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HIGH COURT OF JUDICATURE AT ALLAHABAD

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HIGH COURT OF JUDICATURE AT ALLAHABAD
WRIT - A No. - 40857 of 2015

Shitala Prasad
♦..Petitioner(s)

Versus

State of U.P. and 3 others
♦..Respondent(s)

Counsel for Petitioner(s) : Uma Nath Pandey
Counsel for Respondent(s) : C.S.C.

Court No. - 52

HON'BLE MRS. MANJU RANI CHAUHAN, J.

1. Heard Mr. Ved Prakash Mishra, Advocate, holding brief of Mr. Uma Nath Pandey, learned counsel for the petitioner and Mr. L.M. Singh, learned Standing Counsel for the State.
2. The instant writ petition has been filed seeking quashing of the impugned order dated 02.06.2015 passed by respondent no. 2. A further prayer has been made for issuance of a direction to the Finance and Accounts Officer in the office of respondent no. 3 to give effect to and comply with the order dated 09.03.2000 passed by respondent no. 3, and to ensure payment of the salary due and payable to the petitioner thereunder, month to month, in future. The petitioner has also prayed for payment of all arrears of salary and other consequential benefits accruing to him pursuant to, and in compliance with, the aforesaid order dated 09.03.2000 passed by respondent no.3.
3. Placing the brief facts of the case before the Court, learned counsel for the petitioner submits that the petitioner was appointed as an Assistant Teacher in Mahatma Gandhi Krishakpur Madhyamik Vidyalaya, Kinona, Kurthiya, District Sant Kabir Nagar, an institution duly recognized and receiving aid from the State Government. The institution is run and managed by a duly elected Committee of Management and is governed by the provisions of the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978.
4. It is submitted that the petitioner possesses the requisite educational qualifications, namely B.A. and B.Ed., and was duly appointed as an Assistant Teacher in the aforesaid institution by the Committee of Management on 01.07.1977 in CT-Grade. Pursuant to the appointment letter so issued, the petitioner submitted his joining and has continuously discharged his duties in the institution ever since his appointment.
5. Learned counsel for the petitioner further submits that, following the petitioner's appointment and selection, the Committee of Management forwarded the complete records pertaining to the selection and appointment of the petitioner, along with those of the other selected teachers and non-teaching employees, to the District Basic Education Officer for his approval. Upon due scrutiny and examination of the relevant records, the District Basic Education Officer accorded approval to the selection and appointment of the petitioner, along with the other teachers and non-teaching staff, by order dated 29.07.1982.
6. Learned counsel for the petitioner further submits that, initially, the institution in question was known as Mahatma Gandhi Krishak Vidyalaya. Subsequently, its nomenclature was changed to Ram Akshayabar Basantlal Uchhtar Madhyamik Vidyalaya and, thereafter, it came to be known as Mahatma Gandhi Krishak Purva Madhyamik Vidyalaya, Kinana, Kurthiya, District Sant Kabir Nagar. The aforesaid change in nomenclature was duly recognized by the District Basic Education Officer by order dated 30.03.1997.
7. It is next submitted that, upon the institution being brought within the grant-in-aid scheme, the Manager's Return (M.R. List), containing the particulars of the teaching and non-teaching staff of the institution, was submitted to the competent authority. However, owing to an inadvertent omission, the name of the petitioner did not find place in the said Manager's Return. Consequently, although the District Basic Education Officer, in exercise of powers under Section 10 of the Uttar Pradesh Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978, passed an order dated 21.06.1997

directing payment of salary to the Principal, teaching and non-teaching staff of the institution from the State exchequer, the petitioner was deprived of salary on account of his name not having been incorporated in the Manager's Return.

8. Aggrieved by the non-payment of salary, the petitioner submitted representations before the District Basic Education Officer and other competent educational authorities, requesting that necessary orders be passed for payment of his salary. As no effective decision was taken on the said representations, the petitioner was constrained to approach this Court by filing Civil Misc. Writ Petition No. 41029 of 1998, Shitala Prasad v. District Basic Education Officer and others. The said writ petition was disposed of by order dated 15.12.1998, whereby the authorities concerned were directed to consider and decide the representation of the petitioner within the stipulated period of two months.

9. In compliance with the aforesaid order of this Court, respondent no. 3 called upon the Principal of the institution to appear along with the service records and other relevant documents pertaining to the petitioner's appointment. The Principal accordingly produced the original records relating to the petitioner's selection and appointment before respondent no. 3. Upon examination and scrutiny of the said records, respondent no. 3, being satisfied with the petitioner's claim, passed an order dated 09.03.2000 directing payment of salary to the petitioner with effect from 01.03.1991 under the provisions of the Uttar Pradesh Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978.

10. Learned counsel for the petitioner submits that, notwithstanding the categorical order dated 09.03.2000 directing payment of salary, the Finance and Accounts Officer failed to sanction and process the salary bill of the petitioner. Consequently, the petitioner was once again compelled to invoke the writ jurisdiction of this Court by filing Civil Misc. Writ Petition No. 50919 of 2000, Shitala Prasad v. State of U.P. and others, seeking, inter alia, the following reliefs:

(i) to issue a writ, order or direction commanding respondent no. 2 to comply with the order dated 09.03.2000 passed by respondent no. 1;

(ii) to issue a writ, order or direction commanding respondent no. 2 to pay the salary due and payable to the petitioner, month to month, in future, in accordance with the order dated 09.03.2000 passed by respondent no. 1;

(iii) to issue a writ, order or direction commanding respondent no. 2 to pay the arrears of salary payable to the petitioner pursuant to the order dated 09.03.2000;

(iv) to grant such other and further relief as this Hon'ble Court may deem fit and proper in the circumstances of the case; and

(v) to award the costs of the petition in favour of the petitioner.

