

Court No. - 35

Case :- WRIT - A No. - 7827 of 2022 (Leading writ petition)

Petitioner :- Namo Narayan Tiwari

Respondent :- State Of U P And 5 Others

Counsel for Petitioner :- Prabhakar Awasthi, Manish Tiwari

Counsel for Respondent :- C.S.C., Deepak Kumar, Satyendra Kumar Pandey

With

Case :- WRIT - A No. - 6222 of 2022 (connected C1 writ petition)

Petitioner :- Namo Narayan Tiwari

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

Counsel for Petitioner :- Prabhakar Awasthi, Alka Upadhyay, Manish Tiwari

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - A No. - 16224 of 2023 (connected C2 writ petition)

Petitioner :- Namo Narayan Tiwari

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

Counsel for Petitioner :- Prabhakar Awasthi, Alka Upadhyay, Manish Tiwari

Counsel for Respondent :- CSC

Hon'ble Vikas Budhwar, J.

1. Since common question of laws and facts are involved in all the writ petitions, thus, they are being decided by a common/composite order, for the sake of brevity, the Writ Petition No. 7827 of 2022 (Namo Narayan Tiwari Vs. State of U.P. & 5 Others) is treated as leading writ petition, Writ Petition No. 6222 of 2022 (Namo Narayan Tiwari Vs. State of U.P. & 3 Others) is treated as connected C1 writ petition and Writ Petition No. 16224 of 2023 (Namo Narayan Tiwari Vs. State of U.P. & 4 Others) is treated as connected C2 writ petition.

2. Learned Counsel for the rival parties have made a statement at Bar that since affidavits have been exchanged between the parties and they do not propose to file any further response,

thus, the writ petition be decided on the basis of the pleadings available on record.

3. Heard Sri Prabhakar Awasthi, learned counsel for the writ petitioner in the leading writ petition, connected C1 and connected C2 writ petition, Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel who appears for State official 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 5 in the connected C2 writ petition as well as Sri Deepak Kumar, learned counsel who appears for the sixth respondent C/M P.D. Inter College, Gaighat, Ballia in the leading and the connected C2 writ petition.

4. The case of the writ petitioner, Namo Narayan Tiwari is that there is an institution by the name of P.D. Inter College, Gaighat, Ballia which is recognized under the provisions of U.P. Intermediate Education Act, 1921, the provisions of U.P. Act No. 24 of 1971 and the provisions of U.P. Act No. 5 of 1982 stand applicable.

5. As per the writ petitioner consequent to availing leaving by one Sri Rama Shankar Prasad who was working as Assistant Teacher "Arts" the writ petitioner claims to have been selected/appointed as Assistant Teacher on 12.01.1998 and he was accorded joining on 13.01.1998.

6. For the sake of brevity and in order to avoid bulkiness reference may be given to the order dated 17.09.2021 passed in Writ A No. 7029 of 2020 wherein the order dated 20.07.2020 passed by the respondents was put to challenge. In the said writ petition, the following orders were passed .-

"The present petition has been filed by the petitioner challenging the order dated 20.07.2020 (Annexure No.26 to the writ petition), whereby the claim of the petitioner for regularization under Section 33-G (i) of the U.P. Secondary Education Services Selection Board Act, 1982, has been rejected.

I have heard Sri R.K. Ojha, learned Senior Advocate assisted by Ms. Alka Upadhyay, learned counsel for the petitioner, Sri Brijesh Pratap Singh, learned Standing Counsel for the State-respondent and Sri Satyendra Kumar Pandey, learned counsel appearing on behalf of Committee of Management, respondent no.6.

