selected candidate, who secured 135 marks in total including the interview marks. When the requirement was to obtain minimum qualifying marks in the written examination as well as in interview separately then selection cannot be claimed merely on the basis of higher marks obtained in written examination.

6. It has next been contended that petitioner was purposely given 10 marks and was entitled for being awarded higher marks in view of the fact that he obtained high marks in the written test.

7. The petitioner cannot challenge the wisdom of interview board, which awarded him marks. Neither any mala fide has been alleged against the interview board nor the same can be presumed.

8. In the case of **Madan Lal & Ors. Vs. State of J&K & Ors., (1995) 3 SCC 486,** it has been observed by the Hon'ble Apex Court as under.

"The petitioners subjectively feel that as they had fared better in the written test and had got more marks therein as compared to the selected respondents concerned, they should have been given more marks also at the oral interview. But that is in the realm of assessment of relative merits of candidates concerned by the expert committee before whom these candidates appeared for the viva voce test. Merely on the basis of petitioners' apprehension or suspicion that they were deliberately given less marks at the oral interview as compared to the rival candidates, it cannot be said that the process

of assessment was vitiated. This contention is in the realm of mere suspicion having no factual basis. It has to be kept in view that there is not even a whisper in the petition about any personal bias of the Members of the Interview Committee against the petitioners. The have also not alleged any mala fides on the part of the Interview Committee in this connection. Consequently, the attack on assessment of the merits of the petitioners cannot be countenanced. It remains in the exclusive domain of the expert committee to decide whether more marks should be assigned to the petitioners or to the respondents concerned. It cannot be the subject-matter of an attack before us as we are not sitting as a court of appeal over the assessment made by the committee so far as the candidates interviewed by them are concerned."

9. Last contention on behalf of the petitioner is that prescribing separate qualifying marks for written test and interview is arbitrary and illegal.

10. Petitioner after having taken a chance of appearing in the selection proceedings, it is not open to him to challenge the selection proceedings or to challenge the rule or advertisement under which he has appeared. It is well settled that once a candidate has taken a chance of appearing in the proceedings for selection then it is not open for him to challenge the same or to challenge the rule or advertisement under which he appeared, as such, candidate has no locus standi.

11. Reference may be made to the judgment of Hon'ble Apex Court in the case of **Union of India & Anr. Vs. N. Chandrasekharan & Ors., (1998) 3 SCC 694,** wherein it has been held that after having appeared in the written test and interview, an unsuccessful candidate cannot be permitted to turn around and challenge the procedure contending that marks prescribed for interview in confidential report are disproportionately high and the authorities shall not fix a minimum to be secured either in interview or in the assessment of confidential report.

12. In view of the above facts and discussions, the writ petition must fail and, accordingly, stands dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.05.2011

BEFORE
THE HON'BLE ARUN TANDON,J.

Civil Misc. Writ Petition No. 29618 of 1990

Sri Sayad Gulam Zilani ...Petitioner
Versus
V.C. Aligarh Muslim University and others ...Respondent

Counsel for the Petitioner:
Sri M.A. Qadeer
Sri Shamim Ahmed

Counsel for the Respondent:
S.C.
Sri D. Gupta
Smt. Suneeta Agarwal

Constitution of India, Article 226,311(2)-Alternative remedy-dismissal order-passed without considering the explanation given to second show cause notice-nor any reason recorded for non satisfaction with the reply-order impugned held-bad in law-quashed objection regarding alternative remedy-not sustainable-as since 1990 petition is pending-can not be thrown out on ground of alternative remedy.

Held: Para 9

From a simple reading of the order passed by the Vice Chancellor, this Court finds that except for recording that after receipt of the enquiry report a second notice was issued to the petitioner and further that petitioner has submitted his explanation thereto, absolutely no reasons have been recorded for disagreeing with the explanation furnished by the petitioner or for coming to a conclusion that the charge stood proved, and for the order of dismissal from service being passed.

Case law discussed:

(2003) 11 SCC 519; 2008(4) ALJ page 226; AIR 1970 SC 1302; AIR 1990 SC 1984

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

1. Petitioner before this Court was employed as Section Officer in Aligarh Muslim University. Under a letter issued by the Head of Department dated 31.03.1982, the petitioner was informed that he has been dismissed from service. Not being satisfied with the order so passed, the petitioner filed an appeal, which was also dismissed on 13.07.1992. This culminated in original suit being filed by the petitioner, being Original Suit No. 348 of 1982. In the original suit a written statement was filed by the Aligarh Muslim University and it was stated that the petitioner has only been placed under suspension and he is being proceeded departmentally.

2. Departmental proceedings were held. The enquiry officer found petitioner guilty of one charge, namely Charge No. 6 and submitted its report to the Vice Chancellor. The Vice Chancellor issued second show cause notice to the petitioner calling upon him to explain as to why punishment, as proposed, be not inflicted.

3. At this stage of the proceedings, the petitioner approached this Court by means of the present writ petition.

According to the petitioner the departmental proceedings itself were bad and consequently the second show cause notice was liable to be quashed. No interim order was granted, therefore the Vice Chancellor proceeded in the matter and by means of the order dated 22.10.1990 held that the charge no. 6 against the petitioner was established from the enquiry report. Explanation submitted by the petitioner was not satisfactory and accordingly the punishment of dismissal from service was inflicted. This order has been challenged by means of the amendment application, which has been allowed.

In order to keep the record straight, it may be recorded that in between petitioner had retired from service and under orders of the Division Bench of this Court in Special Appeal No. 948 of 2004 he has also handed over possession of the official quarter, which was allotted to him while he was in service of the University.

4. Challenging the order of the Vice Chancellor, counsel for the petitioner Sri M.A. Qadeer raised a short ground, namely that the order of the Vice Chancellor contains absolutely no reasons for the conclusion arrived at, namely that the petitioner's reply was not satisfactory and the charge against him stood proved. Counsel for the petitioner submits that the reasons are the heartbeat of every conclusion and without the same, it becomes lifeless. Reference- ***Raj Kishore Jha vs. State of Bihar & Ors.; (2003) 11 SCC 519 ,*** which has since been followed in by the Apex Court in the case of State of Uttaranchal vs. Sunil Kumar Negi; ***2008(4)***

ALJ page 226. It is, therefore, contended that the impugned order cannot be legally sustained.

