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Court : Allahabad

Decided On : Feb-02-2005

Reported in : 2005(2)ESC809

Judge : B.S. Chauhan and ;Dilip Gupta, JJ.

Acts : Uttar Pradesh Higher Education and Services Commission Act, 1980; Uttar Pradesh Higher Education and Services Commission Regulations, 1983; [Constitution of India](#) - Article 14; Uttar Pradesh Higher Education Services Commission Rules, 1981; Uttar Pradesh Intermediate Education Act, 1921; Uttar Pradesh Secondary Education Service Commission and Selection Boards Act, 1982

Appeal No. : C.M.W.P. No. 16724 of 2002

Appellant : Pradeep Kumar Arora and anr.

Respondent : State of U.P. and ors.

Advocate for Def. : W.H. Khan and ;Upendra Singh, Advs. and ;S.C.

Advocate for Pet/Ap. : T.P. Singh and ;Shailendra, Advs.

Judgement :

1. This case is an eye-opener as to what extent a litigant can have the audacity to misuse and abuse the process of the Court. One of the petitioners, whose

appointment itself stood cancelled by operation of law is not only in service but had succeeded in joining a college of his choice, though the vacancy of his subject had never occurred therein, only by playing fraud upon the Court.

2. Petitioners stood selected for appointment as Lecturer in Education Department by the U.P. Higher Education Services Commission (hereinafter referred to as the 'Commission') pursuant to advertisement No. 29. Petition has been filed for a direction upon the respondents to consider their claim for inter changing the Colleges where their names have been recommended by the Director of Education (Higher Education) (hereinafter referred to as the 'Director').

3. Consequent to the selections made by the Commission on the basis of Advertisement No. 29 issued by it for filling up the posts of Lecturers in the Colleges in various subjects, a list dated 7.7.2001 was sent by the Commission to the Director recommending the names of 121 candidates found most suitable for the post of Lecturer in B.Ed. The Director intimated the managements of the respective Colleges the names of the candidates for being appointed. Amongst others, the name of Pradeep Kumar Arora, petitioner No. 1, was intimated to the management of Vardhman College, Bijnor whereas the name of Dr, Kailash Nath Gupta, petitioner No. 2, was intimated to the management of Nanakchand AngloSanskrit College, Meerut (hereinafter referred to as 'NAS College' Meerut). Instead of joining at their respective Colleges, both the petitioners moved applications before the Director for inter changing their placement. The Director, however, did not accede to the request and proceeded to place another candidate Harendra Kumar at the NAS College, Meerut. It is in these circumstances that the present petition was filed in the Court for the relief mentioned above and when the matter was taken up on 24.4.2002 time was granted to the respondents to file a counter-affidavit and notices were issued to respondent Nos. 3 and 4 which are the Committee of Managements of the aforesaid two Colleges; The Court further Ordered that in the meantime petitioners may inter change their postings i.e. petitioner No. 1 was permitted to join as Lecturer in B.Ed. in NAS College, Meerut while petitioner No. 2 to join as Lecturer in Vardhman College, Bijnor.

4. The records reveal that on the basis, of the aforesaid interim Orderpetitioner No. 1 joined the NAS College, Meerut but petitioner No. 2 did notjoin the Vardhman College, Bijnor till date.

5. On 22.5.2002, one Ompal Singh filed an application for impleadment as arespondent in the writ petition and for recalling the Order dated 24.4.2002.The said application was allowed impleading him as respondent No. 5. In theaffidavit filed in support of the impleadment application, It was stated thatthe petitioner No. 2 Dr. Kailash Nath Gupta had not joined the intimated placeof posting at NAS College, Meerut and, therefore, his placement Order wascancelled and thereafter the communication dated 24.1.2002 was sent by theDirector to the NAS College, Meerut intimating the name of one Harendra Kumarfor appointment. The applicant (Ompal Singh) had earlier filed a Writ PetitionNo. 14938 of 2002 in, this Court for quashing the aforesaid placement Order ofHarendra Kumar and for a direction to place the applicant at the said NASCollege, Meerut. On 12.4.2002 the Court passed the following Order on theapplication for interim relief:

'It has been averred in writ petition that petitioner is M.A. inMathematics and M.Ed, as also Gold Medallist in M. Phil.

The advertisement was made for Nanak Chand Anglo Sanskrit College Meerut forthe post of Lecturer having qualification B.Ed./Mathematics. The petitioner isspecialised in Mathematics whereas Harendra Kumar respondent No. 5 is M.A. inHistory and prima facie is not eligible.

Considering the averments in the writ petition particularly the fact thatrespondent No. 5 is allegedly not qualified for appointment on the said post westay the impugned Order dated 24.1.2002 (Annexure-1 to the SupplementaryAffidavit).

However it is clarified that if respondent No. 5 has a degree in M.A.Mathematics then this interim Order will be inoperative.'

6. It was also stated that Dr. Kailash Nath Gupta had earlier been selectedby the Commission pursuant to advertisement No. 28 and consequent to theintimation sent by the Director he had been appointed as a Lecturer in B.Ed. InMaltari

College, Azamgarh. However, Dr. Gupta had concealed material facts from this Court and obtained an interim Order dated '24.4.2002.

7. A counter affidavit was filed on behalf of the petitioners to the aforesaid impleadment application wherein it was admitted that petitioner No. 2 Dr. Kailash Nath Gupta was working at Maltari College, Azamgarh in view of his selection on the basis of Advertisement No. 28 and on the basis of the interim Order dated 24.4.2002, he could not join the Vardhman College, Bijnor as he did not receive any information about his placement. However, petitioner No. 1, Pradeep . Kumar Arora joined at the NAS College, Meerut pursuant to the interim Order dated 24.4.2002 and was teaching there. In the rejoinder affidavit to the aforesaid impleadment application Ompal Singh has brought on record the communication dated 31.1.2002 sent by the NAS College, Meerut to the Director wherein reasons have been given as to why Harendra Kumar was not permitted to join in spite of the intimation dated 24.1.2002 sent by the Director to the said College. It has further been stated that an appointment letter had been issued to Dr. Kailash Nath Gupta by the NAS College, Meerut but since he did not join the College, the Director intimated the name of Harendra Kumar to the said College for appointment as a Lecturer.

8. A detailed counter affidavit has also been filed on behalf of the Director. It has been stated that regular selection and appointment for the post of Lecturer in aided non-Government Degree and Post Graduate Colleges are governed by the provisions of the U.P., Higher Education Services Commission Act, 1980 (hereinafter referred to as the 'Act'); under the second proviso to Section 12(4) of the Act, the candidates are required to indicate their Order of preference for various Colleges in respect of which the vacancies had been advertised and under Section 13(3) of the Act, the Director having due regard to the Order of preference indicated by the candidates, intimates to the Management the name of a candidate from the list sent by the Commission for being appointed; that many candidates indicate their preference for the same College and, therefore, the placement Order is issued by the Director looking to the merit and the roster while taking care that only female selected candidates are placed in Girls' Colleges as a result of which the claim of male candidates higher in Order of merit has to be ignored; the

Director also has to look into the specific demands made by the Colleges in respect of specialised field and it was on a consideration of the relevant factors that the Director had made the placement Order of Pradeep Kumar Arora, petitioner No. 1 at Vardhman College, Bijnor since the requirement of this College was for a Lecturer in B.Ed, specialising In Commerce and of Dr. Kailash Nath Gupta, petitioner No. 2 at NAS College, Meerut where the demand was for a Lecturer in B.Ed, specialising in Mathematics. It was, therefore, submitted that if such exchanges are permitted then it would not only be against the requirements of the College but would also ignore the claims of other successful candidates. It has further been stated that the name of petitioner No. 2, Dr. Kailash Nath Gupta was wrongly included in the list of general category candidates sent by the Commission on 7.7.2001 and subsequently the Commission informed the Director that the petitioner No. 2, Dr. Kailash Nath Gupta had been placed at Serial No. 2 in the list of OBC category candidates.

