

Court No. - 35

Case :- WRIT - A No. - 7246 of 2022 (Leading writ petition)

Petitioner :- Smt. Mithilesh Singh

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Kushmondeya Shahi, Tanuj Shahi

Counsel for Respondent :- C.S.C., Narendra Kumar Chaturvedi

With

Case :- WRIT - A No. - 12173 of 2022 (connected C1)

Petitioner :- Smt. Mithilesh Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Tanuj Shahi, Kushmondeya Shahi

Counsel for Respondent :- C.S.C., Narendra Kumar Chaturvedi

With

Case :- WRIT - A No. - 18776 of 2023 (connected C2)

Petitioner :- Smt. Mithilesh Singh

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

Counsel for Petitioner :- Kushmondeya Shahi, Tanuj Shahi

Counsel for Respondent :- CSC, Narendra Kumar Chaturvedi

Hon'ble Vikas Budhwar, J.

1. Since common question of laws and facts are involved in both the writ petitions, thus, they are being decided by a common/composite order, for the sake of brevity, the Writ A No. 7246 of 2022 (Mithilesh Singh Vs. State of U.P & 4 Others) is treated as leading writ petition, Writ A No. 12173 of 2022 (Mithilesh Singh Vs. State of U.P. & 3 Others) is treated as connected C1 writ petition and Writ A No. 18776 of 2023 (Mithilesh Singh Vs. State of U.P. & 4 Others) is treated as connected C2 writ petition.

2. Heard Sri Kushmondeya Shahi, learned counsel for the writ petitioner in all three writ petitions, Sri H.K. Shukla, learned Standing Counsel who appears for respondents No. 1 to 4 in the leading writ petition, respondents No. 1 to 3 in the connected C1 writ petition and respondents No. 1 to 4 in the connected C2 writ petition, Sri Narendra Kumar Chaturvedi, learned counsel who appears for respondent No. 5 in the leading writ petition,

respondent No. 4 in the connected C1 and respondent No. 5 in the connected C2 writ petition.

3. Since the matters are inter-connected with each other, thus, the learned counsel for the rival parties have made a statement at Bar that they have already filed their respective responses and they do not propose to file any further response, thus, the writ petition be decided at the fresh stage.

4. The case of the writ petitioner is that the fifth respondent, Paramhans Baba Ram Kinker Girls Inter College, Pipra Gautam, Basti was an institution earlier recognized under the provisions of the U.P. Basic Education Act, 1972 and the provisions of Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Condition of Service of Teacher) Rules, 1978 stood applicable. However, the said institution got upgraded to the High School and Intermediate and in view of the decision in the case of **Manju Awasthi Vs. State of U.P. reported in 2013 (3) ADJ 64** now the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No. 24 of 1971 stand applicable. According to the writ petitioner, he after passing High School Examination, Intermediate and also clearing Shastri examination from Sampooranand Sanskrit University in the year 1985 pursuant to the advertisement published in widely circulated news papers and submission of application form on 11.09.2001 was appointed as Assistant Teacher in the year 2001 and approval whereof was accorded on 27.09.2001, however, according to the writ petitioner owing to the allegation of fraud while procuring degree which was not verifiable an order is stated to have been passed on 09.04.2022 and 12.04.2022 by the District Basic Education Officer, Basti, third respondent whereby the approval of the writ petitioner has been cancelled.

5. Questioning the said order, the writ petitioner had filed the leading writ petition in which on 17.05.2022 corrected on 23.05.2022 the following orders were passed.-

"It is submitted that approval of appointment of the petitioner dated 27.1.2019 has been cancelled without holding any inquiry. The recovery of salary is directed against the petitioner by orders dated 9.4.2022 and 12.4.2022.

Learned Standing Counsel has accepted notice on behalf of the respondent nos. 1 to 4.

Issue notice to the respondent no.5.

Steps be taken within one week.

List this petition on 15.7.2022.