The facts, in brief, as pleaded in the writ petition are that one Rama Shankar Prasad was employed as Assistant Teacher (Arts). It is claimed that he went on leave from 01.12.1997 onwards, as a result thereof, a short term vacancy arose in the Institution, for which a notification dated 13.12.1997 was issued and in terms of the said notification, the petitioner was selected as an Assistant Teacher on 12.01.1998 (Annexure No.2 to the writ petition). In pursuance to the said selection, petitioner joined on

30.01.1998. It is alleged that despite the petitioner being appointed and working, his salary was not being paid, as such, Writ Petition No.18342 of 2020 was filed before this Court, which was disposed off on 20.04.2020 directing the respondent to dispose off the representation of the petitioner. In terms of the said order, claim of the petitioner stood rejected vide order dated 20.07.2001 (Annexure No.4 to the writ petition). In the said order, it was observed that in spite of asking for documents, the documents were not made available and in the absence of documents, the D.I.O.S. was of the view that procedure prescribed for appointment was not followed. The petitioner moved an application on 29.10.2002 stating that the record was available and it has been wrongly observed in the order dated 20.07.2001 that the record was not available and a request was made for reconsideration. On the said application, notices were issued to the respondents for deciding the issue and an order came to be passed on 07.06.2003 granting approval to the appointment of the petitioner on the post of Assistant Teacher (Annexure No.6 to the writ petition). It is alleged that despite the financial approval, the petitioner was not being paid his salary, as such another Writ Petition No.29691 of 2004 was passed in which an interim order was passed on 03.08.2004 (Annexure No.9 to the writ petition) directing for payment of salary to the petitioner from August, 2004 onward. In the said writ petition, a counter affidavit came to be filed by the then D.I.O.S., wherein, there was no denial of the financial approval granted on 07.06.2003. A copy of the said counter affidavit has been filed on record. Reference of Paragraph Nos.10 and 11 to the said affidavit is necessary for the purpose of this case and is extracted here-in-below:-

"10. That in reply to the contents of paragraphs 14 and 15 of the writ petition, it is submitted that although the then D.I.O.S. was not having any power of review but even then he has heard the matter again and passed the order dated 7.6.2003 by which financial approval was accorded in favour of the petitioner, which is not justified in the eyes of law being findings regarding procedure of selection as well as impact of advertisement, has not been considered at all by the then D.I.O.S. and as such the order passed by the then D.I.O.S. appears to be erroneous in law. It is further relevant to mention here that it was strange enough on the part of the D.I.O.S. that apart from granting approval to the appointment of the petitioner, he has released the salary of the petitioner.

11. That in reply to the contents of paragraph 16 of the writ petition, it is most respectfully submitted that it was not possible at the level of the office of the D.I.O.S. to release the salary of the petitioner in pursuance of the financial approval accorded by the then D.I.O.S. on 7.6.2001 being it was found by the office that regarding alleged appointment of the petitioner, the committee of management has not adopted proper procedure of law regarding selection and appointment of petitioner against short term vacancy and as such the salary of the petitioner could not be released at the level of office of D.I.O.S."

It is alleged that subsequently, Section 33-G was inserted on 22.03.2016 conferring the power of regularization with regard to certain appointments as specified in the said section. In pursuance to the said incorporation of Section 33-G, the papers with regard to the petitioner were sent by the Management under covering letter dated 24.09.2016 before the D.I.O.S. who in turn transmitted the papers to the Joint Director of Education. In the meanwhile, Writ Petition No.29691 of 2004 came to be dismissed for want of prosecution on 05.07.2018 by this Court. The petitioner preferred Special Appeal No.642 of 2018, which was allowed vide order dated 30.10.2018 and the matter was remanded. Subsequently, the Writ Petition No.16716 of 2019 after being restored was disposed off vide order dated 07.11.2019 directing the consideration of

application of the petitioner for regularization. The order was passed in the following terms:-

"Under the circumstances, without expressing any opinion on the merits of the claim of either party, this petition is disposed off by providing that the second respondent (the Joint Director of Education, Azamgarh Region, Azamgarh) shall take an appropriate decision in the matter, after giving opportunity of hearing to all the parties concerned including the Management of the institution concerned and also after obtaining reports from the concerned authorities with regard to the validity and legality of the appointment. It is expected that such exercise shall be completed preferably within a period of four months from the date of production of certified copy of this order in the office of Joint Director of Education, Azamgarh Region, Azamgarh.