Counsel for the University Mrs. Sunita Agrawal submits that the Vice Chancellor has agreed with the findings recorded by the enquiry officer and since explanation of the petitioner to the second show cause notice was not satisfactory, he has proceeded to inflict the punishment after holding the petitioner guilty of the charge. It is further submitted that against the order impugned the petitioner has remedy of approaching the Executive Council. Lastly it is submitted that the petitioner has been working as an Advocate even prior to 1990. Even if the order of the Vice Chancellor is set aside for sufficient reasons being not recorded, there cannot be a direction for reinstatement of the petitioner or for payment of back wages in the facts of the case.

5. I have heard learned counsel for the parties and have gone through the records of the writ petition.

This Court may first examine the plea of exhaustion of alternative remedy available to the petitioner. It is apparent that the present writ petition is pending before this Court since 1990 and the order passed by the Vice Chancellor was subjected to challenge by means of the amendment application, which was granted in the year 1990 itself. Even otherwise the Hon'ble Supreme Court of India in the judgment reported in ***AIR 1970 SC 1302; Mahavir Prasad Santosh Kumar vs. State of U.P. and others*** has specifically held that in absence of reasons having been recorded in the order impugned, filing of an appeal would be an empty formality.

6. In view of the aforesaid this Court has no hesitation to record that asking the petitioner to seek alternative remedy at such a belated stage would not be fair and just.

7. Now on merits petitioner appears to be justified in contending that the Vice Chancellor should have considered the explanation furnished by the petitioner to the second show cause notice and should have recorded independent reasons for coming to a conclusion as to whether the charge stood proved or not. Even otherwise he shall have examined as to whether in the facts of the case the punishment of dismissal from service was commensurate to the charge found proved.

8. The Hon'ble Supreme Court of India in the case of ***S.N. Mukherjee Vs. Union of India; AIR 1990 SC 1984*** has held that reasons are necessary links between the facts and the findings recorded in the administrative orders, which visit a party with evil civil consequences. In absence of reasons such an order cannot be permitted to stand.

9. From a simple reading of the order passed by the Vice Chancellor, this Court finds that except for recording that after receipt of the enquiry report a second notice was issued to the petitioner and further that petitioner has submitted his explanation thereto, absolutely no reasons have been recorded for disagreeing with the explanation furnished by the petitioner or for coming to a conclusion that the charge stood proved, and for the order of dismissal from service being passed.

10. In the totality of the circumstances on record, the order impugned passed by the Vice Chancellor cannot be legally sustained and is hereby quashed.

The issue does arise as to what relief in the facts of the case the petitioner be granted after setting aside the order of the Vice Chancellor. It is admitted position that the petitioner is practicing as an Advocate even since prior to 1990. It is not the case of the petitioner that at any point of time he had surrendered his licence to practice as an Advocate. Further the petitioner has already attained the age of superannuation. This Court records that there cannot be an order of reinstatement or for payment of back wages to the petitioner on the principle of 'No Work No Pay' in the said factual background. However, the issue as to whether the petitioner would be entitled to any relief for the period of suspension or till passing of the order of termination as impugned in the present writ petition, can be examined by the Vice Chancellor himself only after he adjudicate upon the explanation furnished by the petitioner afresh and take a decision supported by reasons in the matter of disciplinary proceedings taken against the petitioner. All issues in that regard are left open.

11. Accordingly, the writ petition is **allowed**. The order of the Vice Chancellor is hereby quashed. Let the Vice Chancellor take a fresh decision in the matter on the basis of the records available, supported by cogent reasons, preferably within three months from the date a certified copy of this order is filed before him.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.04.2011

BEFORE
THE HON'BLE ARUN TANDON,J.

Civil Misc. Writ Petition No. 30654 of 2008

Smt. Sudha Jain ...Petitioner
Versus
State of U.P. and others ...Respondent

Counsel for the Petitioner :
Sri H.N. Pandey

Counsel for the Respondent:
C.S.C.
Sri Ajay Kumar Sharma

Constitution of India-Article 226-compassionate appointment-widowed daughter-in-law-not within the definition of family-can not be appointed on compassionate grounds.

Held: Para 14

So far as the divorced daughter-in-law is concerned, the issue stands decided under the judgement of this Court in the case of Akhilesh Tiwari vs. State of U.P. and others reported in 2006 (3) ESC 1865 (All).

Case law discussed:
[2009 (27) LCD 995]; 2003(40 AWC 3205; 2006(5) ADJ 501; [2011 (3) ADJ 432 (FB)]; 2006 (3) ESC 1865 (All)

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

1. Petitioner before this Court made an application for compassionate appointment on the allegation that her mother-in-law expired during harness and that her husband had pre-deceased the mother-in-law meaning thereby that the petitioner was widowed doughtier-in-law of the deceased employee. This

application of the petitioner was considered and appointment was offered to her. However, on complaints being made, the appointment has been cancelled under the impugned order dated 28.4.2008. Hence this petition.

2. On behalf of the petitioner, it is contended that the impugned order has been passed without opportunity of hearing to the petitioner and further that the same proceeds on presumption that there is a dispute in respect of the right of the petitioner for such compassionate appointment. He submits that the order cannot be legally sustained.

3. On behalf of the respondents, it is pointed out that a Division Bench judgment of this Court in the case of ***Basic Shiksha Adhikari, Hardoi vs. Madhu Mishra and others*** reported in ***[2009 (27) LCD 995]*** has specifically held that widowed daughter-in-law of the deceased employee is not included in the scheme providing for compassionate appointment and, therefore, petitioner can have no claim for such appointment. Irrespective of the reasons assigned in the impugned order since the petitioner was not within the category of persons entitled for compassionate appointment, this Court may not interfere in this matter inasmuch as any order in favour of the petitioner would only perpetuate an illegal appointment.

4. Person seeking impleadment as set up her independent claim for compassionate appointment on the ground that she is divorced daughter of the deceased employee.

5. Shri H.N. Pandey, counsel for the petitioner in rejoinder affidavit submits that appointments has been offered to her in terms of the Government Order dated 04.04.2000 and that the authorities have interpreted that the widowed daughter-in-law is within the definition of family of the deceased employee. He contends that the person seeking impleadment has not been divorced. The allegations in that regard are false. She has been married and there is no decree of divorce granted by any Court of law. In any case even a divorced daughter-in-law is not entitled for such compassionate appointment.