11. It is further submitted that, in the counter-affidavit filed by the Finance and Accounts Officer in the aforesaid writ petition, it was stated that, against the sanctioned strength of fourteen posts of teaching and non-teaching staff, financial approval had been accorded in respect of fifteen persons. It was further contended that such financial approval had been granted without obtaining or consulting the Finance and Accounts Officer. The Finance and Accounts Officer also took the stand that the District Basic Education Officer had passed the order dated 09.03.2000 in favour of the petitioner without consulting him and, therefore, the said order could not be acted upon for the purpose of sanctioning and releasing the petitioner's salary.

12. The aforesaid writ petition was ultimately disposed of by this Court by order dated 25.02.2014, whereby the Director of Education (Basic), Uttar Pradesh, Lucknow was directed to examine the grievance raised by the petitioner. The Director was required to consider the petitioner's claim in the light of the material available on record and, after affording due opportunity of hearing to the petitioner, to pass an appropriate, reasoned and speaking order in accordance with law.

13. Pursuant to the aforesaid order dated 25.02.2014 passed by this Court, the petitioner submitted a detailed representation dated 11.03.2014 before respondent no. 2, enclosing therewith a copy of the order of this Court dated 25.02.2014. Upon receipt of the said representation, respondent no. 2 issued notices to the concerned parties and, by order dated 21.03.2014, called for a report from the District Basic Education Officer, Sant Kabir Nagar. In response thereto, the District Basic Education Officer submitted his report before respondent no. 2.

14. Thereafter, the matter was taken up for consideration and 20.03.2015 was fixed as the date of hearing. On the said date, a report was sought from the Deputy Director and the Additional Director (Basic), Gorakhpur, as well as from the Manager of the institution. However, as certain documents were found to be incomplete, the matter was again taken up on 06.04.2015. On the said date, the petitioner as well as the Manager of the institution were present. Respondent no. 2, however, raised certain further queries with the District Basic Education Officer, Sant Kabir Nagar, who submitted his response on 23.05.2015.

15. In the aforesaid response, the District Basic Education Officer stated that the relevant records pertaining to the petitioner's regularisation were not available in his office. Learned counsel for the petitioner submits that, without undertaking any further verification of the petitioner's claim and without considering the earlier orders passed by the competent authorities, particularly the order dated 09.03.2000 directing payment of salary after examination of the original records, respondent no. 2 proceeded to reject the petitioner's representation merely on the basis of the subsequent report regarding non-availability of the relevant records. Consequently, the impugned order dated 02.06.2015 came to be passed rejecting the claim of the petitioner.

16. Learned counsel for the petitioner further submits that the approval order dated 29.07.1982 covers not only the petitioner but also four other teachers appointed pursuant to the same selection process. Those teachers, who are stated to be junior to the petitioner, have been continuously receiving salary from the State exchequer. It is, therefore, contended that the petitioner's case could not have been treated differently without assigning any cogent or legally sustainable reason.

17. It is further submitted that respondent no. 2 has adopted an inconsistent and mutually irreconcilable approach in dealing with the petitioner's claim. On the one hand, the approval order dated 29.07.1982 has been treated as doubtful or suspicious, whereas, on the other hand, the claim of the petitioner has been rejected on the ground that teachers were working against posts in excess of the sanctioned strength. Learned counsel submits that such an approach, particularly without confronting the petitioner with the material relied upon or affording him an effective opportunity to explain the alleged discrepancy, is contrary to the fundamental requirements of natural justice.

18. Learned counsel for the petitioner further submits that the alleged excess strength could, in any event, not constitute a valid ground for altogether denying consideration of the petitioner's claim, particularly when vacancies had subsequently arisen on account of the retirement of two teachers, namely, Kashiram and Uma Shankar. It is submitted that, out of the total

strength of six teachers referred to in the relevant records, the aforesaid two teachers had already retired and the petitioner could, therefore, have been adjusted against the vacancies so arising. According to learned counsel, this material and relevant aspect of the matter was completely overlooked by respondent no. 2 while passing the impugned order, thereby rendering the decision vulnerable to interference in exercise of the writ jurisdiction of this Court.

19. Learned counsel for the petitioner further submits that the petitioner has been continuously serving in the institution since the date of his initial appointment, i.e. 01.07.1977, and is admittedly the senior-most teacher in the institution. It is contended that, despite his long and uninterrupted service, the petitioner was deprived of the benefit of salary when the institution was brought within the grant-in-aid scheme, whereas teachers junior to him, appointed in the same institution and covered by the same approval order, have been paid salary from the State exchequer. The petitioner has, therefore, been subjected to hostile and wholly unexplained discrimination in the matter of payment of salary.

20. Learned counsel further submits that the petitioner's claim has been rejected essentially on the ground that the records relating to approval of his selection and appointment, as well as the documents pertaining to the sanctioned strength of the institution, were not available in the office of the District Basic Education Officer. According to learned counsel, the very foundation of the impugned order is, however, rendered untenable by the material noticed in the order itself. The impugned order expressly records that the dispatch number relating to the approval order dated 29.07.1982 in respect of the petitioner's selection is available in the relevant dispatch register. It also acknowledges the availability of the class-permission order dated 08.12.1987.

21. It is, therefore, urged that the respondent authority could not, on the one hand, acknowledge the existence of official entries evidencing the approval and class permission and, on the other, reject the petitioner's claim merely on the ground that the underlying records were presently unavailable in the office. Mere non-availability or misplacement of departmental records, particularly when contemporaneous official entries evidencing the relevant orders are admittedly available, cannot, according to learned counsel, furnish a legally sustainable basis for disbelieving the petitioner's appointment or for treating the approval itself as doubtful.