It is made clear that this Court has not expressed any opinion on the merits of the claim of either party and therefore any observation made in this order will not be taken as an opinion expressed by this Court with regard to existence of any fact or law governing the rights of the petitioner.

The writ petition stands disposed off."

In terms of the said directions issued by this Court, the petitioner was served with a notice dated 17.01.2020 by the Joint Director of Education, Azamgarh calling upon the petitioner to furnish the entire record of the writ petition. The petitioner pleads that a copy of Writ Petition No.16716 of 2019 was furnished. Thereafter, a notice dated 30.01.2020 was issued calling upon the D.I.O.S. to furnish the entire record pertaining to the appointment of the petitioner on 11.02.2020. Ultimately, an order came to be passed on 20.07.2020 rejecting the claim of the petitioner (Annexure No.26 to the writ petition). The said order is impugned in the present writ petition.

A perusal of the said order reveals that after passing of the orders of this Court, D.I.O.S. furnished a report dated 13.11.2020 to the effect that after the order was passed by the High Court on 20.04.2000, the letter dated 07.06.2003, issued in respect of petitioner, upon a prima facie, examination does not appear to bear the signature of the author and it appears that in a forged manner efforts have been made for making the signature. It was further recorded that the file with regard to the appointment of the petitioner was not available in the office and thus, an opinion was expressed that the procedure for appointment was not followed and thus it was impossible that a financial approval was granted in case of the petitioner. The said observation was made having regards to the rejection of the earlier financial approval rejected in the case of the petitioner vide order dated 20.07.2001 (Annexure No.4). The said order further records that once the financial approval was rejected, there was no occasion for review of the said order and thus the order dated 07.06.2003 appears to be under forged signature and the signature does not appear to be of the author. The report, as extracted above, was sent to the Commission on 11.05.2020 by the then D.I.O.S., Sri Rajendra Pratap. Based upon this report, the Commission proceeded to reject the case of the petitioner for regularization claimed by him under Section 33-G (1) of the Act, 1982.

Sri R.K. Ojha, learned Senior Advocate for the petitioner argues that the order is bad on many counts. Firstly, he argues that the report dated 13.11.2020, which is the basis of rejecting the claim of the petitioner was never served upon the petitioner nor was the petitioner ever called upon to give any reply in pursuance to the said report specific pleading to have effected has been made in paragraph no.42 of the writ petition, which is

quoted here-in-below:-

"That impugned order heavily banks upon the letter of the then District Inspector of Schools, Sri Rajendra Pratap who had present is adorning the post of Additional Director of Education (Earth), Allahabad dated 11.05.2020 without supplying the copy of said letter or either confronting the petitioner with the said letter. Had the petitioner would have been given opportunity of hearing, he would have confronted the then District Inspector of Schools, Sri Rajendra Pratap, respondent no.5 on the strength of documents to the effect of note sheet and the notice which was issued by him prior to passing of order dated 07.06.2003 and then it was much in the possibility that the result would have been all together different."

He further argues that in the counter affidavit filed by the then D.I.O.S. in Writ Petition No.29691 of 2004, no such ground was taken and in fact a contrary pleading was made accepting the passing of the order dated 07.06.2003. He draws my attention to the paragraph nos.10 and 11 of the counter affidavit (quoted in earlier part of order). The next submission of learned counsel for the petitioner is that the view as expressed in the report dated 11.05.2020 and referred to in the impugned order records that there appears to be a forgery of the signatures on the record. He argues that for establishing or alleging forgery either of the document or of the signature, a basis is to be indicated as to on what ground the conclusion has been arrived that the document or the signature is a forged document, no such exercise appears to be recorded in the report dated 11.05.2020. He further argues that in terms of the Act, 1982 the Committee could have at best accepted or rejected the claim of the petitioner for regularization and there is no occasion or authority or jurisdiction of the committee to comment upon the financial approval granted to the petitioner or for holding that the appointment of the petitioner was illegal as that exercise could only based upon after adopting a process prescribed which has not been done. He further argues that no opportunity of hearing was granted prior to passing of order dated 20.07.2020 as is also reflected from the order which does not record any hearing being granted to the petitioner, thus, he argues that on basis of all the arguments as argued above, the writ petition deserves to be allowed and the order dated 20.07.2020 deserves to be set aside.

