

**Court No. - 29****Case :-** SPECIAL APPEAL No. - 1014 of 2024**Appellant :-** State Of U P And 2 Others**Respondent :-** Gunjan Singh And Another**Counsel for Appellant :-** Abhishek Srivastava,C.S.C.**Counsel for Respondent :-** Adarsh Singh**Hon'ble Ashwani Kumar Mishra,J.****Hon'ble Praveen Kumar Giri,J.**

1. This appeal is filed by the State challenging an order passed by learned Single Judge allowing the writ petition filed by the respondent-petitioner.

2. Undisputed facts of the case as have been noticed by learned Single Judge and are not in issue are recorded in para 3 and 4 of the judgment which is reproduced hereinunder:-

*"3. The brief facts of the case are that the Janta Purv Madhyamik Vidhyalaya, Chichhour, Karaudhi, Mau is a recognized institution and is governed under the U.P. Basic Education Act, 1972 (hereinafter referred to as "the institution"). The institution is managed by respondent no.4/Committee of Management. In the institution, two assistant teachers were working, out of which one is holding the post of officiating head master. The District Basic Education Officer, Mau vide its order, granted permission to fill up the post of Assistant Teacher. Further, the advertisements were made in two daily newspapers, namely; Rashtriya Sahara and Aaj. After due process, the petitioner was selected. Thereafter, the Manager of the institution forwarded the requisite papers pertaining to selection of Assistant Teacher for grant of financial approval and the same was granted by the respondents. Thereafter, the petitioner joined the institution. Since, the salary was not released, the petitioner filed a Writ-A No.17611 of 2019 before this Court, which was disposed of by order dated 11.11.2019, directing the BSA to take a decision on the representation of the petitioner after considering the relevant Rule as well as Government Orders occupying the filed. Thereafter, by the impugned order, the BSA has rejected the same. Hence the present writ petition.*

*4. Learned counsel for the petitioner submits that the appointment has been rejected on the grounds that at the time of appointment, the nominee of BSA was not present as well as the advertisement, which was published in the newspapers, do not have wide circulation in the vicinity of the institution."*

## VERDICTUM.IN

3. Admittedly, the recruitment to the post of assistant teacher is regulated by the provisions of Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Services of Teachers) Rules, 1978. In institution concerned there are six sanctioned posts of teachers against which only two teachers were available. A vacancy on the post of Assistant Teacher had arisen which was duly notified to the District Basic Education Officer. The District Basic Education Officer granted permission to fill up the post. The vacancy, thereafter, was advertised in two newspapers i.e. Aaj and Rashtriya Sahara. The Management intimated the District Basic Education Officer of the recruitment and requested him to send his nominee as was statutorily required under rule 9 for constituting Selection Committee. The District Basic Education Officer, however, did not send his nominee. The institution proceeded to defer the recruitment twice after intimation to the officer concerned. Despite such publication of advertisement and intimation to the District Basic Education Officer the nominee was not sent. It was on the third occasion that the Managing Committee proceeded to hold the selection and since the writ petitioner was found the best candidate, as such he was selected and papers were sent for grant of approval to his appointment. Since the approval was not granted, therefore, the writ petitioner approached this Court in the year 2020. Learned Single Judge noticed the facts of the case and observed that the District Basic Education Officer can not take advantage of his own default in sending a nominee and, therefore, the writ petition has been allowed.

4. Challenging the judgment of the learned Single Judge the State Counsel argues that even in the event the nominee was not sent the Managing Committee could have approached the higher authorities or this Court for appropriate direction. He submits that since the selection committee consists of a nominee of the District Basic Education Officer and such a nominee was not available as such the selection itself is bad in law. He further argues that the law is settled that when an act is required to be done in a particular manner it has to be done in that manner alone and not otherwise. In support of such proposition learned State Counsel has invited our attention to the judgment of Hon'ble Supreme court in **Krishna Rai (Dead) through legal representatives Versus**

## VERDICTUM.IN

**Banaras Hindu University through Registrar and others, (2022) 8 Supreme Court Cases 713**, wherein, the Supreme Court has observed as under:-