6. I have heard counsel for the parties and have examined the records.

7. The issue with regard to the entitlement of a widowed doughtier-in-law being within the scheme providing for compassionate appointment, has specifically been considered by the Division Bench of this Court in the case of ***Basic Shiksha Adhikari (supra).*** After overruling the judgments of the Single Judge reported in ***2003 (4) AWC 3205 and*** reported in ***2006 (5) ADJ 501*** the Division Bench after considering the definition of 'family' as contained under the ***U.P. Recruitment of Dependants of Government Servants Dying-in-harness Rules, 1974,*** which have been applied to the employees of Basic Shiksha Parishad under Government Order dated 04.09.2000 in exercise of powers under Section 13(1) of U.P. Basic Shiksha Adhiniyam, 1972 has proceeded to hold that daughter-in-law is not covered within the definition of family, hence she is not entitled to appointment on compassionate ground. Reference para 14 of the said judgment which is quoted here-in-below:

" ..... 14. "Hard case makes bad law" is a concept well known in Courts of Law. In the cases of Urmila Devi (supra) and Sanyogita Rai (supra), much emphasis has been laid on the word "includes' in the definition of "family'. It is true that inclusive definition is often used in the interpretation clauses in order to enlarge the meaning of the word but the said principle does not contemplate inclusion of such persons which has no nexus with the description of the relations mentioned in the Rules. Rule 2(c) of the Rules 1974 does include "widowed daughter' ***but does not include daughter-in-law. The Rule-making Authority having not included "widowed daughter-in-law', it would mean adding something in the Rule which the Rule-making authority did not intend to include.*** *In our opinion, enlarging the meaning of the word would mean adding words, which is not permissible".*

8. The judgment of the Division Bench in the case of ***Basic Shiksha Adhikari (Supra)*** was referred for consideration to a larger Bench. The Full Bench in the case of ***U.P. Power Corporation Ltd. vs. Smt Urmila Devi*** reported in ***[2011 (3) ADJ 432 (FB)]*** specifically held that the Division Bench had specifically overruled the judgment of the Single Judge in the case of ***Urmila Devi (supra)*** and, therefore, the reference as made itself was not maintainable.

9. However, the Full Bench proceeded to make certain recommendations for the widowed doughtier-in-law being included in the definition of family for the purpose of compassionate appointment and, therefore directed that the State Government may consider this aspect and take appropriate decision so that widowed doughtier-in-law also become entitled to be considered for compassionate appointment, if other criterias are satisfied. Reference para 8 of the Full Bench judgment which reads as follows:

"We must, however, note one feature of the definition of the word 'family' as generally contained in most Rules. The definition of 'family' includes wife or husband; sons; unmarried and widowed daughters; and if the deceased was an unmarried government servant, the brother, unmarried sister and widowed mother dependent on the deceased government servant. It is, therefore, clear that a widowed daughter in the house of her parents is entitled for consideration on compassionate appointment. However, a widowed daughter-in-law in the house where she is married, is not entitled for compassionate appointment as she is not included in the definition of 'family'. It is not possible to understand how a widowed daughter in her father's house has a better right to claim appointment on compassionate basis than a widowed daughter-in-law in her father-in-law's house. The very nature of compassionate appointment is the financial need or necessity of the family. The daughter-in-law on the death of her husband does not cease to be a part of the family. The concept that such daughter-in-law must go back and stay with her parents is abhorrent to our civilized society. Such daughter-in-law must, therefore, have also right to be considered for compassionate appointment as she is part of the family where she is married and if staying with her husband's family. In this context, in our opinion, arbitrariness, as presently existing, can be avoided by

including the daughter-in-law in the definition of 'family'. Otherwise, the definition to that extent, prima facie, would be irrational and arbitrary. The State, therefore, to consider this aspect and take appropriate steps so that a widowed daughter-in-law like a widowed daughter, is also entitled for consideration by way of compassionate appointment, if other criteria is satisfied."

10. It is therefore clear that the Full Bench of this Court has not found any error in the Division Bench judgement of this Court in the case of ***Basic Shiksha Adhikai, (supra).*** The Full Bench only proceeded to make a recommendation to the State Government to amend the definition of family so as to include the widowed daughter-in-law within the ambit of family.

11. It is not the case of the petitioner that such amendment in the definition of 'family' has been carried out till date. The suggestion made by the Full Bench, it appears that has not found favour with the State Government. The law as it stands today cannot be by passed by this Court merely because certain suggestions had been made by the Full Bench for amending the definition of family.

12. In the facts and circumstances of the case, this Court has no hesitation to hold that widowed daughter-in-law is not within the definition of family for being considered for appointment on compassionate ground, in view of the Division Bench of this Court in the case of ***Basic Shiksha Adhikari (supra).***

13. This Court will not interfere with the impugned order inasmuch as any order to the contrary will result in an illegal order of appointment in favour of the petitioner being perpetuated, which can never be the outcome of a judgment of the writ Court.

14. So far as the divorced daughter-in-law is concerned, the issue stands decided under the judgement of this Court in the case of ***Akhilesh Tiwari vs. State of U.P. and others*** reported in ***2006 (3) ESC 1865 (All).***

15. Writ petition is dismissed with the observations made.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.04.2011

BEFORE
THE HON'BLE PANKAJ MITHAL, J.

Civil Misc. Writ Petition No. 30965 of 2010

Virendra Chaudhari ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri Anupam Kulshrestha

Counsel for the Respondent:
C.S.C.

<u>Indian Stamp Act-1899-Art-5-</u> Schedule 1-B-Charge of Stamp Duty-instrument being "agreement to sale" without possession-only on half of consideration stamp duty-payable additional demand of stamp duty treating sale on full consideration-manifestly erred in determining the sufficiency of stamp duty.

Held: Para 3

Admittedly the instrument in question is an agreement to transfer 2 Acres 50 Decimals of land without possession for a sale consideration of Rs.32,000/-. Therefore, in accordance with Article 5(b-1) of Schedule 1-B of the Act, stamp duty

on half of the aforesaid sale consideration i.e. Rs.16,000/- is payable as a deed of conveyance.

(Delivered by Hon'ble Pankaj Mithal, J.)