22. Learned counsel accordingly submits that the reasoning adopted in the impugned order is not only arbitrary but also internally inconsistent, inasmuch as the authority has relied upon the existence of the dispatch entry and the class-permission order while simultaneously treating the absence of the complete underlying records as fatal to the petitioner's claim. The impugned order, therefore, suffers from non-application of mind and failure to consider material evidence available on the official record and is consequently liable to be quashed.

23. Learned counsel for the petitioner submits that once the District Basic Education Officer, upon consideration of the relevant records, had passed the order dated 09.03.2000 directing payment of salary to the petitioner, and the said order had neither been set aside nor modified by any competent authority or court of law, there could be no lawful justification for withholding the petitioner's salary merely on the basis of a technical objection subsequently raised by the departmental authorities. It is contended that the said order, having attained finality, could not have been rendered ineffective indirectly by questioning the availability of the records on which the competent authority had earlier acted.

24. Learned counsel further submits that a bare perusal of the approval order dated 29.07.1982 demonstrates that the petitioner was appointed with effect from 01.07.1977, whereas Shri Lalji, Shri Ram Milan and Shri Ramapati were appointed with effect from 01.07.1978. The aforesaid teachers, though admittedly junior to the petitioner, have been receiving salary from the State Exchequer, while the petitioner has been denied the same benefit. It is, therefore, urged that the differential treatment meted out to the petitioner, in the absence of any legally sustainable distinction between his case and that of the similarly situated teachers, amounts to arbitrary discrimination offending the mandate of Article 14 of the Constitution of India.

25. It is next submitted that, despite the petitioner's continuous service in the institution from the date of his appointment, he was not permitted to discharge his duties in the institution with effect from the year 2005 onwards, for reasons which have not been satisfactorily disclosed by the respondents. The petitioner, however, continued to pursue his claim before the competent authorities and, in compliance with the notice issued by respondent no. 2, personally appeared and produced the relevant records in support of his claim.

26. Learned counsel further submits that the Principal as well as the Manager of the institution also appeared before the authority and supported the petitioner's case, thereby corroborating his claim regarding his appointment and service. Despite the material placed before respondent no. 2 and the support extended by the institutional authorities, the petitioner's representation came to be rejected on findings which, according to learned counsel, are contrary to the material available on record and proceed upon an erroneous appreciation of the facts. It is, therefore, submitted that the impugned order suffers from non-consideration of relevant material, an erroneous appreciation of the record and arbitrary denial of the petitioner's legitimate claim.

27. On the other hand, learned counsel appearing for respondent Nos. 1, 2 and 3 submits that the institution in question is a recognized and aided Junior High School, managed by a duly constituted and elected Committee of Management, and is governed by the provisions of the applicable Act and Rules of 1978. It is contended that the institution was brought within the grant-in-aid scheme with effect from 1.3.1991 pursuant to the order passed by the State Government dated 22.10.1996.

28. Learned counsel further submits that the petitioner had earlier approached this Court by filing Writ Petition No. 41024 of 1998, claiming that he had been appointed pursuant to an appointment letter dated 01.07.1977 and that his appointment had been approved by order dated 29.7.1982. The aforesaid writ petition was disposed of by this Court by order dated 15.12.1998, whereby the competent authority was directed to consider and decide the representation submitted by the petitioner on 15.6.1998.

29. It is submitted that, in purported compliance with the aforesaid order, the then District Basic Education Officer, by order dated 9.3.2000, granted financial sanction in favour of the petitioner without duly examining the legality and validity of the alleged appointment, the genuineness and legal efficacy of the alleged approval order dated 29.7.1982, or the question as to whether any sanctioned post was in existence in the institution against which the petitioner could have been appointed.

According to learned counsel for the respondents, the said order of financial sanction was, therefore, wholly illegal and could not confer any lawful right upon the petitioner to claim payment of salary. It is in this backdrop, according to the respondents, that salary was not paid to the petitioner.

30. Learned counsel further submits that, aggrieved by the non-payment of salary, the petitioner again approached this Court by filing Writ Petition No. 50919 of 2000. This Court, upon consideration of the matter, did not adjudicate the disputed question as to whether the petitioner had, in fact, been validly appointed as an Assistant Teacher, but directed him to approach the Director of Education (Basic), U.P., Lucknow, along with a detailed representation. The Director was required to examine the petitioner's claim in the light of the material available on record, after affording him an effective opportunity of hearing, and to pass a reasoned and speaking order in accordance with law within the period stipulated by the Court.

31. It is, thus, contended on behalf of the respondents that the previous orders passed by this Court did not amount to any adjudication or declaration that the petitioner's appointment was valid, nor did they confer any substantive right upon him to receive salary from the State Exchequer. According to learned counsel, the fundamental question regarding the legality of the petitioner's initial appointment, the existence of a sanctioned post, and the validity of the alleged approval dated 29.7.1982 remained open for examination by the competent authority and, consequently, the petitioner cannot claim any vested or indefeasible right to salary merely on the basis of the subsequent financial sanction dated 9.3.2000.

32. In compliance with the order dated 25.2.2014 passed by this Court, respondent No. 2 afforded adequate and effective opportunity of hearing to all concerned and, upon consideration of the material available on record, passed a detailed and reasoned order dated 2.6.2015, whereby the claim of the petitioner for payment of salary came to be rejected.