*"32. Further in the case of **Tata Chemicals Ltd. Vs. Commissioner of Custmos (2015) 11 SCC 628**, it has been laid down that there can be no estoppel against law. If the law requires something to be done in a particular manner, then it must be done in that manner, and if it is not done in that manner, then it would have no existence in the eye of the law. Paragraph 18 of the said judgment is reproduced below:*

*"18. The Tribunal's judgment has proceeded on the basis that even though the samples were drawn contrary to law, the appellants would be estopped because their representative was present when the samples were drawn and they did not object immediately. This is a completely perverse finding both on fact and law. On fact, it has been more than amply proved that no representative of the appellant was, in fact, present at the time the Customs Inspector took the samples. Shri K.M. Jani who was allegedly present not only stated that he did not represent the Clearing Agent of the appellants in that he was not their employee but also stated that he was not present when the samples were taken. In fact, therefore, there was no representative of the appellants when the samples were taken. In law equally the Tribunal ought to have realized that there can be no estoppel against law. If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of law at all. The Customs Authorities are not absolved from following the law depending upon the acts of a particular assessee. Something that is illegal cannot convert itself into something legal by the act of a third person."*

5. On the other hand, Sri Adarsh Singh, learned counsel appearing for the respondent-petitioner has invited our attention to rule 3 as is stood in the Rules 1978, at the relevant point of time which is reproduced herein below:

*"3. Appointment.- (1) It shall be the responsibility of the Management to fill a vacancy in the post of Headmaster or assistant teacher as the case may be, of a recognised school by 31st July every year.*

*(2). If any vacancy occurs during an academic session, it shall be filled within two months from the date of occurrence of such vacancy."*

6. It is urged on behalf of the respondent-petitioner that the Committee of Management was under a statutory obligation to fill up vacancy in the recognized school by 31st July every year. Sub-rule (2) also fasten an obligation upon the Managing Committee to fill up the vacancy within two months if such vacancy occurs during an academic session. It is submitted that since the

## VERDICTUM.IN

recruitment was to be made by 31st July of the year concerned, as such the Committee of Management had no option but to proceed in accordance with law. Sri Singh has also invited our attention to the judgment of the Supreme Court in **Ishwar Chandra Versus Satyanarain Sinha, SCC 1972 (3) 383**, wherein, the Court has taken note of the quorum and has observed that if the quorum itself is complete the process of recruitment could have been undertaken. Under the Rules of 1978 two out of three members were available and the submission is that the Committee could have proceeded further in accordance with law.

7. Though we find substance in the argument of the State Counsel that the composition of selection committee consisted of a nominee of the District Basic Education Officer and since such nominee was not sent, therefore, the recruitment cannot be treated to be in accordance with the rules, yet, in the facts of this case, the Court cannot be oblivious to the circumstances as also the statutory scheme which obligates the managing committee to conclude the selection proceedings in a given time frame. This is particularly so as unless the teacher is appointed the cause of education itself would suffer. We also cannot be unmindful of the fact that the vacancy was duly notified to the District Basic Education Officer and with his permission the vacancy was published in two newspapers. The Committee of Management proceeded to intimate the officer concerned and made a request to send his nominee. The selection proceedings has to be deferred twice only because a nominee was not sent. The Managing Committee, therefore, had two options. Either, to have allowed the vacancy to subsist and approach this Court for an appropriate direction or to have proceeded further to make selection, by the majority of members of the selection committee present. In our view much will depend upon the reason which impelled the officer concerned not to send his nominee. In case if there is a genuine or bonafide reason for not sending the nominee the action of the officer can be defended. However, when there is absolutely no reason forthcoming as to why a nominee is not being sent and the recruitment is being adjourned successively, we are of the view that the Managing Committee otherwise being enjoined by the Rules to conclude recruitment within a stipulated period by virtue of rule 3, could proceed with the recruitment and make

## VERDICTUM.IN

appointment. No exception to it can be taken in the facts of the case. The writ petitioner otherwise possesses requisite qualification and no illegality or irregularity in the process of recruitment has been pointed out. For such reasons, the view taken by learned Single Judge cannot be faulted.