1. The petitioner has filed this writ petition against the impugned order dated 7.8.2007, passed by the Additional Collector (Finance & Revenue), Mathura and the revisional order dated 29.3.2010, passed by the Additional Commissioner, Agra Division, Agra, determining the deficiency in stamp duty treating the instrument dated 4.7.2010 as a sale-deed.

2. The submission of the petitioner is that the aforesaid instrument is an agreement of sale of immovable property without possession and therefore, the authorities have erred in charging the stamp duty on the same treating it to be a sale-deed. On an agreement or a memorandum of agreement stamp duty in accordance with Article 5 of Schedule 1-B of the Indian Stamp Act is payable. Sub clause (b-1) of Article 5 of Schedule 1-B of the Act provides that an agreement relating to sale of immovable property where possession is not delivered shall be chargeable to stamp duty as a conveyance No.23 clause (a) on half of the amount of consideration as set forth in the agreement. In other words, it provides for charging stamp duty on half of the amount of sale consideration set out in the agreement.

3. Admittedly the instrument in question is an agreement to transfer 2 Acres 50 Decimals of land without possession for a sale consideration of Rs.32,000/-. Therefore, in accordance with Article 5(b-1) of Schedule 1-B of the Act, stamp duty on half of the aforesaid sale consideration i.e. Rs.16,000/- is payable as a deed of conveyance.

4. The authorities below as such have manifestly erred in determining the deficiency in stamp duty on the aforesaid instrument as a sale deed on the market value. Accordingly, the impugned orders cannot be sustained in law and are liable to be quashed.

5. In view of the aforesaid facts and circumstances of the case, the impugned orders dated 7.8.2007, passed by the Additional Collector (Finance & Revenue), Mathura and the revisional order dated 29.3.2010, passed by the Additional Commissioner, Agra Division, Agra are quashed.

6. The writ petition is allowed with no order as to cost.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.04.2011

BEFORE
THE HON'BLE PRAKASH KRISHNA,J.

Civil Misc. Writ Petition No. 48859 of 2007

Ram Naumee ...Petitioner
Versus
State Of U.P. and others ...Respondent

Counsel for the Petitioner:
Sri Arun Kumar Singh

Counsel for the Respondent :
C.S.C.
Sri Anuj Kumar

U.P.Z.A. & L.R. Act-Section 198(3) Cancellation of Patta-granted about 200 hectares of Pasture Land-objection that Public utility land can not be subject

matter of Patta apart from other legal flaw-rejected by both authorities below on ground of limitation-ignoring the aspect in view of law laid down by the Apex Court in several decisions if lease relate to public utility-the authorities below ought to have take suo moto-action-order not sustainable-petititon allowed with cost of Rs. 50000/ out of which 10 thousand shall be given to petitioner and remaining 40000/ shall go in Gaon Sabha fund.

Held: Para 25

It is not out of place to mention here that under section 198 power to cancel lease is granted not only to aggrieved person but it is also confers suo moto power on the authority. The authorities below, therefore, should have exercised the suo moto power for cancelling the illegal allotment in favour of the contesting private respondent no.6.

Case law discussed:

2010 (109) RD 156; JT 2011 (1) SC 617; JT 1999 (5) SC 42; JT 2001 (6) SC 88

(Delivered by Hon'ble Prakash Krishna,J.)

1. Arazi No.8 area 200 hectare situate in Village Makdumpur District Mau is the subject matter of the present writ petition. The said plot was earmarked as pasture land in the revenue record.

2. The grievance of the petitioner is that the respondents have unauthorizedly allotted the said plot to the contesting respondent no. 6 Smt.Dulari W/o Shanker.

3. An application for cancellation of allotment of the aforesaid plot in favour of Smt. Dulari was filed by certain persons including the petitioner before the Upper Collector, Mau.

4. The application was filed on the ground that the petitioner is a poor Harizan Agricultural Labourer. The land in question being pasture land which is public utility land, could not have been allotted to the contesting respondent. It was further stated that the Revenue Inspector intentionally submitted a false report dated 2.5.1996 by changing the land use of the said plot. The lease was given to the contesting respondent without there being any public notice etc. in a clandestine manner. The application has been dismissed by the order dated 23.10.2004 on the ground that lease was granted in the year 1996 and the application for its cancellation was filed in the year 2001 I.e beyond three years; the period prescribed for filing an application for cancellation of a lease, by an aggrieved person. The matter was carried in revision No.348/426/B of 2004 before the Additional Commissioner(1st) Azamgarh Division, Azamgarh who by his order dated 19.10.2006 confirmed the order and the said revision was dismissed.

5. Challenging the aforesaid two orders, the present writ petition has been filed. Heard Shri Arun Kumar Singh, learned counsel for the petitioner and the learned standing counsel on behalf of the respondents no. 1 to 4. Notices were issued to respondent no.6 but her counsel Shri D.B.Yadav and Shri R.D.Yadav, Advocates are not present even in the revised list.

6. The learned counsel for the petitioner submits that the land in question being a pasture land cannot be subject matter of allotment to anybody. He further submits that the procedure prescribed for allotment was not followed. The said plot has been allotted to the respondent no. 6 in a fraudulent manner without there being any public notice. The respondent no. 6 is not a landless agricultural laborer. Her husband has already got three bighas of land besides

two medical shops and gun license. The learned standing counsel on the other hand supports the impugned orders.

7. The only question that arises for consideration in the present petition is whether the authorities below were justified in rejecting the application filed by the petitioner for cancellation of the allotment in favour of the contesting private respondent on the plea that the same is barred by time.

8. Along with the writ petition, a copy of Khatauni has been filed which shows that in pursuance of the order of Sub Divisional Officer, Ghosi and the resolution dated 25.2.1996 approved on 30.12.1996, the user of the plot no.8 was changed from pasture land and the name of respondent no. 6 was recorded as Bhumidari with non transferable rights. The above document clearly shows that the respondents have allotted a public utility land in favour of the respondent no.6.

9. The learned counsel for the petitioner submits that it was a public utility land and therefore, it could not have been allotted. Reliance has been placed upon a judgment of this Court in **Atar Singh versus State of U.P and others 2010 (109) RD 156,** wherein it has been held that a land recorded as Charagah cannot be allotted in favour of any person.

10. There are mainly two objects of pasture land or grazing land:

Firstly, it provides rights to the villagers to graze their cattle, free of cost, and without any money.