33. Learned counsel for the respondents further submits that the State Government, by Government Order dated 30.04.2010, directed respondent No. 2 to undertake necessary verification and to ensure that salary was paid only to such teaching and non-teaching employees of aided Junior High Schools as had been appointed against duly sanctioned posts and in accordance with the applicable provisions governing such appointments. Pursuant to the aforesaid Government Order, the salary of a number of teaching and non-teaching employees of aided Junior High Schools was withheld upon verification of their respective appointments and the posts against which they claimed to have been appointed.

34. It is further submitted that, with a view to addressing the difficulties arising on account of stoppage of salary of teaching and non-teaching employees of aided Junior High Schools, the State Government subsequently issued Government Order dated 31.1.2013. By the said Government Order, certain provisions were made for consideration and release of salary in respect of those teaching and non-teaching employees whose salaries had been stopped pursuant to the earlier verification exercise.

35. Learned counsel submits that paragraphs 1 and 2 of the aforesaid Government Order specifically prescribe the manner and conditions subject to which payment of salary could be considered in favour of such employees. The relevant provisions of the Government Order dated 31.1.2013 are extracted hereinbelow:

❖(1) विद्यालयों के अनुदान सूची पर आने के बाद पारित सबसे पुराने/उपलब्ध अन्तिम वेतन बिल को आधार मानकर विद्यालयों की जनशक्ति का निर्धारण कर ऐसे शिक्षकों के अद्यावधिक संतोषजनक रूप से कार्यरत होना प्रमाणित/पुष्टि पाये जाने पर उक्त शिक्षकों के अवरुद्ध किये गये वेतन का नियमानुसार भुगतान किये जाने की कार्यवाही की जाय।

(2) जिन विद्यालयों में पद सृजन नहीं है एवं मानक से अधिक शिक्षक/शिक्षणेतर कर्मचारी कार्यरत हैं तथा जिनका माह मई, 2010 से वेतन भुगतान नहीं किया गया है, उन विद्यालयों में जब तक मानक से अधिक कार्यरत शिक्षक/शिक्षणेतर कर्मचारियों का समायोजन भविष्य में विद्यालय में सेवानिवृत्त/अन्य प्रकार से होने वाले शिक्षकों के रिक्त पदों के प्रति नहीं हो जाता है, जब तक कोई नवीन नियुक्ति की मांग नहीं की जायेगी और न ही नवीन नियुक्ति की जायेगी।"

36. In terms of the aforesaid Government Order dated 30.04.2010, the Manager of the institution in question submitted the working strength of the institution in Prapatra-1 dated 11.10.2010. In the said statement of working strength, i.e. the Jan Shakti as on 11.10.2010, the name of the petitioner did not find place. It is further submitted that an inspection of the institution was conducted by the departmental authorities on 7.3.2011, and according to the inspection report dated 7.3.2011 also, neither was the petitioner found working in the institution nor did his name figured in the relevant records.

37. Learned counsel for the respondents further submits that, during the course of proceedings before respondent No. 2, undertaken in compliance with the order dated 25.2.2014 passed by this Court, the Manager of the institution submitted a letter dated 1.4.2015. In paragraph 15 thereof, it was specifically stated that the petitioner had worked in the institution only up to the year 2005 and had not worked therein thereafter.

38. It is, therefore, contended that the aforesaid contemporaneous material, namely, the working-strength statement submitted on 11.10.2010, the departmental inspection report dated 7.3.2011, and the subsequent letter of the Manager dated 1.4.2015, does not substantiate the petitioner's assertion that he continued to discharge duties in the institution after the year 2005. According to learned counsel for the respondents, in the absence of any satisfactory documentary evidence establishing his continuous working thereafter, the petitioner could not claim payment of salary from the State exchequer merely on the strength of the alleged appointment and approval orders.

39. Learned counsel for the respondents further submits that, as borne out from the official records, the then District Basic Education Officer, Basti, by letter dated 8.12.1987, granted permission for running one section each in Classes VI and VII. Consequent thereto, five sections came to be recognized in Classes VI, VII and VIII. However, according to the office records, no letter or order relating to the creation or sanction of any post in the institution is available on record. It is, therefore, contended that the Manager of the institution has also failed to produce or make available any order or letter evidencing the creation or sanction of posts in the institution.

40. Learned counsel further submits that, significantly, the Manager, in his letter dated 1.4.2015, particularly in paragraph 16 thereof, has categorically stated that no posts had been created in the institution and that, for the said reason, the salary of all the teaching and non-teaching staff of the institution had been withheld.

41. It is, thus, contended that the petitioner's name neither finds place in the relevant M.R. nor in Prapatra-1 dated 11.10.2010,

nor does it figure in the inspection report dated 7.3.2011. Coupled with the admitted position that no post was ever sanctioned or created in the institution, the petitioner, according to the respondents, could not claim payment of salary in terms of the Government Order dated 31.1.2013. On the aforesaid premises, learned counsel submits that respondent No. 2, namely, the Director of Basic Education, U.P., rightly rejected the petitioner's claim for payment of salary by the reasoned and speaking order dated 2.6.2015, and that the said order suffers from no illegality, infirmity or jurisdictional error warranting interference by this Court in exercise of its writ jurisdiction.

42. Learned counsel for respondent Nos. 1, 2 and 3 further submits that the petitioner claims to have been appointed in the institution pursuant to which an approval order dated 29.7.1982 is stated to have been passed. According to learned counsel, however, the said approval order was never produced by the Manager of the institution before respondent No. 2, nor is any corresponding record thereof available in the official files, except for an entry purportedly appearing in the dispatch register.