9. On 13.5.2003, when the matter was taken up by the Court, the following Order was passed:

'The petitioner No. 2 has sworn affidavit on personal knowledge and made false averments in para 32 of the writ petition. He is directed to remain present before this Court on 22.5.2003 at 2.00 p.m. to explain under what circumstances he has made factual averments in para 32 that the vacancy of commerce has ever been advertised in NAS College Meerut and how he has verified this fact on personal knowledge in his affidavit. He is directed to file affidavit explaining his conduct why he should not be dealt with criminal contempt. List this petition for further hearing on 22.5.2003 at 2.00p.m.'

10. Pursuant to the aforesaid directions, an application duly supported by an affidavit of Dr. Kailash Nath Gupta. An attempt was made to explain the facts mentioned in paragraph 32 of the petition by stating that the averments had been made on the basis of the report of the Committee of Management of the NAS College, Meerut rather than on the basis of the advertisement and an unconditional apology was submitted.

11. The matter was heard by us at length on 19.1.2005 and the following Order was passed :

'Judgment reserved. Sri Kailash Nath Gupta, petitioner No. 2 is directed to file his affidavit as under what circumstances he had made averments in paragraph 32 of the petition regarding placement of Harendra Kumar, and as to whether he was aware of the cancellation of his placement in N.A.S. College, Meerut. Affidavit be filed within ten days from today.

Director of Higher Education is directed to transmit the original record of the appointment/ placement of Lecturer in Education Department in N.A.S. College, Meerut as well as Vardhman College, Bijnor along with the Order cancelling the placement of Shri Kailash Nath Gupta in N.A.S. College, Meerut and the application sent by the Committee of Management of that College for the cancellation of his placement for not joining within time.

The record may be transmitted forthwith and in any case not later than one week from today.

Copy of this Order may be given to the learned Chief Standing Counsel S.M.A.Kazmi by tomorrow.'

12. Pursuant to the aforesaid directions issued by us, a supplementary affidavit has been filed by the petitioners and the records have also been produced by Director of Education. In the supplementary affidavit it has been stated that petitioner No. 2 was never communicated any Order of cancellation of his placement at the NAS College, Meerut by the State-respondent. The supplementary affidavit has however very conveniently omitted to explain as to on what basis the petitioners had made the averment in paragraph 32 of the petition regarding the placement of Harendra Kumar at the NAS College, Meerut, if they were not aware of the letter dated 24.1.2002.

13. We have heard Sri T.P. Singh, learned Senior Counsel for the petitioners, assisted by Sri Shailendra and the learned Standing Counsel appearing on behalf of the respondent Nos. 1 and 2, Sri W.H. Khan, learned Counsel appearing for the

Committee of Management of the NAS College, Meerut and SriUpendra Singh, learned Counsel appearing for the newly impleaded respondentOmpal Singh.

14. Sri T.P. Singh, learned Senior Counsel for the petitioners submittedthat it was obligatory on the part of the Director to have considered theapplications submitted by the petitioners for inter changing their place ofpostings since there were so many cases in which the Director permitted suchmutual exchange of placement; the Director was not justified in adjustingHarendra Kumar who belongs to the Other Backward Category and who was at SerialNo. 1 in the said category and had been placed at Vardhman College, Bijnor; andthat Harendra Kumar belongs to History subject whereas no such post wasavailable at NAS College, Meerut.

15. On the other hand, learned Standing Counsel and Sri Upendra Singh,learned Counsel appearing for the newly impleaded respondent No. 5 opposed thegrant of any relief since that would not only be against the provisions of theAct and the Rules framed thereunder but the petitioners had also concealedmaterial facts from this Court and in support of their contentions the learnedCounsel relied upon the averments made in the affidavits filed by them.

16. In Order to appreciate the controversy involved in the present petition,it would be necessary to refer to the provisions of the Act and the provisionsof the Uttar Pradesh Higher Education Services Commission Rules, 1981(hereinafter referred to as the 'Rules') and the provisions of the UttarPradesh Higher Education Services Commission (Procedure for Selection ofTeachers) Regulations, 1983 (hereinafter referred to as the 'Regulations').Prior to the commencement of the Act, the appointment to the post of teachersin the Non-Governmental Colleges affiliated to the various Universities in theState was made by the Selection Committee of the Management of the Collegeconcerned. For various reasons the said process was not found to be congenialand so the aforesaid Act, was enacted. Sections 12, 13, 14 and 15 of the Actwhich are relevant for the purposes of the controversy involved in the petitionare quoted below :

'12. Procedure for appointment of teachers. -- (1) Every appointment asa teacher of any College shall be made by the management in accordance with theprovisions of this Act and every appointment made in contravention thereofshall

be void.

(2) The management shall intimate the existing vacancies and the vacancies, likely to be caused during the course of the ensuing academic year, to the Director at such time and in such manner, as may be prescribed.

(3) The Director shall notify to the Commission at such time and in such manner as may be prescribed a subject-wise consolidated list of vacancies intimated to him from all Colleges.

(4) The manner of selection of persons for appointment to the posts of teachers of a College shall be such, as may be determined by regulations : Provided further that the candidates shall be required to indicate their Order of preference for the various Colleges, vacancies wherein have been advertised.

13. Recommendation of Commission. --(1) The Commission, shall as soon as possible, after the notification of vacancies to it under sub-Section (3) of Section 12, hold interview (with or without written examination) of the candidates and send to the Director a list recommending such number of names of candidates found most suitable in each subject as may be, so far as practicable, twenty five per cent more than the number of vacancies in that subject. Such names shall be arranged in Order of merit shown in the interview, or in the examination and interview if an examination is held.

(2) The list sent by the Commission shall be valid till the receipt of a new list from the Commission.

(3) The Director shall having due regard in the prescribed manner, to the Order of preference if any indicated by the candidates under the second proviso to Sub-section (4) of Section 12, intimate to the management the name of a candidate from the list referred to in Sub-section (2) of Section 12.

(6) The Director shall send a copy of the intimation made under Sub-section (3) or Sub-section (4) or Sub-section (5) to the candidate concerned.

14. Duty of Management--(1) The management shall within a period of one month from the date of receipt of intimation under Sub-section (3) or Sub-section (4) or Sub-section (5) of Section 13, issue appointment letter to the person whose name has been intimated.

(2) Where the person referred to in Sub-section (1) fails to join the post within the time allowed in the appointment letter or within such extended time as the management may allow in this behalf, or where such person is otherwise not available for appointment, the Director, shall on the request of the management intimate fresh name from the list sent by the Commission under Sub-section (1) of Section 13 in the manner prescribed.

15. Inquiry by Director.--(1) Where any person is entitled to be appointed as a teacher in any College in accordance with Sections 12 to 14, but he is not so appointed by the management within the time provided therefore, he may apply to the Director for a direction under Sub-section (2).