Secondly, pasture land is a part of our ecology and helps a lot in maintaining our ecological balance by providing domestic animals of the tribes, their natural environmental and natural home and natural environmental and natural vegetation, where they eat food (grass), drink water, get pure air, sunlight, rest, move and enjoy freedom, freedom from the shackles of farm house, freedom from the fetters of rope and freedom from every iron bar. Otherwise, it would be a perpetration of cruelty, torture, exploitation and degrading treatment of domestic animals unbalancing our ecological system.

11. The fact is that a large chunk of land measuring 200 hectares has been allotted to the respondent no. 6 without following the prescribed procedure under section 198 of U.P.Z.A & L.R Act.

12. Section 197 of U.P.Z.A & L.R Act 1950 empowers the Land Management Committee with the previous approval of the Assistant Collector incharge of the Sub Division to admit any person as Bhumidhar with non transferable rights to any land to a vacant land, land vested in the Land Management Committee. This section also refers Section 132.

"Section 132 provides that notwithstanding anything contained in Section 131 Bhumidhari rights shall not accrue in pasture lands or lands covered by water.....".

13. The scheme of the Act suggest preservation of pasture land. This is one aspect of the case. There appears to be no provision to convert a pasture land at the whims of an authority into a vacant land and open such converted land for allotment under section 197 of the Act.

14. A complete procedure for allotment of vacant land vested in the Land Management Committee under section 194 or any other provision of the Act has been provided therein. Section 198 is in the nature of self code. It lays down the order of preferences in admitting persons to land as Bhumidar with non transferable right. Its sub section (3) provides that the land that may be allotted under sub section (1) shall not exceed.

(i)in the case of a person falling under Clause (C) such areas together with the land held by him as bhumidar or asami immediately before the allotment would aggregate to 1.26 hectares (3.125 acres):

(ii) in any other case, an area of 1.26 hectare (3.125 acres)

15. Procedure for cancellation of allotment has also been provided therein. In any case in view of sub section (3) of Section 198 an area more than 1.26 hectares cannot be allotted to a person.

16. In the case on hand therefore, allotment of 200 hectares of land to the contesting private respondent on the face of it is illegal, void and beyond the statutory provisions.

17. There is another flaw in the impugned orders. The impugned orders would show that the resolution of Gaon Sabha for allotment of the land in dispute is dated 25.2.1996 which was approved on 30.12.1996. No such resolution could have been passed on 25.2.1996 or approved on 30.12.1996, as on these dates the land continued to be recorded in revenue record as "charagah' i.e 'pasture land'. The entry of pasture land was struck off by the order dated 2.1.1997. Thus, on the date of proposal or its acceptance, it was not a vacant land open for allotment.

18. The authorities below have also failed to consider the plea that the allottee is not a landless agricultural labourer. Her husband is a rich person and possesses three bighas of land and two medical stores. The said averment made in para 9 of the writ petition, in the above of any denial, is liable to be accepted as correct.

19. It is apt to consider the judgment of the Apex Court in **Jagpal Singh & others versus State of Punjab & Others JT 2011 (1) SC 617.** This was a case with respect of a Village Pond. In that connection, the Apex Court has made certain observations which are relevant for the present purposes. The Apex Court has deprecated the action of the State Authorities either in allotting the public utility land in favour of a person or in permitting an encroacher to occupy such public utility land. It has relied upon its earlier decision **M.I.Builders (P) Ltd. Versus Radhey Shyam Sahu JT 1999(5) SC 42:** where the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs.100 crores. It has been observed that the principle laid down in the said decision of **M.I.Builders (P) Ltd. Versus Radhey Shyam Sahu JT 1999(5) SC 42:** will apply with even greater force in cases of encroachment of village common land. In para 15 of the report, the settlement of such Gaon Sabha land to private persons and commercial enterprises on payment of some money has not been approved and it has been provided that even if there is general order in favour of such settlement, the same should be ignored.

20. In the case of **Hinch Lal Tewari versus Kamala Devi JT 2001 (6) SC 88 and others** the Apex Court has observed thus:

"13. It is important to note that material resources of the community like forests, tanks, ponds, hillock, mountain et.c are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enable people to enjoy a quality life which is essence of the guaranteed right under Article 21 of the constitution. The Government, including revenue authorities, i.e respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites. '

21. The ratio of the aforesaid decisions is that a public utility land should be preserved as such and under no circumstances it should be allotted or leased out to any person. Any action on behalf of the state authorities contrary to above, is illegal and is liable to be ignored.

22. In the case of **Jagpal Singh & Others (Supra),** the following observation in respect of illegal allotment of such lands has been made:
month

"The time has now come to review all these orders by which the common village land has been grabbed by such fraudulent practices."

23. Not only this, general directions have been issued to all State Governments directing them to prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land. It has been further provided that all these land be restored to Gaon Sabha/Gram Panchayat for the common use of Villagers of the Village.

24. In view of above, the action of the respondents is void and without any jurisdiction. The authorities below were not justified in rejecting the application for cancellation of the lease. It is settled principal of law if an order has been obtained by fraud, the said order is void and its validity can be questioned as soon as the fraud comes to knowledge of the concerned party. The authorities below have not examined the case from the said angle and proceeded to dismiss the application for cancellation of lease. Such approach is wholly unwarranted in law.

25. It is not out of place to mention here that under section 198 power to cancel lease is granted not only to aggrieved person but it is also confers suo moto power on the authority. The authorities below, therefore, should have exercised the suo moto power for cancelling the illegal allotment in favour of the contesting private respondent no.6.

26. In the counter affidavit filed on behalf of the State, the fact that it was a pasture land and its land use is being changed has not been disputed.

27. In this view of the matter, the impugned orders cannot be allowed to stand. No counter affidavit has been filed by the respondent no. 6 and in the counter affidavit filed on behalf of the respondent

no. 1 to 4, it has not been disputed that the said plot was not a pasture land, it is necessary in the interest of justice to issue a direction to the respondent no. 3, the Collector, Mau to evict the respondent no. 6 forthwith, in any case not later than one month from the date of production of certified copy of this order before him.

28. The respondents are further directed not to allot or lease out the said plot to any person. The said plot shall be restored as pasture land. No person or authority shall be entitled to change its use.