Sri Satyendra Kumar Pandey, learned counsel appearing on behalf of respondent no.6 argues that no error was committed by the Board in rejecting the case of the petitioner. He argues that the short term vacancy on which the petitioner claims to be appointed was never there as the person, namely, Rama Shankar Prasad never went on leave. He further argues that once the financial approval was rejected by order dated 20.07.2001, the D.I.O.S. did not have any power to review and he could not have passed the order dated 07.06.2003 even accepting the said order to have been actually passed. He further argues that there is forged signature of the then D.I.O.S. as has been revealed in the report which was before the Commission dated 11.05.2020. He thus argues that no error could be found in the impugned order and the writ petition deserves to be dismissed. He further argues that the earlier order passed on 20.07.2001 was never challenged by the petitioner instead he moved an application on which the subsequent order dated 07.06.2003 came to be passed. With regard to the scope of Section 33-G (1) of the Act, 1982 he argues that once the appointment order of the petitioner was passed upon forged document, it has to be held void ab initio appointment which does not entitle the petitioner for regularization. He further placed reliance on the affidavit filed by Rama Shankar Prasad that he was never on leave. The said affidavit is on record as Annexure No.9 to the counter affidavit.

Learned Standing Counsel argues that no fault can be found in the said order. He also argues that for claiming the benefit of regularization, the appointment is to be in accordance with law and once there is a report to the effect that the order of financial approval bears forged signature, the petitioner was not entitled to any relief and he thus prayed that the writ petition is liable to be dismissed.

In view of the pleadings and arguments as recorded above, what is to be decided is whether the order impugned is legally sustainable or not.

The parties are not at issue that the report which is basis for passing the order that is the report dated 11.05.2020 was neither confronted to the petitioner nor author of the said report was ever produced before the Commission and at no point of time the petitioner was permitted to challenge the said report or to cross-examine the author of the said report. Further, no hearing seems to be accorded to the petitioner prior to passing of the said order dated 20.04.2020, even if there is no provision for providing an opportunity of hearing, it is well settled that principles of natural justice, namely, audi alteram partem has to be read into every adjudicatory process, more so in the present case, whether the adjudication is based upon allegations of forgery. Thus, on both the grounds as recorded above, the writ petition deserves to be allowed, I have no hesitation in holding that the order dated 20.07.2020 is in violating of the principles of natural justice and thus, is clearly violative of the rights of the petitioner enshrined under Article 14 of the Constitution of India. Furthermore the finding of forgery is based upon no material that can be discerned from the impugned order or even the report dated 11.05.2020 referred to in the impugned order. This Court at present is not in a position to comment with regard to the genuineness or otherwise of the order dated 07.06.2003. In view of the fact that I have come to the conclusion that the order dated 20.07.2020 is violative of principles of natural justice is liable to be set aside, the matter is remanded before the Committee to pass fresh orders, in accordance with law after giving opportunity of hearing to the petitioner, D.I.O.S. as well as the Committee of Management. The petitioner shall also be entitled to right of cross-examination in the event the Committee wants to go into the question of genuineness of the document.

Needless to say that prior to adjudication, all the materials which are proposed to be relied upon against the petitioner shall be furnished and after giving him a reasonable opportunity of rebutting the same.

In view of the fact that the matter is very old one, it is directed that the Committee shall take a decision in the light of the directions given above, with all expedition preferably within a period of four months from the date of filing of copy of this order before the Committee.