(2) On receipt of an application under Sub-section (1), the Director may hold an Inquiry, and if he is satisfied that the management has failed to appoint the applicant as a teacher in contravention of the provisions of this Act. he may by Order, require--

(a) the management to appoint the applicant as a teacher, and to pay him salary from the date specified in the Order; and

(b) the Principal of the College concerned to take work from him as a teacher.

(3) The amount of salary, if any, due to such teacher shall, on a certificate issued by the Director, be recoverable by the Collector as arrears of land revenue.'

17. A perusal of the aforesaid provisions of the Act indicates that every appointment of a teacher in a College has to be made by the Management in accordance with the provisions of the Act and every appointment made in contravention thereof shall be void. The Management has to intimate the existing vacancies and the vacancies likely to be caused during the course of the ensuing academic year to the Director in the prescribed manner who shall then notify to the

Commission a subject wise consolidated list of vacancies intimated to him from all Colleges. Thereafter the Commission shall give wide publication in the State to the vacancies and the candidates shall be required to indicate their Order of preference for the various Colleges. Under Section 13 (1) of the Act, the Commission shall hold interview of the candidates and send to the Director a list recommending such number of names of candidates found most suitable in subject and such names shall be arranged in Order of merit. This list sent by the Commission shall be valid till the receipt of a new list from the Commission. Under Section 13 (3) of the Act the Director shall, having due regard to the Order of preference indicated by the candidates, intimate to the Management the name of a candidate from the list sent by the Director for being appointed. Under Section 13 (6) of the Act, the Director shall also send a copy of the intimation to the candidate concerned. Section 14 of the Act prescribes that it is the duty of the management to issue appointment letter to the person whose name has been intimated within a period of one month but where the person fails to join the post within the time allowed in the appointment letter, the Director shall intimate a fresh name from the list sent by the Commission. Under Section 15 of the Act, if the person is not appointed by the management then he may apply to the Director for directions and under Section 15 (2) of the Act, the Director, after holding an enquiry, may require the management to appoint the person and the Principal concerned to take work from him. Rule 7 of the Rules provides that the management of the College has to intimate the number of vacancies to be filled in by recruitment during the course of the year by 31st May in Form I and under Rule 11 the candidate recommended by the Commission for appointment may intimate to the Director his non-appointment by the management in Form II. The Regulations provide that the minimum qualification for appointment of a teacher shall be as given in the Statutes of the Universities and they also provide for a detailed procedure regarding the termination and intimation of vacancies, notification of vacancies, submission of application and indication of preference and the procedure for selection and recommendation for appointment and the notification of names of selected candidates.

18. Now coming to the facts of the instant case, we find that both the petitioners had submitted applications before the Commission for being considered for

appointment as Lecturers in B.Ed, pursuant to the Advertisement No. 29. The Commission had sent a list dated 7.7.2001 containing the names of the Lecturers in B.Ed, for the Graduate and Post Graduate Colleges in respect of the vacancies advertised for 121 posts which included 61 general category posts, 33 OBC category, 25 Scheduled Caste category and 2 Scheduled Tribe category. The name of petitioner No. 1, Pradeep Kumar Arora was indicated at Serial No. 42 in the list of general category candidates while the name of Dr. Kailash Nath Gupta, petitioner No. 2 was indicated at Serial No. 55 in the list of general category candidates. However, against the name of petitioner No. 2 OBC was mentioned. In paragraph 18 of the counter affidavit filed on behalf of the Director, it has also been stated that subsequently the Commission informed the Director that petitioner No. 2, namely, Dr. Kailash Nath Gupta should be placed at Serial No. 2 in the list of OBC category candidates. In the aforesaid list dated 7.7.2001 the name of Harendra Kumar has been placed at Serial No. 1 in the list of OBC category candidates while the name of Ompal Singh is at Serial No. 2 in the said category. Under Section 13 (3) of the Act, the Director by means of the communication dated 22.12.2001 intimated the management of Vardhman College, Bijnor the name of petitioner No. 1, Pradeep Kumar Arora for appointment as a Lecturer in B.Ed, and the management was directed to issue the appointment letter giving 21 days time to the candidate to join. A copy of the letter was also endorsed to the Principal of the College and to the candidate concerned namely Sri Pradeep Kumar Arora with the remark that he should contact the management and join the post at the earliest and intimate the said fact to the Director. It was also specifically mentioned that if he failed to join the post on the basis of the letter issued by the management of the College then it will be presumed that he was not desirous of joining the College. and in such circumstances his name will not be considered in any other College and the appointment shall automatically stand cancelled. Likewise, the Director also sent a communication dated 23.10.2001 to the management of NAS College, Meerut intimating the name of petitioner No. 2, Dr. Kailash Nath Gupta for appointment as a Lecturer in B.Ed, in the College. A copy of the letter also endorsed to petitioner No. 2 with the same remark. Both the petitioners did not desire to join the place of postings indicated in the aforesaid communications sent

by the Director and, therefore, moved applications for Inter changing their place of postings.

19. What, therefore, emerges is that in the communications dated 22nd December, 2001 and 23rd October, 2001 sent to the petitioner Nos. 1 and 2 respectively for their placements at the Colleges it was clearly mentioned that they should immediately intimate the Director about their joining at the respective Colleges and should they fail to join within the time stipulated by the management of the Colleges it will be presumed that they were not interested in joining so that their appointments shall automatically stand cancelled and they will also not be considered for placement in any other College. The petitioners have not brought on record the letters issued by the management of the two Colleges and it is also not their case that such letters were not issued. However, In the letter issued by the Director, the managements were required to give not more than 21 days time to the candidates to join the College. There is nothing on the record to show that the petitioners had ever sought extension of time either from the Director or the management of the Colleges, The petitioners had admittedly not joined the Colleges. and therefore their appointments stood cancelled and they could not be considered for appointment in any other College in view of the specific stipulation to this effect contained in the aforesaid letters. There was no requirement at all for the Director or the management of the College to intimate the candidates about cancellation of their appointments since it automatically stood cancelled on the failure to Join the College within the stipulated time. Thus, the appointments of the petitioners stood automatically cancelled much prior to the filing of this petition on 22nd April, 2002.

20. Equally disturbing is the fact that In the entire petition it has not been stated that petitioner No. 2 Dr. Kailash Nath Gupta was already working as a Lecturer in B.Ed, in Maltari College, Azamgarh pursuant to the selection made by the Commission earlier on the basis of Advertisement No. 28 and the fact that since petitioner No. 2 had not joined the College within the time stipulated in the letter, the Director had sent the communication dated 24.1.2002 to the NAS College, Meerut intimating the name of Harendra Kumar for being given an appointment as a Lecturer in B.Ed. In the petition, which was filed on 24.4.2002, it was

merely mentioned that the Director was 'making' an effort to issue the placement Order in favour of one Harendra Kumar OBC candidate' and that Harendra Kumar should not be sent to NAS College, Meerut since he was specialising in History whereas there was no requirement for History in the College. Harendra Kumar has, however, not been impleaded as a respondent in the writ petition even though his placement in NAS College, Meerut was sought to be challenged.