43. It is further submitted that the alleged approval order dated 29.7.1982 is inherently doubtful and, according to the respondents, appears to be a forged and fabricated document. Learned counsel submits that, at the relevant point of time, only three posts of Peons had been sanctioned in the institution. Nevertheless, whereas the approval order dated 27.9.1982 is stated to have sanctioned or approved appointments against certain posts, the alleged approval order dated 29.7.1982 is relied upon by the petitioner as having approved the appointments of as many as thirteen Assistant Teachers and three Peons. According to the respondents, the figures reflected in the alleged approval order are themselves inconsistent with the sanctioned strength of the institution.

44. Learned counsel further submits that, subsequent to the alleged approval order dated 29.7.1982, the then Basic Education Officer, Basti, passed another approval order dated 30.12.1987, whereby the appointments of three Peons and nine Assistant Teachers were again approved on the basis of the actual working strength of the institution. It is contended that, if the earlier approval order dated 29.7.1982 had genuinely approved the appointment of three Peons, there could have been no occasion for the competent authority to again approve the appointment of three Peons by the subsequent order dated 30.12.1987, particularly when, according to the prescribed norms, only three posts of Peons were permissible in the institution at the relevant time.

45. On the aforesaid basis, learned counsel for the respondents contends that the subsequent approval order dated 30.12.1987, coupled with the absence of the original approval order dated 29.7.1982 from the official records and the alleged inconsistency between the number of posts sanctioned and the appointments purportedly approved, casts serious doubt upon the genuineness and authenticity of the approval order dated 29.7.1982 relied upon by the petitioner. It is, therefore, submitted that the alleged approval order cannot be treated as a genuine and legally effective document merely on the basis of an entry in the dispatch register, and that the petitioner cannot derive any enforceable right to salary therefrom.

46. Learned counsel for the respondents further submits that the M.R. return, which was submitted by the Manager after the institution was brought within the grant-in-aid list, did not contain the name of the petitioner. It is, therefore, contended that the District Basic Education Officer rightly declined to permit payment of salary to the petitioner from the State Exchequer.

Learned counsel further submits that the order dated 09.03.2000, passed by the then District Basic Education Officer, was rendered without duly examining the records relating to the creation and availability of the post and without obtaining the requisite consultation with, or opinion of, the Finance and Accounts Officer. According to the respondents, the appointment of the petitioner was illegal, having been made against a post which had never been duly created or sanctioned, and consequently no liability could lawfully be fastened upon the State exchequer towards payment of salary to the petitioner.

47. Learned counsel appearing for Respondent Nos. 1, 2 and 3 further submits that the approval order dated 30.12.1987, whereby nine Assistant Teachers were regularised and/or granted approval on the basis of their actual working in the institution, itself demonstrates that the alleged approval order dated 29.07.1982 was issued merely on the basis of class-wise permission and not upon any duly sanctioned creation of posts. It is further submitted that the Assistant Teachers covered by the aforesaid approval order had approached this Court by filing a writ petition, which was disposed of with a direction to the competent authority to consider and decide the representation of the petitioner in accordance with law, after examining the relevant records, since the records pertaining to the alleged approval order dated 29.07.1982 had not been placed before the Court.

48. Learned counsel for the respondents submits that, in compliance with the aforesaid order of this Court, Respondent No. 2 afforded due opportunity of hearing to the petitioner and thereafter, upon a proper appreciation of the documents and material placed before it by the Manager as well as the then District Basic Education Officer, passed the impugned order dated 02.06.2015. It is thus contended that the impugned order has been passed after due consideration of the relevant material, in compliance with the directions issued by this Court, and strictly in accordance with law. According to learned counsel, the impugned order suffers from neither any illegality nor any infirmity warranting interference by this Court in exercise of its writ jurisdiction.

49. Learned counsel appearing for the State, placing reliance upon the record, further submits that the name of the petitioner does not find place in the working-strength statement, namely, Prapatra-1 dated 11.10.2010, nor does it find mention in the inspection report dated 07.03.2011 relating to the working strength of the institution. It is contended that the petitioner was working against a non-sanctioned post and, consequently, in view of the relevant Government Order dated 31.01.2013, he is not entitled to claim payment of salary from the State Exchequer.

50. Learned counsel further submits that the Manager's letter dated 01.04.2015 also indicates that the petitioner had not worked in the institution after the year 2005. According to the respondents, therefore, the petitioner cannot legitimately claim salary for the period in question. It is thus submitted that the impugned order has been passed upon due consideration of the relevant material and in accordance with the applicable Government Orders, suffers from no illegality or infirmity warranting interference by this Court, and the writ petition is accordingly liable to be dismissed.

51. Having bestowed anxious consideration upon the rival submissions, the orders earlier passed by this Court, and the material brought on record pursuant thereto, this Court is unable to accept the contention of the petitioner that the impugned

order suffers from any jurisdictional infirmity or perversity warranting interference under Article 226 of the Constitution. The earlier orders passed by this Court expressly required the competent authority to examine the relevant records and to take an appropriate decision thereupon. The authority, in compliance thereof, afforded an opportunity of hearing to the petitioner, examined the material made available by the Manager and the departmental authorities, and thereafter recorded a categorical finding with regard to the genuineness and legal efficacy of the alleged approval order dated 29.07.1982.

52. Significantly, the petitioner has not been able, either before the competent authority or before this Court, to furnish any contemporaneous and unimpeachable material capable of displacing the findings emerging from the official record. The mere assertion that an approval order existed cannot, in the face of the record subsequently examined pursuant to the directions of this Court, constitute a sufficient juridical foundation for a claim against the public exchequer. More particularly, where the document relied upon as the very source of the petitioner's entitlement has, upon scrutiny of the original departmental record, been found to be forged or otherwise not genuine, the legal consequences necessarily attach to the foundation itself and cannot be circumvented by invoking the petitioner's subsequent continuance in the institution.