Till the next date of listing, the effect and operation of the impugned orders dated 9.4.2022 and 12.4.2022 passed by respondent no.3, District Basic Education Officer, Basti shall remain stayed."

"Order on Civil Misc. Correction Application No. 02 of 2022

Heard learned counsel for the petitioner.

This is the correction application for correction in the order dated 17.05.2022.

In the 2nd line of 1st paragraph of the order dated 17.05.2022, in place of '27.01.2019', '27.09.2001' shall be read.

The correction application is allowed.

This order shall be treated as part of the order dated 17.05.2022."

6. During the pendency of the aforesaid writ petition two orders have been passed dated 28.06.2022 and 25.07.2022 by the Director, General School Education, Nishatganj, Lucknow, U.P. and District Basic Education Officer, Basti for lodging of the first information report. The said order was subject matter of challenge in Writ A No. 12173 of 2022 (connected C1 writ petition) in which on 23.08.2022 the following orders were passed.-

"Heard Sri Kushmondeya Shahi learned counsel for the petitioner and the learned Standing Counsel for the State respondents.

Submission of learned counsel for the petitioner is that the earlier direction issued by the District Basic Education Officer, Basti dated 12.4.2022 requiring registration of criminal case and recovery of moneys from the petitioner, has been stayed by this Court in Writ-A No. 7246 of 2022. That writ petition is pending and interim order continuing. In face of that, despite correct facts being informed, the Director General Education has issued a contrary direction to the BSA which falls in the teeth of the interim order granted by this Court.

Matter requires consideration.

Issue notice to respondent No. 4 fixing 29.11.2022.

All noticed respondents may file counter affidavit within a period of six weeks. The petitioner shall have two weeks thereafter to file rejoinder affidavit.

List on 29.11.2022 alongwith Writ-A No. 7246 of 2022.

Till the next date of listing, effect and operation of the impugned orders dated 28.6.2022 and 25.7.2022 shall remain stayed."

7. Thereafter, according to the writ petitioner on 09.10.2023 an order is stated to have been passed by the District Basic Education Officer, Basti whereby the writ petitioner has been treated to be a terminated teacher. The same led to filing of the connected C2 writ petition.

8. Thus, today all the three writ petitions are before this Court. Sri Shahi, learned counsel who appears for the writ petitioner in all the writ petitions submits that the order dated 09.04.2022 & 12.04.2022 passed by the third respondent, District Basic Education Officer, Basti cannot be sustained as once the said institution stood upgraded to the High School level then in view of the judgment in the case of **Manju Awasthi (supra)** the power for taking appropriate action vest with the Committee of Management and not with the District Basic Education Officer, Basti. He, thus, submits that the consequential orders so passed are illegal and the same are based upon the parent order which itself is illegal.

9. Sri H.K. Shukla, learned Standing Counsel as well as Sri Narendra Kumar Chaturvedi, learned counsel who appears for the Committee of Management does not dispute the said position as according to him once the said institution got upgraded to High School and Intermediate level in the year 2016 then the judgment in the case of **Manju Awasthi (supra)** will come to the rescue of the writ petition, however, according to them the orders in question be set aside, matter be left open for the Committee of Management to take appropriate decisions in that regard.

10. To such submission, Sri Kushmondeya Shahi, learned counsel for the writ petitioner has no objection.

11. Considering the submission of the rival parties as well as the stand taken by them, the writ petitions stand allowed the orders dated 09.04.2022 & 12.04.2022 passed by the District Basic Education Officer, Basti impugned in the leading writ petition, orders dated 28.06.2022 and 25.07.2022 passed by the Director, General School Education, Nishatganj, Lucknow, U.P. and District Basic Education Officer, Basti as well as the order dated 09.10.2023 passed by the District Basic Education Officer, Basti in the connected C2 writ petition are set aside.

12. The passing of this order may not preclude the Committee of Management of the institution in question to take appropriate

action as warranted and admissible under law.

13. With the aforesaid observation, all the writ petitions stand partly allowed.

Order Date :- 22.11.2023

Rajesh