21. From the facts stated above it transpires that as petitioner No. 2 Dr. Kailash Nath Gupta was already working as a Lecturer in B.Ed, in Maltari College, Azamgarh, he was not interested at all in joining the NAS College, Meerut but since petitioner No. 1 Pradeep Kumar Arora was desirous of joining the NAS College, Meerut he prevailed upon Dr. Kailash Nath Gupta to join as a petitioner in the present petition so as to make out a case of simple inter change of place of postings. We are persuaded to form such an opinion because of the fact that even after the passing of the interim Order dated 24.4.2002 petitioner No. 2 Dr. Kailash Nath Gupta did not join the Vardhman College, Bijnor though petitioner No. 1 Pradeep Kumar Arora immediately joined the NAS College, Meerut. The contention of Dr. Kailash Nath Gupta that he was not issued a letter by the Vardhman College, Bijnor cannot be accepted because there was an interim Order granted in his favour by this Court and nothing has been brought on record to show that he moved any application/representation before the said College for appointment or that he complained to this Court that the interim Order was not complied with by the Vardhman College, Bijnor. Thus, it is amply clear that he had no intention of joining the said College. It was by this oblique method that Dr. Kailash Nath Gupta wanted to help petitioner No. 1 in seeking appointment in the NAS College, Meerut and in doing so material facts were deliberately concealed from this Court. We are not inclined to accept the contention of the petitioner that they had no knowledge of the letter dated 24.1.2002 sent by the Director to the NAS College, Meerut because they have clearly stated about Harendra Kumar being sent to the NAS College, Meerut and they could have gathered information of this fact only through the letter dated 24.1.2002. Even in the supplementary affidavit filed by the petitioner pursuant to the directions issued by us on 19.1.2005 the petitioners have not explained as to on what basis they had stated in the

petition that the Director was making an effort for placement of Harendra Kumar at the NAS College, Meerut. Thus neither the communication dated 24.1.2002 sent by the Director to the NAS College, Meerut was placed on record or sought to be quashed and nor was Harendra Kumar impleaded as a respondent in the petition.

22. We are doubtful whether the Court could have entertained the writ petition, much less granted interim relief, if these material facts had been brought to its notice. No interim relief at the initial stage can be granted in the instant case, as the Hon'ble Apex Court has consistently and persistently held that the Court of law should not pass an interim Order which amounts to a final relief. [Vide A.P. Christians Medical Educational Society v. Gout, of A.P. and Anr., AIR 1986 SC 1490; State of Jammu and Kashmir v. Mohd. Yakoub Khan and Ors., 1992 (4) SCC 167; U.P. Junior Doctors' Action Committee and Ors. v. Dr. B. Shital Nandwani and Ors., 1992 Suppl (1) SCC 680; Guru Nanak Dev University v. Parminder Kr. Bansal and Anr., AIR 1993 SC 2412; St. John's Teachers Training Institute (For Women), Madurai and Ors. v. State of Tamil Nadu and Ors., 1993 (3) SCC 595; Dr. Bharatbhushan Sonaji Kshirsagar v. Abdul Khalik Mohd. Musa and Ors., 1995 Suppl (2) SCC 593; Bank of Maharashtra v. Race Shipping and Transport Co. Put. Ltd. and Anr., AIR 1995 SC 1368; Commissioner/ Secretary to Government Health and Medical Education Department, Civil Secretariat, Jammu v. Dr. Ashok Kumar Kohli, 1995 Suppl (4) SCC 214; Union of India v. Shree Ganesh Steel Rolling Mills Ltd. and Anr., 1996 (8) SCC 347; State of Madhya Pradesh and Ors. v. M.V. Vyavsaya and Co., AIR 1997 SC 993; and Central Board of Secondary Education v. P. Sunil Kumar, (1998) 5 SCC 377J.

23. The logic behind this remains that the ill-conceived sympathy masquerades as interlocutory justice exposing the judicial discretion to the criticism of private benevolence and the Court should not be guided by misplaced sympathy, but should pass interim Orders making accurate assessment of even the prima facie legal position. The Court should not embarrass the authorities under the Statute by taking over the functions to be performed by them.

24. In Union of India v. Era Educational Trust and Anr., (2000) 5 SCC 57, the Hon'ble Supreme Court after considering its large number of Judgments held that

while passing interim Order in exercise of writ Jurisdiction under Article 226 of the Constitution, principles laid down for granting Interim relief under Order XXXIX of Code of Civil Procedure, 1908 should be kept in mind. It can neither be issued as a matter of right nor it should be in the form which can be granted only as final relief.

25. In *Morgan Stanley Mutual Fund v. Kartick Das*, (1994) 4 SCC 225, the Hon'ble Apex Court held that ex-parte injunction could be granted only under exceptional circumstances. The factors which should weigh for grant of injunction are - (a) whether irreparable or serious mischief will ensue to the plaintiff; (b) whether the refusal of ex-parte injunction would involve greater injustice than grant of it would involve; (c) even if ex-parte injunction should be granted, it should only be for a limited period of time; and (d) general principles like prima facie case, balance of convenience and irreparable loss would also be considered by the Court.

26. In *Burn Standard Co. Ltd. and Ors. v. Dinabandhu Majumdar and Anr.*, AIR 1995 SC 1499, the Hon'ble Supreme Court deprecated the practice of grant of interim relief which amounts to final relief, observing that High Court should exercise its discretion, while granting interim relief, reasonably and judiciously and, if loss can be repaired or the loss can be satisfied by giving back wages etc., no interim Order should be granted. Hon'ble Apex Court further observed as under :

'It should be granted only in exceptional circumstances where the damage cannot be repaired, for the reason that if no relief for continuance in service is granted and ultimately his claim... is found to be acceptable, the damage can be repaired by granting him all those monetary benefits which he would have received and he continued in service. We are, therefore, of the opinion that in such cases it would be imprudent to grant interim relief.'

27. Similar view has been reiterated in *Council for Indian School Certificate Examination v. Isha Mittal and Anr.*, (2000) 7 SCC 521.

28. In *State of U.P. and Ors. v. Modern Transport Company, Ludhiana and Anr.*, JT (2002) 1 SC 425, the Hon'ble Supreme Court deprecated the practice of granting interim relief wherein the party could be compensated at the time of disposal of the

writ petition. The Hon'ble Apex Court observed as under :

'It is unfortunate that the High Court has given no reason whatsoever in support of its Order. It is expected that when interim Orders are passed which, in effect, results in the writ petition itself being allowed, the High Court must give reasons in support thereof.'

29. In *Union of India and Ors. v. Modiluft Ltd.*, AIR 2003 SC 2218, the Hon'ble Supreme Court while making the similar observations held that an interim Order passed in equity must be one which is equitable to all the parties concerned and it must meet ingredients of Order XXXIX, Rule 1 of Code of Civil Procedure.

30. Similar view has been reiterated in *State of Haryana v. Suman Dutta*, (2000) 10 SCC 311; and *Regional Officer, CBSE v. Ku. Sheena Peethambaran and Ors.*, (2003) 7 SCC 719.

31. Thus, in view of the aforesaid decisions, no interim relief, which amounts to a final relief, should be granted at the initial stage.