29. From the record, prima facie it is evident that the officials were hands in glove with the contesting private respondent no.6 with a view to illegally grab the common land of the villagers. Let an inquiry be conducted against the then officials who accorded the permission for treating the land in dispute as a vacant land by ordering the change of revenue entry and the officials who have accorded the sanction of the proposal of Gaon Sabha if any for allotment of the disputed land to the contesting respondent no.6.

30. In the result, the writ petition succeeds and is allowed with cost of Rs.50,000/- payable by the contesting private respondent no.6. Out of the said amount, a sum of Rs.10,000/- shall be payable to the petitioner and the remaining amount shall be payable to the Gaon Sabha. One month time is granted to pay the said cost failing which it shall be open to the Collector to recover the said amount along with the collection charges from the contesting private respondent in accordance with law. Both the impugned orders dated 23.11.2004 and 19.10.2006 are hereby set aside. The authority concerned is required to take immediate action for the restoration of the land in question as public utility land by evicting the respondent No. 6 from the land in dispute, as directed above.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 31.05.2011

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

Civil Misc. Writ Petition No.46071 of 2000

Dr. Pradyumna Singh ...Petitioner
Versus
The Chancellor, Din Dayal Upadhyay,Gorakhpur Univeristy and others ...Respondents

Counsel for the Petitioner:
Sri O.P. Singh
Sri S.K. Rao
Sri A.K. Singh
Sri R.C. Yadav

Counsel for the Respondents:
Sri R.K. Ojha
Sri Dilip Gupta
C.S.C.

U.P. State Universities Act, Section 35(2) readwith Para 17.06 of status of university-Dismissal of Principal-enquiry conducted in accordance with law-inspite of full fledged opportunity the petitioners tried his best to avoid the disciplinary proceeding-even on first opportunity never raise voice regarding non availability of supported documents-appellate authority confirmed the punishment of dismissal-considering gravity of charges-writ court declined to interfere.

Held: Para 24 and 25

The entire correspondence annexed to the writ petition establishes that the petitioner was only trying to avoid and

delay the enquiry. He did not want the document, which were removed after breaking up the locks from his residence to prepare a defence. There was no specific demand of any documents by the petitioner, whereas he was the Principal of the college for 9 years and was all along maintaining the accounts. The petitioner also did not state in his correspondence that the documents in support of the chargesheet were not annexed with the chargesheet. His reply was confined to the fact that the documents removed from his residence were to be used by him in his defence.

We do not find any good ground to interfere with the orders of the Vice Chancellor approving the resolution of the Committee of Management to dismiss the petitioner on the charges, which were found established against him in an enquiry in which he refused to participate, and the order of the Chancellor dismissing the appeal, considering all the points. We also decline to interfere in the matter on the ground that the petitioner was accused in the crimes of the murder of a teacher of his own college and for embezzlement of the funds of the college.

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

1. We have heard Shri O.P. Singh assisted by Shri S.K. Rao for the petitioner. Shri R.K. Ojha appears for the management-respondents.

2. The petitioner was selected by the U.P. Higher Education Service Commission and was appointed as Principal of Buddha Post Graduate College, Kushi Nagar in June 1989. He joined as Principal of the college on 5.12.1989. It is stated by him in the writ petition that he started several departments in the college and constructed buildings. The college progressed day by day and became one of the famous colleges affiliated under Deen Dayal Upadhyay Gorakhpur University, Gorakhpur. The petitioner's work and conduct was so good that he was considered for appointment to the post of Vice Chancellor of some other university.

3. It is stated in the writ petition that the Committee of Management of the college is headed by an industrialist, Sardar Dilip Singh Majithiya. Shri Chandan Singh Dhillon was the Secretary of the Committee of Management of the college and Shri Rameshwar Prasad Pandey was the Joint Secretary. They wanted to use the property of the college for their personal advantage. A number of letters are annexed to the writ petition to show that the petitioner was directed by Shri Majithiya and Shri Dhillon to bear the expenditure of their travel. Many a time money was also demanded. The petitioner refused to oblige on which the management was not pleased and started interfering in the affairs of the college.

4. The petitioner was suspended on 18.2.1999 and a first information report was lodged by College Management against him and four others in Case Crime No.345 of 1999 under Section 408, 419, 420, 467, 468, 471 IPC. The High Court in Criminal Misc. Application No.1940 of 2000 by order dated 8.3.2000 transferred the investigation from civil police to CBCID. The investigation is still pending.

5. A five member enquiry committee was appointed by the college on 24.2.1999 to enquire into the matter and submit a chargesheet for approval before the Committee of Management. Since the petitioner had made many complaints against the Secretary and the Joint Secretary, who was made the

members of the enquiry committee, a representation was made by him to change the members of the enquiry committee on 1.3.1999 and 12.3.1999. These applications were ignored and chargesheet dated 16.3.1999 was prepared and was sent by registered post. The chargesheet was received by him on 21.5.1999.

6. In the chargesheet dated 16.3.1999 running into 25 pages the petitioner was charged with administrative and financial mismanagement, misappropriation of college funds and embezzlement. He was charged with allowing a daily wage employee, who is not regular employee of the college to maintain the accounts; cash book and other accounts of the maintenance grants for which no permission was taken from the President/ Secretary of the Committee of Management. The amount spent towards maintenance of which the vouchers were annexed with the chargesheet were paid for which no work was carried out, nor there is any proof of its expenditure. All the vouchers are on plain paper and paid in cash and in this manner the petitioner has embezzled Rs.5,15,414/-. The amounts for binding and purchase of books was spent without any demand for binding and receipt of bills. A large number of daily wage employees were engaged without taking sanction from the President of the Society. The District Magistrate was given false information about the meeting of the Committee of Management vide his letter dated 8.3.1999. The petitioner was also charged with failing to attend the meeting on the murder of a teacher of the college late Shri J.N. Singh causing disturbance and destruction of the property of the college by the agitated students. By Charge No.3A the petitioner was charged with appointing his own wife Smt. Gyanti Singh as Lecturer in History. He had concealed the fact that she was his wife. He also appointed one Shri Ghan Shyam Rao, the Lecturer in Ancient History by manipulating his marks, whereas he was not eligible for appointment. The nomination fees of Rs.1,43,783/- and examination fees of Rs.3,34,270/- was misappropriated. The petitioner had charged applications fees of Rs.20/- and admission fees of Rs.75/- from the students and did not deposit the entire amount of Rs.4,39,710/- in the college accounts. An amount of Rs.4,50,741.50 was used for personal expenses. In the same manner the caution money fund, sports fund, reading room fund, B.Ed. cultural fund, examination fund, social welfare fund, development fund and the grant received from the University were misappropriated, for which a first information report was lodged against him.