In view of the fact that the parties are not at issue that the petitioner is actually teaching in the Institution in question, the salary of the petitioner shall be paid to him, in accordance with law to which he is entitled, subject to final outcome of the decision taken by the Committee.

The writ petition is allowed in terms of the said order."

7. Post remand, now an order is stated to have been passed on 30.04.2022 by the second respondent, Regularization

Committee as enunciated under Section 33C of U.P. Act No. 5 of 1982 headed by the Joint Director of Education, Azamgarh Region, Azamgarh negating the claim of the writ petitioner for regularization in terms of the aforesaid provision.

8. Questioning the said order, the writ petitioner has preferred the leading writ petition in which on 05.07.2022 the following orders were passed.-

"Heard learned counsel for petitioner, learned State counsel appearing for opposite parties no.1 to 4 and Mr. Satyendra Kumar Pandey, learned counsel appearing for opposite party no.6.

At present notices to opposite party no.5 shall stand dispensed with.

Petition has been filed against the order dated 30.04.2022 whereby petitioner's claim for regularization under Section 33-C and 33-G of the Act No.V of Act of 1982 has been rejected.

Learned counsel for petitioner submits that earlier petitioner had filed Writ A No.7029 of 2020 challenging the order dated 20.07.2020 whereby earlier as well petitioner's claim for regularization was rejected. The aforesaid petition was allowed vide judgment and order dated 17.09.2021 remanding the matter to the Committee envisaged and issuing certain directions as indicated in the aforesaid judgment. It is submitted that none of the directions issued in the aforesaid judgment have been complied with by the opposite parties while passing the impugned order as has been indicated in paragraph no.62 to 66 of the writ petition.

Considering the aforesaid submissions advanced by learned counsel for petitioner, opposite parties are granted two weeks' time either to seek instructions or to file counter affidavit in the matter specifically pertaining to the aforesaid paragraphs of the writ petition and to bring on record any document to substantiate that the directions issued by this Court earlier were complied with while passing the impugned order.

List on 26.07.2022 as a fresh case."

9. A counter affidavit has been filed on behalf of the respondents No. 1 to 4 sworn by the District Inspector of Schools, Ballia dated 10.11.2022 to which a rejoinder affidavit has been filed.

10. During the pendency of the aforesaid writ petition, the connected C1 writ petition has been preferred by the writ petitioner for a mandamus commanding the respondents authorities to take necessary legal action in pursuance of the complaint/applications submitted by the petitioner against the acts and omissions of the fourth respondent who was posted as Dispatch Clerk in the office of the District Inspector of Schools, who had mis-placed the file. In the said writ petition, also counter affidavit has been filed by the State official respondents No. 1 to 3 sworn by the District Inspector of Schools, Ballia

dated 24.05.2022 to which a rejoinder affidavit has been filed.

11. In sequel to the aforesaid two writ petitions, the connected C2 writ petition has been filed wherein prayer has been made to confer payment of salary in favour of the petitioner from February, 2020 to December, 2020 and to pass a reasoned and speaking order on the claim of the writ petitioner.