32. There can be no quarrel to the legal proposition that no party can suffer by the action of the Court and when the High Court in exercising of its powers under Article 226 of the [Constitution of India](#) grants interim relief; the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised. The institution of litigation by a party should not be permitted to confer an unfair advantage on the party responsible for it. [Vide *Grindlays Bank Ltd. v. Income-tax Officer, Calcutta and Ors.*, AIR 1980 SC 656; *Ram Krishna Verma and Ors. v. State of U.P. and Ors.*, AIR 1992 SC 1888; *State of Madhya Pradesh and Ors. v. M/s. M.V, Vyavsaya and Co.*, AIR 1997 SC 993; and *Smt. Rampati Jaiswal and Ors. v. State of U.P. and Ors.*, AIR 1997 All 170].

33. No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim Order always merges in the final Order to be passed in the case and if the writ petition is ultimately dismissed, the interim Order stands nullified automatically. A party cannot be allowed to take any benefit of his own

wrong by getting interim Order and thereafter blame the Court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim 'Actus curiae neminem gravabit', which means that the act of the Court shall prejudice no-one, becomes applicable in such a case. In such a situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court. [Vide *Dr.A.R. Sircar v. State of Uttar Pradesh and Ors.*, 1993 Suppl. (2) SCC 734; *ShivShankar and Ors. v. Board of Directors, U.P.S.R.T.C. and Anr.*, 1995 Suppl (2) SCC 726; *Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur and Ors. v. Sree Kumar Tiwary and Anr.*, AIR 1997 SC 3071; and *GTC industries Ltd. v. Union of India and Ors.*, (1998) 4 SCC 376].

34.. In *Kanoria Chemicals and Industries Ltd. and Ors. v. V.P. State Electricity Board and Ors.*, (1997) 5 SCC 772, the Hon'ble Apex Court approved and followed its earlier judgment in *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association C.S.I. Cinod Secretariat, Madras*, (1992) 3 SCC 1, and observed as under :

'It is equally well settled that an Order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the Court in such a case to put the parties in the same position they would have been but for the interim Orders of the Court.'

35. The same view has been taken by the Hon'ble Supreme Court in the case of *N. Mohanan v. State of Kerala and Ors.*, AIR 1997 SC 1896; and *Bhleshiuar Khan Uduog Khedut Sahkari Mandalf Ltd. and Ors. v. Union of India and Anr.*, AIR 1999 SC 1198, wherein it has been held that the appointment/continuation in service by interim Order, does not create any legal right in favour of the appointee. In *State of U.P. and Ors. v. RajKaran Singh*, (1998) 8 SCC 529, the Hon'ble Apex Court has categorically held that interim Order cannot disturb the position in law and if a person is in service by virtue of the interim Order of the Court, he cannot agitate

the issue that his continuation in service in such a condition has improved his claim to regularisation.

36. Similar view has been reiterated in *South Eastern Coalfields Ltd. v. State of M.P. and Ors.*, (2003) 8 SCC 648; and *Karnataka Rare Earth and Anr. v. Senior Geologist, Department of Mines and Geology and Anr.*, (2004) 2 SCC 783.

37. This petition is also liable to be dismissed on the ground of non-impleadment of the necessary party, namely, Harendra Kumar in view of the decisions of the Supreme Court [*Vide Prabodh Verma and Ors. v. State of V.P. and Ors.*, AIR 1985 SC 167; *Ishujar Singh Ajay Kumar and Ors. v. Kuldip Singh and Ors.*, 1995 (Suppl) 1 SCC 179; *Bhagujanti and Ors. v. Subordinate Services Selection Board, Haryana and Anr.*, 1995 (Suppl) 2 SCC 663; *Central Bank of India v. S. Satyam and Ors.*, (1996) 5 SCC 419 ; *J. Jose Dhanapaul v. S. Thomas and Ors.*, (1996) 3 SCC 587; *Arun Tiwari and Ors. v. Zila Mansavi Shikshak Sangh and Ors.*, AIR 1998 SC 331; *Azhar Hasan and Ors. v. District Judge, Saharanpur and Ors.*, (1998) 3 SCC 246 ; *Ram Swamp and Ors. v. S.N. Matra and Ors.*, (1999) 1 SCC 738; *L. Chandrakishore Singh v. State of Manipur and Ors.*, (1999) 8 SCC 287; *Mohd. Riazul Usman Gani and Ors. v. District and Sessions Judge, Nagpur and Ors.*, (2000) 2 SCC 606 ; *Nirmala Anand v. Advent Corporation (P) Ltd. and Ors.*, (2002) 5 SCC 481 ; *M.P. Rajya Sahkari Bank Maryadit v. Indian Coffee Workers' Co-operative Society Ltd. and Ors.*, (2002) 9 SCC 204; and *Ramrao and Ors. v. All India Backward Class Bank Employees' Welfare Association and Ors.*, (2004) 2 SCC 76).

38. This apart, what has also to be examined in this petition is whether in law it is permissible for two such candidates whose names have been recommended by the Director for appointment in two different Colleges to move an application for inter changing their placement of postings. This issue has to be examined in the light of the provisions contained in the Act, the Rules and the Regulations.

39. As stated above, under Section 13 (3) of the Act, the Director having due regard to the manner prescribed in the Rules and the Regulations and the Order of preference indicated by the candidates has to intimate the management the name of a candidate for being appointed. It is in keeping with the said provision that the

Director had intimated the Committee of Managements of the two Colleges the names of Pradeep Kumar Arora and Dr. Kallash Nath Gupta for being appointed as Lecturers in B.Ed. The requirements of the Colleges and the merit of the candidates have necessarily to be taken into consideration. In the counter affidavit filed by the Director it has clearly been stated that whereas the requirement in N.A.S. College, Meerut was for a Lecturer in B.Ed, specialising in Mathematics the requirement at Vardhman College, Bijnor was for a Lecturer in B.Ed, specialising in Commerce. Petitioner No. 1 Pradeep Kumar Arora had to his credit specialisation in Commerce while Dr. Kailash Nath Gupta had to his credit specialisation in Mathematics. Thus these two petitioners on their own could not have agreed for inter changing their place of postings. It is for the Director under Section 13(3) of the Act to place a particular person to a particular College looking to the preference indicated by the person concerned, his merit determined by the Commission and the requirement of the particular College. This being the position, we are of the considered opinion that the petitioners could not have been permitted to inter change their place of postings merely because they had no objection or the respective Colleges had no objection.

40. In the case of *Km. Ragini Srivastava v. State of UP.*, 1997 (1) ESC 649 a Division Bench of this Court consisting of one of us (Dr. B.S. Chauhan, J.) considered the question whether a candidate, whose name had been intimated by the Director to the management of a College and who was consequently issued a letter of appointment by the management could prefer not to join the College and then claim appointment to some other College. The Court held that such a course cannot be adopted by the candidate. The relevant portions of paragraphs 6 and 7 of the aforesaid judgment are quoted below :

'6. The list sent by him Commission remains valid till the receipt of a new list from the Commission, under Sub-section (2) of Section 13. This is intended to meet the situation where a selected candidate does not join the post for any reason and also to meet a contingency specified in Sub-section (4) of Section 13. The process of selection and appointment comes to an end after a candidate has been selected in accordance with the provisions of the Act, and his name has been intimated to the management of a College by the Director, and he has been

issued appointment letter, pursuant to such intimation. This process also gets exhausted if after a candidate is selected and his name is intimated by the Director having due regard to the Order of preference intimated by him fore-stalls his appointment by the management by pleading that it is not possible for him to join the College. Once the appointment process is complete, there remains no occasion for him to say that on account of his personal problems he should be appointed to a vacancy for which selection process contemplated under the Act was not gone through.