8. The view taken by us finds support from the judgment of two coordinate Division Benches of Lucknow Bench in **Special Appeal Defective No. 92 of 2016, District Basic Shiksha Adhikari Ambedkar Nagar and another Versus Chandra Prakash Tripathi and others, decided on 02.03.2016**, wherein, the Division Bench observed as under:-

*"From a perusal of the impugned judgment, we find that the learned Single Judge has dealt with the matter in the light of statutory rules applicable in relation to the recruitment process as well as the authority which is to be exercised by the District Basic Education Officer in the process of selection.*

*The only ground raised in the appeal is that the selection committee composition of which is prescribed under the statutory rules to consist of Manager of the Institution, Head Master and one nominee of the District Basic Education Officer could not make the recommendation for appointment due to the reason that the nominee of the District Basic Education Officer did not participate in the selection.*

*From the materiel placed on record, we find that a communication dated 04.09.2013 was duly sent to the Basic Shiksha Adhikari for sending his nominee on the date fixed for selection. The District Basic Education Officer does not seem to have responded to the said letter as a consequence whereof, the selection committee comprising of the Manager and Head Master met and made recommendation for appointment. The meeting of the selection committee comprising of two members in this manner took place and made the selection which was treated to be a sufficient compliance of the statutory rules in the light of certain judgments which lay down the law on the point of quorum.*

*We do not see any reason to interfere with the impugned judgment particularly for the reason that the District Basic Education Officer had himself failed to send the nominee who otherwise would have participated in the selection proceedings. In our considered opinion, the selection can not be faulted on the alleged ground that the selection committee comprising of two members could not hold the selection, as such, the impugned judgment does not call for any interference.*

*It is however open to the District Basic Education Officer to go into any other formality prescribed under law while making compliance of the direction issued by this Court.*

## VERDICTUM.IN

*The special appeal is accordingly dismissed."*

9. A similar view has been taken by the Division Bench of Lucknow Bench in **State of U.P. and others Versus Praveen Kumar Mishra and another, LAWS (ALL) 2018 3 223**, wherein, the Court on similar facts and circumstances refused to interfere in the judgment of learned Single Judge. Para 14 and 17 of the Division Bench judgment are reproduced as under:

"14) A perusal of the impugned order, it reveals that learned Single Judge, after appreciating the submissions of the parties and Rule 15 (5) (ii) of the Rules, 1984, has recorded a clear cut finding that it is not in dispute that receipt of the letter dated 26.9.2006 has not been denied anywhere in the counter affidavit. In the said letter, the Institution had indicated that three dates have been fixed for holding the interview on which dates the Observer was not sent by the District Basic Education Officer, Raibareli and finally the selection was fixed for 30.9.2006. On 30.9.2006, also no Observer was sent and as such, the Selection Committee met and finalized the process in which the writ petitioner was selected for Class-IV post. The entire papers relating to the selection were forwarded to the District basic Education Officer, Raebareli, on 15.10.2006 as is evident from the letter of the Institution dated 17.11.2006. In these backgrounds, learned Single Judge opined that the District Basic Education Officer despite requests having been made by the Institution for forwarding the name of an Observer, did not do so and even after the selection papers were received in his office on 15.10.2006, he neither approved nor disapproved the same. In this situation, on the expiry of one month from the date of receipt of the papers, the selection would be deemed to have been approved by the District Basic Education Officer in view of the provisions of Rules 15(5) of the Rules, 1984. Accordingly, learned Single Judge rightly came to the conclusion that it is not open for the respondent now to take the stand that the selection suffers from the vice of illegality since no observer was present in the selection.

17) Considering the peculiar facts and circumstances of the case, we are of the view that there is no illegality or infirmity in the impugned judgment passed by the learned Single Judge as the findings recorded by him are wholly justified and are based on cogent reasoning."

10. For the reasons recorded above, we are not persuaded to interfere in the present appeal filed by the State.

11. The special appeal accordingly fails and is dismissed.

**Order Date :- 28.4.2025**

K.K. Maurya