7. It is stated in the writ petition that in the absence of the petitioner on 28.3.1999 the members of the committee took away more than 300 files, cash books, vouchers, registers and papers from the residence of the petitioner after breaking the lock. Out of these only 149 papers and registers were mentioned in the inventory signed by 13 persons. The chargesheet was prepared on the basis of these documents but that enquiry officer did not supply these documents along with the chargesheet or thereafter. The petitioner requested for these documents by letter dated 22.5.1999 to the President and the Committee of Management but the documents were not supplied to him. Once again he wrote a letter on 24.5.1999.

Since he did not get the documents, general reply was given to the chargesheet on 16.3.1999. The petitioner, thereafter, kept on sending letters on 5.7.1999, 19.7.1999, 28.7.1999 and 4.8.1999 to give documents relied upon in the chargesheet. The documents, however, were not supplied to him.

8. On 9.8.1999 the President of the Committee of Management passed a resolution for dismissing the petitioner from service and send a copy to the Vice Chancellor of the University for his approval. The petitioner filed a Writ Petition No.37339 of 1999. On 1.9.1999 the writ petition was disposed of with directions that the Vice Chancellor will pass an order withi9n a period of one month and that unless and until the Vice Chancellor approve the resolution, the same shall not be given effect to. The order was in consonance with the provisions of the U.P. State Universities Act, 1973 (the Act).

9. The Vice Chancellor by his letter dated 4.9.1999 informed the petitioner fixing 15.9.1999 for hearing. The petitioner wrote letter to the Vice Chancellor on 9.9.1999 to provide the documents, which were mentioned in the chargesheet and that the Committee of Management should be asked after supply of documents to give him an opportunity of hearing. The petitioner also made a personal request at the time of oral hearing to the Vice Chancellor on 15.9.1999 to be given documents and proper hearing. The petitioner's request was not accepted. The documents and the witnesses were not summoned nor any direction was given to the Committee of Management to that effect and on 28.9.1999 the Vice Chancellor of the University approved the resolution of the Committee of Management dismissing the petitioner from the post of Principal under Section 35 (2) of the Act.

10. The Vice Chancellor in his order approving the resolution of the Committee of Management to dismiss the petitioner has observed that the enquiry committee after considering the records, and the accounts examined by the Chartered Accountant found the charge of embezzlement of Rs.95,90,769/- to be established against him. He found that the chargesheet of 25 pages with 171 documents in proof was sent to the petitioner by registered post at his residential address on 16.3.1999. He was required to submit his explanation within three weeks. A news was also published in "Dainik Jagran' on 14th May, 1999, "Rashtriya Sahara' Editions Lucknow and Delhi on 12.5.1999 asking the petitioner to submit his explanation. The petitioner did not submit any explanation on which the enquiry committee considered the 16 page enquiry report on the basis of document. In between the petitioner sent a letter on 24.5.1999, which was received by the Secretary of the society asking for time to submit his explanation by 30.6.1999. In order to give sufficient for explanation the Committee of Management in its meeting dated 24.6.1999 decided to sent a copy of the enquiry report to the petitioner to submit his explanation and to give him an opportunity to examine the documents and evidence all over again. The notice was also published in the newspaper "Dainik Jagran' on 24.6.1999 allowing the Principal to appear either on 12th, 13th, 14th July, 1999 according to his convenience and to appear in the office of the Secretary, who was the coordinator of

the enquiry committee. The Principal submitted his reply on 29.6.1999, which was received by the Secretary on 10.9.1999 and in which the petitioner denied the charges and requested for revoking the suspension order.

11. The Committee of Management in its meeting dated 9th August 1999 decided to give an opportunity of personal hearing to the petitioner and informed him by registered post on 26.7.1999 but that the petitioner did not appear on which by a unanimous decision in the meeting of the Committee of Management on the same day on 9th August, 1999, it was decided to dismiss the petitioner for having remained absent for a long period of time, misappropriating the amount from maintenance and development grants without the approval of the President and the Secretary ignoring the permanent employees of the college to allow the daily wagers to prepare the accounts. The Committee of Management also found the petitioner guilty of appointing the ineligible persons as Lecturers in the college and for mismanagement. He was also found guilty of making payments in violation of the orders of the High Court in misappropriating the registration fees of Rs.1,45,782/- and examination fees of Rs.8,44,088.75 of the students. He was also found guilty of withdrawing Rs.49,97,648.27 by vouchers, which has been verified and for not depositing and misappropriating the entire amount of Rs.36,05,250.00 received from the University Grants Commission. The Vice Chancellor found that the principles of natural justice have been followed in establishing the charges and thus he approved the resolution to dismiss the petitioner from service.

12. The petitioner preferred an appeal before the Chancellor on 28.9.1999 and sent a letter to the Chancellor again demanding the documents and hearing to explain the allegations. The appeal was rejected on 20.6.2000. The order was served on the petitioner on 13.7.2000 giving rise to this writ petition.

13. The Chancellor in his order dated 20th June, 2000 considered the grounds urged by the petitioner in appeal namely that the Committee of Management and the Vice Chancellor did not give him sufficient opportunity to defend himself. The documents and the evidence in proof of the charges were not given to him and that by unreasonable haste the resolution of the Committee of Management to dismiss the petitioner was approved. The Chancellor has considered the stand taken by the Committee of Management that the petitioner was given sufficient opportunity to defend himself. The enquiry committee gave a chargesheet on the basis of cogent evidence establishing embezzlement. The petitioner was given sufficient opportunity by the Committee of Management on 12.7.1999 and 9.8.1999 and thereafter by the Committee of Management also. The Chancellor also noted the contention of the Committee of Management of the college that the petitioner has also been made an accused in Case Crime No.1107 of 1998 reporting the murder of late Shri J.N. Singh, Associate Professor in the Botany Department of the college. The High Court dismissed the writ petition of the petitioner to quash the first information report. The Chancellor has also noted the statement of the Committee of Management. The petitioner is an accused

in Case Crime No.86 of 1999 for embezzlement as Accused No.3.