7. We are further of the view that where Sub-section (4) of Section 13 applies to any vacancy, nomination is to be made by the Director of Education from amongst the candidates whose names have not already been intimated to the management of any College and not from amongst those whose names have already been intimated to the management of any College having due regard to preference indicated by them. The reason is that the appointment process comes to a close after selection process contemplated in the Act has been gone through and appointment letter has been issued by the concerned College pursuant to the recommendation of the Director of Education or whereafter the intimation has been sent by the Director under Section 13 (3) the candidate frustrates the issue of appointment letter by saying that it is not possible for him to join the College. Any other view would cause the whole scheme unworkable throwing the cause of higher education in disarray. If a candidate who having been selected and appointed is to be allowed not to join the post to which he was appointed in accordance with the provisions of the Act to permit him to wait for a vacancy in the College of his choice to arise, that would amount to total disregard to the interest of the College and the students and the cause of higher education to serve only personal interest of an individual.'

41. The proposition of law laid down in the aforesaid decision would apply with equal force in the instant case even though petitioners have claimed appointments in Colleges to the posts which have been advertised. In the instant case the petitioners have not come out with the case that the Committee of Managements of the respective Colleges did not issue them letters of appointment but what they contend is that the places of posting should be inter changed. Thus also no relief

can be granted to the petitioners.

42. The matter can be examined from another angle namely, whether it is permissible for teachers to seek mutual transfer once they had been appointed in particular Colleges. There is no provision in the Act, which permits mutual transfers, and this question was also specifically considered by a Full Bench of this Court in *Ajay Kumar v. Director of Higher Education of U.P., Allahabad and Ors.*, (1997) 1 UPLBEC 337. The Full Bench after an elaborate discussion of the provisions of the Act disagreed with the view earlier taken by the Division Bench of this Court in the case of *Dr. Suman Agarwal v. U.P. Higher Education Service Commission, Allahabad and Ors.*, 1995 (3) ESC 298, and held that neither the Commission nor the Director has any power to transfer a teacher from one Degree College to another. Relevant paragraph Nos. 8 and 10 of the Full Bench decision are quoted below :

'8. Analysis of the provisions of the Act, clearly indicates that power of the Commission is merely to select the most suitable candidates for appointment in vacancies intimated to it under Section 12 and to send to the Director a list containing the names of the selected candidates arranged in Order of merit. After the Commission has sent the list containing the names of the selected candidates, its function is over. It does not have any power express or implied to appoint a teacher in a College or to transfer him from one College to another. Even Section 11, which has defined the powers and duties of the Commission does not contain any such power. The incidental power referred to in Section 11 (h) is the power which is incidental or conducive to the powers/functions mentioned in other clauses of the said Section. It neither expressly nor by necessary implication confers any power on the Commission to appoint a teacher in a College or to transfer him from one College to another. After the selected candidate is appointed in a College by its management he becomes employee of the College. The law does not give any power to the Commission or even to the director to interfere with the working of the teacher so appointed.

10. Even the Director does not have any power to transfer a teacher from one College to another. The Director has very limited powers, functions under the

Commission Act. Sub-Section (3) of Section 12 requires the Director to notify to the Commission subjectwise consolidated list of vacancies intimated to him under Sub-section (2) of Section 12. After the Director receives the list containing the names of theselected candidates from the Commission he has to intimate the names theselected candidates to the management of the Colleges for appointment in thevacancies intimated under Sub-section (2) of Section 12, It is the management,which appoints the teacher, whose name is intimated by the Director. TheDirector himself cannot appoint a teacher. If a candidate, whose name isintimated by the Director to the management is not appointed, the Director cantake appropriate action against such management under Section 15.'

43. In this connection it mayalso be noticed that there are a large number of Intermediate Colleges in theState which are governed by the provisions of the U.P. Intermediate EducationAct, 1921 and the Regulations framed thereunder and the U.P. SecondaryEducation Service Commission and Selection Boards Act, 1982. This Act of 1982also contains provisions regarding intimation of the vacancies by the Collegefor selection of suitable candidates, sending of the name of the selectedcandidates by the Commission to the appropriate authority and the appointmentsof the selected candidates by the management of the College. The Supreme Courtin the case of Om Prakash Rana v. Swamp Singh Tomar and Ors.. AIR 1986 SC 1672,held that after the enactment of the Secondary Service Commission Act, 1982 ateacher of an Intermediate College cannot be transferred from one College toanother in spite of the specific provision of transfer contained in theIntermediate Education Act and the Regulations framed thereunder and therelevant portion of the judgment is quoted below :

'The scheme under theEducation Act envisages the appointment of a Principal In relation to aspecific College. The appointment is in relation to that College and to noother. Moreover, different Colleges may be owned by different bodies ororganisations so that each Principal serves a different employer. Therefore, onfilling the office of a Principal to a College a new contract of employmentwith a particular employer comes into existence. There is no State-levelservice to which the Principals are appointed. Had that been so, it would havebeen possible to say that when a Principal is transferred from one College to another no fresh

appointment is involved. But when a Principal is appointed in respect of a particular College and is thereafter transferred as a Principal of another College it can hardly be doubted that a new appointment comes into existence. Although the process of transfer may be governed by considerations and move through a machinery different from the considerations governing the appointment of a person ab initio as Principal, the nature of the transaction is the same, namely, that of appointment, and that is so whether the appointment be through direct recruitment through promotion from the teaching staff of the same institution or by transfer from another institution.'

44. The Act involved in the present petition contains identical provisions and, therefore, the decision of the Supreme Court in the case of Om Prakash Rana (supra), applies to teachers of Degree Colleges also. The U.P. Secondary Education Service Commission and Selection Boards Act, has since been amended and under the proviso to Section 16a a teacher can now be transferred from one institution to another in accordance with the provisions of Section 16-G. of the U.P. Intermediate Education Act, 1921.

45. The most disquieting feature of this case is still to be dealt with. When a person approaches a Court of Equity in exercise of its extraordinary jurisdiction under Article 226/227 of the Constitution, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective. [Vide Ramjas Foundation and Ors. v. Union of India and Ors., AIR 1993 SC 852; K.P. Srinivas v. R.M. Premchand and Ors., (1994) 6 SCC 620], Thus, who seeks equity must do equity. The legal maxim '*Jure Naturae Aequum Est Neminem cum Alterius Detrimeto Et Injuria Fieri Locupletioem*,' means that it is a law of nature that one should not be enriched by the loss or injury to another.

46. In Nooruddin v. Dr. K.L. Anand, (1995) 1 SCC 242, the Hon'ble Supreme Court observed as under :

'.....Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice.'

47. Similarly, in *Ramniklal N. Bhutta and Anr. v. State of Maharashtra and Ors.*, AIR 1997 SC 1236, the Hon'ble Apex Court observed as under :

'The power under Article 226 is discretionary. It will be exercised only in furtherance of justice and not merely on the making out of a legal point....the interest of justice and public interest coalesce. They are very often one and the same....The Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226....Indeed any of their discretionary powers.'

48. In *Dr. Buddhi Kota Subbarao v. K. Parasaran and Ors.*, AIR 1996 SC 2687, the Hon'ble Supreme Court has observed as under :

'No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. Easy, access to justice should not be misused as a licence to file misconceived and frivolous petitions.'