53. The distinction between a mere procedural irregularity and a foundational nullity is of decisive significance. This is not a case where an otherwise lawful appointment is sought to be defeated by some collateral or insignificant deficiency in the record. The alleged approval order, upon which the petitioner substantially rests his claim for recognition and payment of salary, has itself failed the scrutiny of the competent record. Once the foundational document is found to be forged, the superstructure erected upon it cannot acquire legal validity merely by efflux of time, actual working, or continued receipt of emoluments.

54. The principle is no longer *res integra*. In *R. Vishwanatha Pillai v. State of Kerala*, (2004) 2 SCC 105, the Hon^{ble} Supreme Court held that an appointment procured by practising fraud is void from its inception and that an incumbent cannot derive a legally enforceable right from such an appointment. The Court further recognised that the right to salary and other service benefits is consequential upon a valid appointment; where the appointment itself is void, the consequential claim cannot survive. The Supreme Court's judgment records that salary, pension and other service benefits flow from a valid and lawful appointment and cannot be claimed where the appointment is founded upon fraud.

55. Likewise, in *Union of India v. M. Bhaskaran*, 1995 Supp (4) SCC 100, the Supreme Court enunciated the principle that an appointment procured through fraudulent means cannot be permitted to confer an enduring legal advantage upon the person who derives benefit from it. The same principle has subsequently been reiterated in *Avtar Singh v. Union of India & Others*, (2016) 8 SCC 471, wherein the Hon^{ble} Supreme Court observed that an appointment obtained through fraud or forged documents is liable to be recalled and that mere continuance in service for several years does not, by itself, create an equity or estoppel against the employer.

56. The principle is particularly apposite to the present controversy because the petitioner seeks not merely continuation of an existing benefit but enforcement of a claim upon the State Exchequer founded upon an approval whose genuineness has not survived scrutiny of the original records. In *State of Bihar & Ors. v. Devendra Sharma*, (2020) 15 SCC 466, the Hon^{ble} Supreme Court, while dealing with appointments in the education department founded upon forged or illegal documents, affirmed the fundamental proposition that the right to salary springs from a lawful right to hold the post; where the root of the appointment is non-existent, the consequential claim to salary cannot subsist.

57. It is, therefore, immaterial for the determination of the present claim that the petitioner may have actually discharged duties for some period. Actual performance of work, though a relevant factual circumstance in an appropriate case, cannot metamorphose a non-existent legal entitlement into a valid appointment. Public funds cannot be disbursed merely on the equitable consideration that an incumbent has worked, when the very legal foundation upon which the claimed entitlement rests has been found to be non-existent or forged. The doctrine that one who seeks equity must approach the Court with clean hands assumes particular significance where the foundational document relied upon for obtaining a public benefit has itself been found to be inauthentic.

58. Equally, the fact that an earlier departmental order or administrative action may, at one point of time, have extended some recognition to the petitioner cannot create an indefeasible right if that recognition itself was founded upon, or sought to be sustained by, a document which subsequent scrutiny has established to be forged. An erroneous administrative act cannot confer legality upon an otherwise void transaction; nor can repeated reference to such an act supply the missing legal foundation.

59. The orders previously passed by this Court cannot be construed as an adjudication validating the alleged approval dated 29.07.1982. On the contrary, where this Court directed the competent authority to examine the relevant records and to take an appropriate decision, the consequential determination made upon such examination must be tested on the material considered by the authority. In the present case, the petitioner has not demonstrated that the findings recorded by the authority are unsupported by the record, that relevant material was ignored, or that the conclusion regarding the alleged approval order is so irrational or perverse as to warrant exercise of the extraordinary jurisdiction of this Court.

60. The submission that the petitioner should nevertheless be paid salary merely because he claims to have worked cannot, therefore, be accepted. Salary from the State Exchequer is not a bounty flowing from actual occupation of a seat; it is a statutory consequence of a lawful appointment to a duly sanctioned post. Where the legal foundation of such appointment is absent or is demonstrated to rest upon a forged document, the consequential claim to salary necessarily fails with it. The Hon^{ble} Supreme Court has recently reiterated the same principle, holding that where an appointment is void and non est because its foundation rests upon fraud or forgery, no consequential statutory right to salary or other service benefits can be founded upon such appointment.

61. Accordingly, this Court finds no perversity, jurisdictional error or manifest illegality in the impugned order dated 02.06.2015. The petitioner has failed to rebut the material findings emerging from the record examined pursuant to the earlier orders of this Court and has failed to establish any subsisting lawful foundation for his claim to salary from the State Exchequer. Once the alleged approval order dated 29.07.1982, which constitutes the foundation of the petitioner's claim, has been found to be

forged and the petitioner has failed to displace that finding by cogent and reliable material, no enforceable right to salary can be said to survive.

62. Even otherwise, quite apart from the foregoing conclusion, the petitioner's claim for salary cannot be sustained in view of the contemporaneous record concerning his actual working in the institution. The letter of the Manager dated 01.04.2015 itself indicates that the petitioner had worked in the institution only up to the year 2005. Further, when the institution was brought within the grant-in-aid list, the petitioner's name did not find place in the Managerial Return/working-strength return submitted in that regard. These contemporaneous records materially undermine the petitioner's assertion of a continuing entitlement to salary from the State Exchequer.

63. The absence of the petitioner's name from the relevant return assumes particular significance because the return was prepared in the ordinary course in connection with the institution's inclusion in the grant-in-aid regime. It is not the case that the petitioner has produced any subsequent sanctioned record demonstrating that, notwithstanding his omission from the said return and the Manager's own statement regarding cessation of his working after 2005, he continued thereafter against a duly sanctioned and recognised post. Thus, even independently of the finding concerning the alleged approval dated 29.07.1982, the contemporaneous institutional record does not establish any lawful basis for fastening a continuing salary liability upon the State.