12. Since all the three writ petitions are before this Court, thus, they are being decided by a composite order.

13. Sri Prabhakar Awasthi, learned counsel for the writ petitioner while assailing the order dated 30.04.2022 passed by the Committee, impugned in the leading writ petition has sought to argue that there happens to be procedural irregularities in passing the said order which makes the order not only vulnerable but also vitiated. He while inviting the attention of the Court towards paragraphs 46 to 67 of the leading writ petition which is being sought to be argued that post remand the matter was remand in Writ A No. 7029 of 2020 various dates were fixed. First was the notice dated 01.10.2021 fixing 20.10.2021 on that date though the writ petitioner was present but the Joint Director of Education was not present in the office pursuant thereto on 26.10.2021 next date was fixed on 26.11.2021 the writ petitioner was required by the Joint Director of Education to supply his written submission and on that date neither Additional Director of Education (Basic) nor District Inspector of Schools was present. Then again, notice was issued on 21.12.2021 fixing the date 10.12.2021 on that date representative of the Manager, Principal of the institution was present before the Joint director of Education only and on that date the writ petitioner was directed to submit objection. Thereafter, on 28.12.2021 another notice was issued fixing 12.01.2022 and the writ petitioner presented himself before the authority concerned and on that date the Manager was also present only presence was recorded and the objection of the Manager was submitted thereafter on the objection so submitted by the Manager, last date by virtue of the notice dated 18.01.2022 was fixed on 04.02.2022 and thereafter straight away the order dated 30.04.2022 denying the claim of the writ petitioner for regularization was passed. While specifically emphasizing upon the averments contained in para 60 to 62 it is being sought to be contended that the last date as per the notice dated 18.01.2022 was fixed on 04.02.2022 and at that point of time Sri Brijesh Mishra was manning the post of District Inspector of Schools, however, Sri Brijesh Mishra was sent to jail on 30.03.2022 but, now when the order impugned dated 30.04.2022 had been passed, it bears the signature of Sri Rakesh Kumar, Associate District Inspector of Schools.

According to the learned counsel for the writ petitioner, the said procedure is totally novel to the principles of natural justice particularly when law does not contemplate hearing by one and passing of an order by another. He while inviting the attention towards paragraphs No. 63 and 64 submits that certain inputs in the shape of the document dated 11.05.2020 was put to service to negate the claim of the writ petitioner, however, the said inputs were though relied upon but was not confronted to the writ petitioner so as to enable the writ petitioner to refute the same, thus, according to him the order in question is liable to be set aside, he further submits that had proper opportunity been accorded in conformity and in consonance with the principles of natural justice then it was a perfect case wherein the writ petitioner could have convinced the committee that he had a case to be considered for regularization. Insofar as the connected C1 and C2 writ petitions are concerned, learned counsel for the writ petitioner submits that they are dependent upon the fate of the leading writ petition as whatever would be the fate would dependent upon the payment of salary and other issues.

14. Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel relying upon paragraph No. 4 and 5 of the counter affidavit submits that the writ petitioner has no case in the eyes of law particularly in view of the fact that it was a duly constituted committee which had to select the writ petitioner and accord appointment and there are no documents worth consideration for considering the claim of the writ petitioner, he further relies upon the Government Order dated 09.11.2023 according to which, now the writ petitioner has no case in that regard.

15. Sri Deepak Kumar, learned counsel for the Committee of Management has supported the case of the writ petitioner.

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

17. Though the second respondent in the leading writ petition has proceeded to pass an order dated 30.04.2022 while addressing on the merits of the matter. However, specific allegations have been made from paragraphs No. 46 to 67 of the writ petition including the crucial aspect that the District Inspector of Schools, who had heard the matter was languishing in jail and the order has been signed by the Associate District Inspector of Schools, Sri Rakesh Kumar and further the fact that there are various irregularities as noticed above and the allegations have not been disputed in a counter affidavit filed on behalf of the Associate District Inspector of Schools as the said

paragraphs have been replied in para 11 of the counter affidavit in an evasive manner without dealing with the same, thus, according to the Court, there has been a procedural irregularity. So far as the reliance has been placed upon the Government Order dated 09.11.2023 concerned prima facie this Court is not expressing any opinion on the said aspects as it is for the respondents to take note of the same and to pass an order consequently the order dated 30.04.2022 passed by the second respondent is set aside, the matter stands remitted back to the competent authority to pass fresh order after putting to notice the writ petitioner and the Committee of Management of the institution within a period of three months from the date of production of certified copy of the order.

18. Since the payment of salary and the other directions sought in the connected C1 and connected C2 writ petitions are dependent upon the final outcome post remand in the leading writ petition, thus, they are also being disposed of.

Order Date :- 29.11.2023

Rajesh