49. Similar view has been reiterated by the Supreme Court in *K.K. Modi v. K.N. Modi and Ors.*, (1998) 3 SCC 573.

50. In *Trilokchand Motichand v. H.B. Munshi*, AIR 1970 SC 898; *State of Haryana v. Karnal Distillery*, AIR 1977 SC 781; and *Sabia Khan and Ors. v. State of U.P. and Ors.*, (1999) 1 SCC 271, the Hon'ble Apex Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such litigant is not required to be dealt with lightly, as petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the Court.

51. In *Agriculture and Process Food Products v. Oswal Agro Furane*, AIR 1996 SC 1947, the Apex Court had taken a serious objection in a case filed by suppressing the material facts and held that if a petitioner is guilty of suppression of very important fact and his case cannot be considered on merits. Thus, a litigant is bound to make 'full and true disclosure of facts'. While deciding the said case, the Hon'ble Supreme Court had placed reliance upon the judgment in *King v. General Commissioner*, (1917) 1 KB 486, wherein it has been observed as under :

'Where an ex parte application has been made to this Court for a Rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent abuse of its process, to refuse to proceed any further with the examination of its merits....'

52. In *Abdul Rahman v. Prasony Bai and Anr.*, 2003 AIR SCW 14; and *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Ors.*, (2004) 7 SCC 166, the Hon'ble Supreme Court held that whenever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse relief to the party. This Rule has been evolved out of need of the Courts to deter a litigant from abusing the process of the Court by deceiving it. However, the suppressed fact must be material one in the sense that, had it not been suppressed, it would have led any fact on the merit of the case.

53. Principle enshrined in Section 35A of the Code of Civil Procedure should be applied in such a case as the said provisions provide for compensatory costs in respect of fake or vexatious claim or defence in addition to criminal liability in respect of such a false claim or defence. This principle can also be made applicable in case of suppression of facts. In *T. Arivandandam v. T.V. Satyapal and Anr.*, AIR 1977 SC 2421, the Apex Court held that the Court should remind itself of the provisions of Section 35A, C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexation motives. In such a case the lawyer also owes a duty not to present such a case observing as under :

'We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the Court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions..... A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial

process.....'

54. Not only the litigants but also the counsel for them failed to appreciate as what duties he had towards the Court in filing a petition. The petition has been filed by the counsel without, any sense of responsibility.

55. Legal maxim 'Juri Ex Injuria Non Oritur' means that a right cannot arise out of wrong doing, and it becomes applicable in case like this.

56. The facts stated above also amply depict that the manner in which the petition has been drafted exposes the petitioners to be prosecuted for criminal Contempt. It is a settled proposition of law that a false statement made in the Court or in the pleadings, intentionally to mislead the Court and obtain a favourable Order, amounts to criminal contempt, as it tends to impede the administration of justice. A Constitution Bench of the Hon'ble Supreme Court in *Naraindas v. Government of Madhya Pradesh and Ors.*, AIR 1974 SC 1252, has held as under :

'Now there can be no doubt that if a wrong or misleading statement is deliberately and wilfully made by a party to a litigation with a view to obtain a favourable Order, it would prejudice or interfere with the due course of the judicial proceeding, and thus, amount to contempt of Court.'

57. In *Advocate General, State of Bihar v. M/s. Madhya Pradesh Khair Industries and Anr.*, AIR 1980 SC 946, the Apex Court held that every abuse of the process of the Court does not necessarily amount to contempt of Court, but a calculated attempt to hamper the due course of the judicial proceeding or administration of justice shall definitely amount to contempt of the Court, and in such a case, punishment to the contemnor is necessary to prevent the abuse and making a mockery of the judicial process, as it adversely affects the interest of the public in the administration of justice. The Court further held as under :

'The public have an interest, an abiding and a real Interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice,

and so, it is entrusted with the power to commit for contempt of Court, not in Order to protect the dignity of the Court against insult or injury as the expression 'contempt of Court' may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with.'

58. In *Secretary, Hailakandi Bar Association v. State of Assam and Anr.*, AIR 1996 SC 1925, the Apex Court held that filing inaccurate documents deliberately, with a view to mislead the Court, amounts to interference with the due course of justice by attempting to obstruct the Court from reaching a correct conclusion, and thus, amounts to contempt of Court.

59. Similar view has been reiterated by the Apex Court in *Dhananjay Sharma v. State of Haryana and Ors.*, (1995) 3 SCC 757; and *Rita Markandey v. Surjit Singh Arora*, (1996) 6 SCC 14, observing that deliberate attempt to impede the administration of justice or interference or tending to interfere with or obstruct, or tend to obstruct the administration of justice, in any manner, amounts to criminal contempt.

60. In *Afzal and Anr. v. State of Haryana and Ors.*, (1996) 7 SCC 397; and *Mohan Singh v. Late Amar Singh*, (1998) 6 SCC 686, the Apex Court held that a false and a misleading statement deliberately and wilfully made by a party to the proceedings to obtain a favourable Order, amounts to prejudice or interference with the due course of judicial proceedings, and it will amount to criminal contempt. The Court further held that every party is under a legal obligation to make the truthful statement before the Court, for the reason that causing obstruction in the due course of justice 'undermines and obstructs the very flow of the unsoiled stream of justice, which has to be kept clear and pure, and no one can be permitted to take liberties with it by soiling its purity.'

61. Similar view has been reiterated in *Delhi Development Authority v. Skipper Construction and Anr.*, (1995) 3 SCC 507; and *Superintendent of Central Excise and Ors. v. Somabhai Ranchhodhbhai Patel*, (2001) 5 SCC 65.

62. The Hon'ble Apex Court in *Re:Sanjiv Datta*, (1995) 3 SCC 619, observed as under :

"Some members of the profession have been adopting perceptibly casual approach to the practice of the profession, as is evident from their absence when the matters are called out, the filing of incomplete and inaccurate pleadings, many times even illegible and without personal check and verification, the nonpayment of Court fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties, yet al. They do not realise the seriousness of these acts and omissions. They not only amount to the contempt of the Court but do positive dis-service to the litigants and create embarrassing situation in the Court leading to avoidable unpleasantness and delay in the disposal of matters. This augurs ill for the health of our judicial system,'

63. In view of the above, we are of the view that the petition has been filed with very vague/inaccurate pleadings, and the petitioners not only filed it to mislead the Court but they also succeeded in their mission and obtained the desired relief, though it did not even warrant. Moreover, the petitioner No. 2 even did not join Vardhman College, Bijnor in pursuance of the interim Order, obviously, playing fraud upon the Court.

64. The present petition is, therefore, liable to be dismissed on the ground of deliberate concealment of material facts.

65. We are also not inclined to accept the submissions made on behalf of the learned Senior Counsel appearing for the petitioners that since in the past the Director had permitted the candidates to inter change the place of posting, the Director should have passed the Order in their case also. In the first instance, the petitioners have failed to point out any specific instance when the Director permitted such inter change and secondly this contention was also considered and repelled by this Court in the case of *Km. Ragini Srivastava* (supra) and it was held as follows :

'The fact that in the past recommendations were made by the Director for the vacancies which were not notified and for which stipulated selection process had

not been gone through would not form the ground for our holding that the others who did not get the benefit of illegal Orders should be extended similar benefits: Article 14 of the Constitution cannot be extended to legalise the illegal Orders though others had wrongly got the benefit of such Order. In this view we find support from *Harped Kaur Chahal v. Director, Punjab Instructions*, 199S Supp. (4) SCC 706. So, neither petitioner is entitled to relief.'