64. Accordingly, the petitioner's claim fails on this additional and independent ground as well. A claim for salary from the State exchequer necessarily requires proof of a subsisting lawful appointment and corresponding entitlement during the period for which salary is claimed. Where the institution's own record indicates that the petitioner ceased working after 2005 and his name was absent from the relevant return when the institution entered the grant-in-aid list, no continuing entitlement to salary can be inferred merely from an earlier administrative order. The petitioner has not produced any cogent material sufficient to displace these contemporaneous records.

65. The impugned order, therefore, cannot be faulted merely because it declined to extend salary benefits to the petitioner. The finding is supported not only by the absence of a valid foundational approval and the subsequent record-based determination pursuant to the orders of this Court, but also, independently, by the petitioner's own institutional records, which fail to establish his continued working or entitlement to salary after 2005. The claim against the State exchequer consequently has no sustainable legal or factual foundation.

66. Learned counsel for the petitioner has, however, placed considerable reliance upon the order dated 09.03.2000 passed by the then District Basic Education Officer, contending that the said order recognised the petitioner's entitlement to payment of salary and has never been assailed or set aside by any competent authority or Court. It is, therefore, urged that the said order, having attained finality, could not subsequently be disregarded by the authorities and that the petitioner acquired a subsisting right to receive salary from the State Exchequer.

67. The submission, though attractive at first blush, cannot be accepted in the facts and circumstances of the present case. The mere fact that the order dated 09.03.2000 was not independently challenged does not render it conclusive of every question subsequently arising with regard to the legality and foundational basis of the petitioner's appointment. An administrative order, particularly one which was passed without examination of the foundational records relating to creation and sanction of the post, cannot, by its mere existence, confer legality upon an appointment which is otherwise unsupported by the requisite statutory foundation.

68. The material circumstance which cannot be lost sight of is that the order dated 09.03.2000 was not passed after an exhaustive adjudication of the genuineness of the alleged approval order dated 29.07.1982, the creation or sanction of the post, or the availability of the requisite financial sanction. The respondents have specifically demonstrated that the said order was passed without the relevant records concerning creation of the post being duly examined and without the matter being placed before or considered in consultation with the Finance and Accounts Officer. Thus, the order dated 09.03.2000 cannot be elevated to the status of a judicial determination conclusively validating the petitioner's appointment and the underlying approval.

69. More importantly, the subsequent proceedings before this Court furnish the determinative context in which the impugned order came to be passed. This Court, after recording the submissions advanced by learned counsel for the parties, did not itself declare the alleged approval order dated 29.07.1982 to be genuine, nor did it direct the authorities to mechanically give effect to the order dated 09.03.2000. On the contrary, Respondent No. 2 was specifically directed to pass an appropriate order after taking into consideration the relevant records and after affording due opportunity to all concerned, including the petitioner. The direction was thus unmistakably one for an objective reconsideration upon examination of the underlying record.

70. Consequently, the subsequent exercise undertaken by Respondent No. 2 cannot be characterized as an impermissible review or unilateral annulment of an order which had attained finality. The authority was acting pursuant to the express direction of this Court and was required to ascertain, upon examination of the original material, whether the petitioner possessed a legally sustainable foundation for claiming salary from the State Exchequer. The petitioner was afforded an opportunity of hearing; the records were examined; and the material placed by the Manager and the departmental authorities was considered. The resultant finding that the alleged approval order dated 29.07.1982 was not borne out by the authentic departmental record, and was found to be forged, has not been displaced by the petitioner by any cogent or contemporaneous documentary evidence.

71. The distinction between the finality of an administrative order and the finality of the legal foundation upon which a statutory monetary claim is asserted is material. Finality cannot be invoked to perpetuate an entitlement founded upon a document which, upon subsequent examination of the original record pursuant to an order of this Court, has been found to be forged. An administrative order cannot validate what the statute does not authorise, nor can it create a sanctioned post where none existed. Still less can an earlier administrative determination preclude the competent authority, acting under the specific mandate of this Court, from examining the underlying record and determining whether the alleged appointment and approval

had any lawful foundation.

72. The petitioner's argument that the order dated 09.03.2000 remained unchallenged must, therefore, be understood in its proper perspective. Its existence and the fact that it was not independently assailed are not in dispute. What does not follow from that circumstance is that the said order conclusively establishes the legality of the petitioner's appointment, the existence of a sanctioned post, or the authenticity of the alleged approval dated 29.07.1982. Those questions were precisely among the matters which, pursuant to the subsequent order of this Court, were required to be examined upon the relevant records.

73. Once the competent authority, after complying with the direction of this Court and after granting an effective opportunity of hearing, has found that the foundational approval relied upon by the petitioner is forged and that there was no valid creation or sanction of the post against which the petitioner could claim a statutory right to salary, the petitioner cannot derive an indefeasible monetary right merely from the earlier administrative order dated 09.03.2000. The doctrine of finality cannot be invoked as an instrument to confer permanence upon an entitlement which has no lawful substratum.

74. It is equally significant that the petitioner has not rebutted the specific factual findings emerging from the record. No contemporaneous order creating or sanctioning the post has been produced; no authentic departmental record establishing the alleged approval dated 29.07.1982 has been brought forth; and no material has been demonstrated before this Court which would render the findings recorded by Respondent No. 2 perverse or unsupported by evidence. The petitioner cannot succeed merely by placing reliance upon an earlier order whose evidentiary foundation was itself subsequently subjected to scrutiny pursuant to the directions of this Court.