14. After narrating the charges against the petitioner the Chancellor quoted sub-section (2) of Section 35 and Statutes 17.06 relating to departmental enquiry against the teachers including the Principal of the Statutes of the Gorakhpur University and has recorded the finding that the petitioner was given chargesheet and that his explanation to the charges were considered after giving him sufficient opportunity of hearing before deciding to dismiss his services. The fact available on record establish that the petitioner is guilty of serious charges, which were proved against him on the basis of the evidence and that there was no illegality of the order of the Vice Chancellor.

15. Shri O.P. Singh assisted by Shri S.K. Rao submits that the documents were not supplied to the petitioner. The entire enquiry was farce. The President of the college mostly lives outside the country and use to demand money for himself and the Secretary of the College. The petitioner even after doing his best and improving the college, could not make illegal demand of the management and was thus framed in respect of charges for which he had sufficient explanation. The documents taken away from his residence were sought to be basis of proving the charges. These documents were never given tot he petitioner. The petitioner requested to give the document on the basis of which the allegations were made against him of embezzlement made to the enquiry committee, the Committee of Management and the Vice Chancellor were not considered. The petitioner could not give a detailed reply tot he charges on account of non-availability of the documents. It is submitted that the enquiry is vitiated for violation of principle of natural justice. The charges of embezzlement could not be proved in the documents which were supplied to the petitioner.

16. Shri O.P. Singh has tried to establish the fact of non-furnishing of the documents, in submitting that the chargesheet could not have enclosed 171 documents, which has been sent to him by post without affixing sufficient stamp. The documents were not enclosed with the chargesheet.

17. In the counter affidavit of Shri Rameshwar Prasad Pandey, Secretary of the Buddha Post Graduate College, Kushinagar it is specifically alleged in para 19 that all the documents in support of the charges relied upon in establishing the guilt (171 enclosures) were sent along with chargesheet and were received by the petitioner. In para 19 of the counter affidavit it is stated as follows:-

"19. That the contents of paragraph No.21 of the writ petition are denied. It is further stated that chargesheet dated 16.3.99 was sent by the answering respondents by a registered letter dated 17.3.1999 to the parental address of the petitioner as well as to the new address of New Delhi. A copy of the receipt of the registered letter is being filed herewith and is marked as Annexure CA-6 to this affidavit.

That by perusal of the aforesaid receipt it is very much clear that amount of charge is about Rs.170-176, which clearly shows that answering respondents has sent a chargesheet containing 171

evidence enclosed along with the aforesaid chargesheet. Further Smt. Gyanti Singh wife of the petitioner has served a letter in the office of the college on 2.4.1999 in which petitioner has very much shown that enquiry is pending against him on the charge. A copy of the letter dated 2.4.1999 is being filed herewith and is marked as Annexure CA-07 to this affidavit."

18. It is submitted by Shri R.K. Ojha that when the petitioner involved in several criminal cases, left the institutions unattended, after 27.1.1999, the almirahs were opened in the presence of the SDM and other local authorities locks were opened and the documents were put in the custody of competent authority.

19. We find that though the petitioner has denied in para 25 that the chargesheet included the documents, and that payment of Rs.170 or 176 of the stamps on envelops does not mean that the documents enclosed were infact documents relied upon in the charge sheet. He has not denied that he left the college unattended after 27.1.1999 on which locks were broken in the presence of the SDM and other authorities. He has tried to defend himself in saying that on one hand the respondents have served chargesheet on 16.3.1999 while on the other hand locks of the petitioner's house were broken on 28.3.1999 and from this admission it appears that entire exercise were carried out in a preplanned manner. If the chragesheet were prepared on the basis of preliminary enquiry and other documents, same document could not have been recovered later.

20. The petitioner left the college unattended on 27.1.1999. The Committee of Management with the help of district administration got the locks opened and recover the documents and that the chargesheet enclosed 171 documents in evidence against the charges after the preliminary enquiry was conducted. The chargesheet was sent tot he petitioner's residence as well as his parental address of New Delhi.

21. We have gone through the chargesheet and find that each of the charges has been stated in detail. Each voucher with the details of the amount, and the person, who carried out the work, which the Committee of Management did not found to be verified; the amount drawn sought to be spent for purchase of books, the appointment of his own wife Smt. Gyanti Singh as Lecturer in History. The appointment of Shri Ghan Shyam, Lecturer in Ancient History by manipulating his marks, misappropriation of the registration fees and examination fees of the students, which was not entered in the account and other items of embezzlement were clearly stated. The petitioner gave a vague and evasive reply to the chargesheet in just two paragraphs on 22.5.1999. In the first para he protested to the failure of the President of the Committee of Management to give reply to his application for changing the members of the enquiry committee and carrying out the enquiry by private Chartered Accountant. In the second paragraph he protested to the breaking of the locks at his residence on 28.3.1999 taking away all the documents. He alleged that the documents, which could be produced by him in proof of his evidence were also removed and that he could given reply tot he charges only if all the documents are made available to him in

the absence of which it was not possible for him to give reply.

22. It is significant to notice that the petitioner did not deny the charges and only protested to change of enquiry officer and for providing him the documents, which were removed and which can be used by him in his defence.

23. It is also significant to note that the petitioner did not state in his first letter dated 22.5.1999 on receiving the chargesheet that the letter did not accompany the documents mentioned in the chargesheet and which were drawn to be relied upon in proof of the charges.

24. The entire correspondence annexed to the writ petition establishes that the petitioner was only trying to avoid and delay the enquiry. He did not want the document, which were removed after breaking up the locks from his residence to prepare a defence. There was no specific demand of any documents by the petitioner, whereas he was the Principal of the college for 9 years and was all along maintaining the accounts. The petitioner also did not state in his correspondence that the documents in support of the chargesheet were not annexed with the chargesheet. His reply was confined to the fact that the documents removed from his residence were to be used by him in his defence.

25. We do not find any good ground to interfere with the orders of the Vice Chancellor approving the resolution of the Committee of Management to dismiss the petitioner on the charges, which were found established against him in an enquiry in which he refused to participate, and the order of the Chancellor dismissing the appeal, considering all the points. We also decline to interfere in the matter on the ground that the petitioner was accused in the crimes of the murder of a teacher of his own college and for embezzlement of the funds of the college.

26. The writ petition is **dismissed.**