66. Even if in the past, such an inter-change had been permitted by the Director of Higher Education, it would not create a right in favour of the petitioners as Article 14 of the Constitution does not envisage a negative equality.

67. Article 14 is not meant to perpetuate an illegality. Therefore, we are not bound to repeat the wrong action done by us earlier. This view stands fortified by the judgments of the Hon'ble Apex Court e.g., *Snehprabha v. State of U.P. and others*, AIR 1996SC 540; *Secretary, Jaipur Development Authority, Jaipur v. Dautot Mal Jain and Ors.*, (1997) 1 SCC 35; *State of Haryana and Ors. v. Ram Kumar Mann*, (1997) 3SCC 321; and *Faridabad C.T. Scan Centre v. D.G. Health Services and Ors.*, (1997) 7 SCC 752.

68. In *Finance Commissioner (Revenue) v. Gulab Chandra and Anr.*, 2001 AIR SCW 4774, the Hon'ble Apex Court rejected the contention that as other similarly situated persons had been retained in service, the petitioner could not have been discharged during the period of probation observing that if no action has been taken in a similar situation against similarly situated persons, it did not confer any legal right upon the petitioner therein.

69. In *Jalandhar Improvement Trust v. Sampuran Singh*, AIR 1999 SC 1347; and *Union of India and Ors. v. Rakesh Kumar*, 2001 AIR SCW 1458, the Hon'ble Supreme Court held that Courts cannot issue a direction that the same mistake be perpetuated on the ground of discrimination or hardship.

70. Any action/Order contrary to law does not confer any right upon any person for similar treatment. [Vide *State of Punjab and Ors. v. Dr. Rajeev Sarwal*, (1999) 9 SCC 240; *Yogesh Kumar and Ors. v. Government of NCT Delhi and Ors.*, (2003) 3 SCC 548; and *Union of India and Anr. v. International Trading Company and*

Anr., (2003) 5 SCC 437; M/s. Anand Buton Ltd, v. State of Haryana and Ors., 2005 AIR SCW 67].

71. Even otherwise, Article 14 provides only for positive equality and not negative equality. Article 14 does not provide for passing wrong Order, if it had been committed by an authority. Moreover, this doctrine does not apply to the Court. Even if, we have passed a wrong Order, we have a right to rectify our mistake, but no litigant has a right to blackmail the Court and therefore, the Court is not bound to pass a wrong Order again and again.

72. In view of the aforesaid discussion, we reach the following inescapable conclusions :

(I) The petitioners had deliberately concealed material facts from this Court inasmuch as they did not bring on record the letters issued by the Managements of the two Colleges for appointment pursuant to the intimation sent by the Director under Section 13(3) of the Act and the fact that Dr. Kailash Nath Gupta was already working as a Lecturer in the Maltari College, Azamgarh. In terms of the letter sent by the Director, since the petitioners had failed to join the respective colleges, their appointments stood automatically cancelled and thus there could be no occasion for them to claim any relief whatsoever. The fact of cancellation of their placement was concealed.

(II) Petitioner No. 2 who was already working at Maltari College, Azamgarh had no intention of joining the Vardhman College, Bijnor since even after obtaining the interim Order from this Court, which permitted him to join the said College, he made no efforts to join and, therefore, it is clear that the petitioners had played fraud upon this Court by making out a simple case of inter change of the Colleges whereas in fact it was not so and petitioner No. 2 by this oblique method wanted to help petitioner No. 1, as he is still working in Azamgarh College.

(III) Petitioners purposely and knowingly did not disclose that by virtue of their posting, the purpose of filling up the vacancy in a particular subject would stand frustrated, and this way where there was a requirement of a Maths Teacher, a Commerce Teacher has been appointed.

(IV) The petitioners have not impleaded Harendra Kumar who was a necessary party since his appointment was sought to be quashed- Neither the letter dated 24.1.2002 sent by the Director was annexed to the writ petition nor any relief was claimed to quash the same.

(V) Even otherwise such an inter change is not possible under the provisions of the Act.

(IV) The contention of the petitioners that such an inter change should be permitted since the Director in the past had granted permission cannot be accepted since the petitioners have not pointed out a single instance when the Director granted permission. Such a contention cannot be accepted for want of any provision in the Statute permitting such an interchange.

73. There is, therefore, no merit in any of the contentions raised by the learned Senior Counsel for the petitioners and the petition is liable to be dismissed. As the appointment of the petitioner No. 1 stood cancelled by operation of law, he cannot claim the placement in any other College. We also consider it appropriate to impose the cost upon each of the petitioners to the extent of Rs. 10,000/- (Rupees ten thousand only). The said amount shall be realised by the Collectors of the respective Districts as arrears of land revenue within a period of four weeks from the date of filing a certified copy of this Order before him. The cost realised shall be transmitted to the Legal Services Committee, Allahabad High Court, Allahabad.

74. The copies of the Judgment may be sent to respective District Collectors of District Meerut as well as Azamgarh, to make the recovery from the petitioners of the aforesaid amount,

75. The writ petition is accordingly dismissed and the interim Order dated 24th April, 2002 is vacated.

76. The petitioners had deliberately concealed material facts from the Court and succeeded in getting the interim relief. We are of the opinion that if correct facts had been brought to the notice of the Court, the petition itself could not have

been entertained, much less the grant of any interim Order in their favour. It is, therefore, a fit case, where the fact-situation demands initiation of proceedings for criminal contempt.

77. The criminal contempt can be dealt with only by the Bench presided over by the Hon'ble Chief Justice or a Bench nominated by His Lordship [Vide Prof. Y.C. Simhadri and Ors. v. Deen Bandhu Pathak. (2001) 4 ESC 1515]. Today, this Bench has the jurisdiction to deal with the criminal contempt and contempt appeal. We initiate the proceedings for committing criminal contempt of this Court and for that purpose, we frame the following charges:

That you, Pradeep Kumar Arora and Dr. Kailash Nath Gupta filed the writ petition giving an impression that there was no requirement of any specialisation in a particular subject while making the appointment in Education Department; you concealed, knowingly and purposely, the fact that none of you had joined in the College of your placement by the Director of Higher Education nor you have stated that you had approached the Committee of Management of the respective institutions where you had been given the placement by the Director of Higher Education and the Committee of Management did not issue the appointment letters; you did not disclose that your appointment itself came to an end by operation of law as well as in terms of your placement Order as you failed to join the respective College of your placement within the stipulated period; and by suppressing these facts, you succeeded in obtaining interim Order; though petitioner No. 1 joined but petitioner No. 2 did not join at the College in Bijnor in view of the interim Order of this Court dated 24.4.2002, thus, played fraud upon the Court in Order to get the placement of petitioner No. 1 in NAS College, Meerut as the petitioner No. 2 is still working in Azamgarh.

78. We are of the view that your conduct amounts to criminal contempt. Thus, you are directed to show cause as to why you should not be punished for committing the criminal contempt in view of the provisions of Article 215 of the [Constitution of India](#) read with the provisions of Section 15 of the Contempt of Courts Act, 1971, within a period of three weeks from today.

List the matter on 25th February, 2005 and on that date, both petitioners are directed to remain present in the Court.

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