

**Court No. - 35**

**Case :-** WRIT - A No. - 5332 of 2023 (***Leading petition***)

**Petitioner :-** Phoolchandra Chandravashi

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Ripu Daman Singh,Ashish Singh,Bhupendra Kumar Singh

**Counsel for Respondent :-** C.S.C.,Sandeep Kumar Bhatt

:with:

**Case :-** WRIT - A No. - 19145 of 2023 (***Connected petition***)

**Petitioner :-** Phoolchandra Chandrawanshi

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Ripu Daman Singh,Ashish Singh,Bhupendra Kumar Singh

**Counsel for Respondent :-** C.S.C

**Hon'ble Vikas Budhwar,J.**

1. Instructions filed today are taken on record.
2. Heard Sri Ripu Daman Singh, learned counsel for the petitioners in both the writ petitions and Sri Shailendra Singh, the learned Standing Counsel, who appears for Respondents 1 to 4 in both the petitions as well as Sri Sandeep Kumar Bhatt, who appears for the Committee of Management Chitrakoot Inter College Karvi, District Chitrakoot in the leading writ petition. He has made a statement at Bar that he appears for the Committee of Management in the connected petition also.
3. The learned counsel for the parties have made a statement at Bar that they do not propose to file any further response and the writ petition be decided on the basis of the pleading set forth in both the writ petitions, in view of the order which is being proposed to be passed.
4. The case of the writ petitioner in the leading petition is that there is an Institution, Chitrakoot Inter College Karvi, District Chitrakoot, which is recognized under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act no.5 of 1982 and U.P. Act No.24 of 1921 stand applicable. As per the writ petitioner, he was accorded regular selection as an Assistant Teacher LT Grade in Civics by the U.P. Service Selection Board on 01.04.1998 post-completion of 12 years of teaching and

having obtained the degree of Masters in Political Science, he was permitted to teach in the Intermediate Section for the Session 2009-2010 for taking the classes referable to the subject Civics. It is also the case of the writ petitioner that on 30.06.2010, one Sri Chandrika Prasad Mishra, who was working as a Lecturer in Civics in the said Institution superannuated and one senior most teacher Sri Roshan Singh had tendered its inability in seeking claim for promotion. One Sri Bhaiyalal Ji was the claimant for the post of Civics, but he also claimed promotion as a Lecturer in Hindi. An order is stated to have been passed by the Joint Director of Education, Jhansi on 13.04.2006, which was subject matter of challenge in Writ Petition No.11151 of 2006, which was preferred by the writ petitioner, which was pending. However, in the wake of the occurrence of the vacancy in Lecturer (Civics) on 30.06.2010 consequent to the retirement of Chandrika Prasad Mishra, as per the writ petitioner Sri Bhaiya Lal Ji had no claim for being accorded promotion as Lecturer (Civics), so the writ petitioner being claimant himself to be the only eligible person preferred an application for consideration of his claim. It is also the case of the writ petitioner that the Committee of Management of the said Institution proceeded to pass a resolution dated 07.10.2013 considering the aforesaid factual background and resolved to promote the petitioner as Lecturer (Civics).

5. The claim of the writ petitioner was placed before the Committee so constituted therein, which came to a conclusion that there are 15 sanctioned posts of Lecturers and against the same, only 5 Lecturers under direct recruitment quota and 4 under the promotional quota were working and the claim of the writ petitioner was considered in the light of the resolution of the Committee of Management according promotion to the writ petitioner w.e.f. 01.07.2010 on the post of Lecturer (Civics) and the same was approved. On 28.03.2021, the District Inspector of Schools, in pursuance of the communication of the Principal/ Management of the institution in question dated 13.02.2021 accorded the said benefits w.e.f. 01.07.2010 and the writ petitioner continued to work as a Lecturer (Civics). Since the writ petitioner was not paid selection grade after completion of 10 years in services of the Lecturer, so he preferred the leading writ petition, which was entertained by this Court on 05.04.2023 while seeking response and issuing notice to the fifth respondent, Committee of Management, there is an office report dated 03.05.2023 depicting that the writ petitioner has not taken steps. However, in the cause list, name of Sri Sandeep Kumar Bhatt is shown from the respondent side and he has made a statement that he appears for

the fifth respondent, Committee of Management.