75. In these circumstances, the contention founded upon the unchallenged order dated 09.03.2000 does not survive scrutiny. The said order may establish that, at the relevant point of time, the then District Basic Education Officer had directed or permitted payment; it does not, however, constitute an adjudication by a competent Court that the petitioner had been appointed against a duly sanctioned post in accordance with law or that the alleged approval dated 29.07.1982 was genuine. The subsequent proceedings, undertaken under the express command of this Court, have materially altered the evidentiary position and have disclosed circumstances which the earlier administrative order had not examined.

76. The Court is, therefore, constrained to hold that the petitioner's reliance upon the order dated 09.03.2000, notwithstanding its having remained unchallenged, cannot furnish an independent and enduring source of entitlement to salary from the State exchequer. Where the very foundation of the claimed appointment and approval is found, upon examination of the original record pursuant to the directions of this Court, to be forged or non-existent, no amount of administrative acquiescence or passage of time can transmute such foundation into a lawful right.

77. Accordingly, the impugned order dated 02.06.2015 cannot be faulted merely because it does not perpetuate the benefit which had earlier been extended under the order dated 09.03.2000. The subsequent decision was rendered pursuant to the specific directions of this Court, after affording the petitioner an opportunity of hearing and after examining the relevant records. The petitioner has failed to demonstrate any perversity, jurisdictional error, breach of natural justice, or manifest illegality in the decision-making process.

78. For the foregoing reasons, this Court finds no legally sustainable basis upon which the petitioner can claim salary from the State exchequer solely by placing reliance upon the order dated 09.03.2000. This formulation preserves the petitioner's submission that the 09.03.2000 order was unchallenged and had attained finality, but distinguishes that proposition from the separate question whether that order conclusively established the existence of a sanctioned post and the genuineness of the 29.07.1982 approval.

79. The record also discloses that the order dated 09.03.2000 was not founded upon a complete adjudication of the legality of the petitioner's appointment after examination of the foundational records relating to creation or sanction of the post and the genuineness of the alleged approval dated 29.07.1982. The respondents specifically contend that the relevant records were not examined and that the Finance and Accounts Officer was not consulted. More importantly, the subsequent proceedings before this Court materially altered the procedural position. This Court, after hearing the parties, did not affirm the petitioner's entitlement on the basis of the order dated 09.03.2000, nor did it direct its mechanical implementation. Instead, Respondent No. 2 was directed to pass an appropriate order after examining the relevant records and after affording opportunity of hearing to all concerned, including the petitioner.

80. That direction is of considerable legal significance. It constituted the governing procedural mandate for the subsequent decision-making process. The authority was thereby required to undertake a fresh examination of the underlying record and was not confined to perpetuating the earlier administrative conclusion. The petitioner was afforded the opportunity so directed, the relevant material was examined, and the impugned order was thereafter passed. Thus, the subsequent order cannot properly be characterised as an impermissible administrative review of the order dated 09.03.2000; it was the result of the specific reconsideration directed by this Court upon examination of the foundational record.

81. Upon such examination, the alleged approval order dated 29.07.1982, upon which the petitioner's claim substantially rests, was found not to be supported by the authentic departmental record and was found to be forged. The petitioner has not placed before this Court any contemporaneous and unimpeachable material sufficient to dislodge that finding. Nor has he demonstrated that the conclusion reached by Respondent No.2 is founded upon irrelevant considerations, that relevant material was ignored, or that the decision is perverse in the legal sense.

82. The consequence is that the earlier finality of the order dated 09.03.2000 cannot be construed as conclusively adjudicating matters which were subsequently required, by the express order of this Court, to be examined from the original record. Finality prevents an administrative order from being casually ignored or reopened at will; it does not, however, create a sanctioned post where none is established, authenticate a document subsequently found to be forged, or preclude an authority from undertaking an inquiry which this Court itself has expressly directed. The earlier order, therefore, remains relevant as part of the historical record, but it cannot furnish an independent and indefeasible source of entitlement once the foundational basis of the claim has failed upon the record-based inquiry mandated by this Court.

83. This distinction is particularly material to the claim for salary. The right to draw salary from the State Exchequer ordinarily

follows from a lawful appointment against a duly sanctioned post. It cannot be founded solely upon actual working or upon an earlier administrative recognition when the very document relied upon to establish the legality of the appointment is found to be forged. As held by the Supreme Court in R. Vishwanatha Pillai (supra), an appointment obtained or sustained upon a fraudulent foundation cannot confer an enforceable right to consequential service benefits. The same principle is reflected in Union of India v. M. Bhaskaran (supra), and State of Bihar v. Devendra Sharma (supra): a void or fundamentally unlawful appointment cannot, merely by the passage of time or continued service, generate a lawful entitlement to consequential monetary benefits.

84. The petitioner's actual working, even if assumed for the purposes of consideration, cannot by itself cure the absence of a lawful foundation for the appointment. Nor can the order dated 09.03.2000 be treated as having conclusively determined the genuineness of the alleged approval when that question was neither finally adjudicated therein upon the complete record nor foreclosed by the subsequent order of this Court. What is decisive is that the competent authority, acting pursuant to the express judicial direction, examined the relevant material, afforded the petitioner an opportunity of hearing, and recorded findings which the petitioner has failed to rebut by cogent documentary evidence.

85. In these circumstances, this Court finds no jurisdictional error, procedural impropriety, violation of natural justice or perversity in the impugned order dated 02.06.2015. Once the alleged approval itself has failed that scrutiny and no valid creation or sanction of the post has been established, the consequential claim upon the State Exchequer cannot be sustained.

86. The writ petition is, accordingly, dismissed. There shall be no order as to costs.

(Mrs. Manju Rani Chauhan,J.)

September 25, 2026

Rahul

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