6. During the pendency of the leading writ petition, now an order has been passed on 03.10.2023, whereby the writ petitioner has been treated to be promoted as Lecturer (Civics) w.e.f. 01.07.2016 and not from 01.07.2010 by the District Inspector of Schools, Chitrakoot, while determining the monetary benefits on the basis of the said dates and also issued a direction for making recovery for excess payment already made. The connected writ petition was tagged with the leading petition by virtue of the order dated 02.12.2023 and thus, both the petitions are before the Court today.

7. Sri Ripu Daman Singh learned counsel for the writ petitioner submits that the order dated 03.10.2023 passed by the District Inspector of Schools, Chitrakoot cannot be sustained for a single moment, firstly, on the ground that the same has been passed without putting to the writ petitioner to notice and further recovery has been directed to be made. He submits that one certain right stands crystalized in favour of the writ petitioner, then he could not have been snatched away without putting to notice. Secondly, it is also argued that a conscious decision was taken pursuant to the resolution of the Committee of Management in the Institution in question for promoting the writ petitioner as Lecturer (Civics) on 01.07.2010 and the committee so constituted comprising of Joint Director of Education, Chitrakoot Dham Mandal, Banda and the District Inspector of Schools, Banda and the Principal of the Institution accorded approval on 23.02.2015 to the promotion of the writ petitioner on 01.07.2010 and consequential orders have also been passed determining the pay-scale to the writ petitioner, which further was implemented pursuant to the order of the District Inspector of Schools dated 20.03.2021 and when the writ petitioner preferred the leading writ petition seeking mandamus, then now without putting the writ petitioner to notice, the order impugned has been passed. He submits that it is not a case of fraud, concealment and misrepresentation and further at least propriety demanded that opportunity of hearing ought to have been accorded to the writ petitioner that too in a case, when recovery has been sought to be made. Sri Ripu Daman Singh, learned counsel for the writ petitioner further submits that the District Inspector of Schools had no power to review its own order, particularly, when the ingredients, which could have accorded the said power, are missing being fraud, concealment and misrepresentation in that regard, the the review is a creation of the statute.

8. Sri Shailendra Singh, learned Standing Counsel on the other

hand submits that the writ petitioner might be right to extend that the order in question is not revealing that the writ petitioner was not put to notice, but what is to be seen is the fact that he was actually promoted w.e.f 01.07.2016, thus no benefit anterior to the same could have been extended to the writ petitioner. He further submits that now, consequential recovery has been directed to be made.

9. Sri Sandeep Kumar Bhatt, who appears for the Committee of Management of the Institution in question has supported the argument of the learned counsel for the writ petitioner.

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

11. The facts are not in dispute. It is not in dispute that pursuant to the resolution of the Committee of Management, the writ petitioner was accorded benefit as a Lecturer (Civics) w.e.f. 01.07.2010 by virtue of the order of the committee dated 23.02.2005 and a consequential order was also passed by the District Inspector of Schools, Chitrakoot on 20.03.2021. In the wake of the said facts, it is to be seen that the said proceedings has been initiated behind the back of the writ petitioner without putting into notice in the wake of the fact that nothing has been forthcoming from the order that the benefits were procured/obtained by the writ petitioner by concealment, misrepresentation or fraud. The Court finds that opportunity of hearing ought to have been accorded to the writ petitioner before passing the said order that too when ultimate decision has been taken by the committee.

12. Having heard the learned counsel for the rival parties as well as the stand taken by them, the writ petition is being disposed off requiring the writ petitioner to approach the third respondent, District Inspector of Schools, Chitrakoot along with a comprehensive representation accompanied with self-attested copy of the writ petitions, who shall, on the receipt of the same, put to notice the fifth respondent and thereafter proceed to consider the claim of the writ petitioner after hearing the version of the writ petitioner within a period of two months from the date of production of certified copy of the order.

13. The recovery so sought to be made in pursuance of the order dated 03.10.2023 shall be kept in abeyance till the passing of the fresh order after hearing the petitioner.

14. With the aforesaid observations the writ petition stands

**disposed off.**

**Order Date :- 15.12.2023**

N.S.Rathour