

Court No. - 35

Case :- WRIT - A No. - 7409 of 2023 (***Leading Petition***)

Petitioner :- Bhanu Pratap Singh And 9 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Agnihotri Kumar Tripathi

Counsel for Respondent :- C.S.C.

:and:

Case :- WRIT - A No. - 11591 of 2023 (***Connected Petition***)

Petitioner :- Vinay Kumar Pandey And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Rajesh Kumar Pandey, Agnihotri Kumar Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri Agnihotri Kumar Tripathi, learned counsel for the petitioners, who are 10 in number in the leading writ petition and 2 in number in the connected writ petition, Sri Shailendra Singh, the learned Standing Counsel, who appears for Respondents 1 to 4 in the leading writ petition and Respondent nos. 1 to 3 in the connected writ petition.

The case of the writ petitioner in the present writ petitions are that an advertisement was published on 20.08.2003 whereby various posts of Instructors were advertised. However, owing to the amendment in the Rules in question, the said advertisement was cancelled and a fresh advertisement was issued. The same was subject matter of challenge in the case of *Upendra Narayan Singh Vs. State of U.P.*, Writ Petition No.1822 of 2004, in which initially an interim order was passed and thereafter selections were directed to be conducted, but appointment orders were restrained to be issued. Ultimately, the said writ petition came to be decided on 08.08.2006, wherein in paragraph-34 of the said judgment, it was observed as under:-

"34. The State Government is directed, in addition, and in modification to the direction issued by Lucknow Bench of this Court in its judgment and order dated 05.3.2003, in writ petition No. 6565 (SS) of 2001, Kalyan Rai v. State of U.P. and Ors. to advertise, hold and complete the selection process on all the vacancies within a period of four months from the date of delivery of this judgment. Now since directions have to be issued for fresh advertisement for these vacancies and all those vacancies, which may have arisen subsequently, the rights of those candidates, who have obtained these higher/ teaching

qualifications as recommended by the Central Government and provided in the rules by the 2nd Amendment to the Rules of 1991, on 08.08.2003 cannot be ignored. It is as such further directed that all those candidates, who have obtained qualifications upto the date of fresh advertisement shall also be considered for selections and that all those candidates, who were within the age limit on the last date of receiving application in pursuance of advertisement dated 20.8.2003, shall also be eligible to apply for selections in pursuance of the fresh advertisement."

Learned Counsel for the writ petitioners submits that they had applied in pursuance of the Advertisement dated 20.8.2003 and they were issued interview letters dated 21.01.2004 respectively. However, the said selections were not concluded and post issuance of fresh Advertisement on 18.12.2006. They participated in the interview conducted between 31.07.2007 to 07.08.2007 and they were accorded appointment on 05.09.2007. Submission is that they did not apply afresh but the application submitted by them post issuance of Advertisement dated 20.08.2003 was considered. Accordingly, it is prayed that their case be considered under the Old Pension Scheme and not in New Pension Scheme, which came into effect from 01.04.2005 pursuant to the notification dated 28.03.2005.

This Court had heard the matter along with the leading Writ Petition, Writ-A No.5537 of 2023 (Nand Lal Yadav Vs. State of U.P. & 6 Others) and the judgment was reserved on 17.11.2023. The Court after going through the file needed certain clarifications pursuant where to an order was passed on 17.11.2023, which reads as under: -

"Though the writ petition was tagged with 5537 of 2023 (Nand Lal Yadav Vs. State of U.P. & 6 Others) and was heard and judgment was reserved on 17.11.2023, however, while dictating the order in the chamber certain aspects have cropped up which need clarification.

Put up this case on 30.11.2023 at 2:00 P.M. as fresh."

The matter was adjourned. Thereafter on 30.11.2023, further orders came to be passed, which are quoted hereinunder: -

"This Court on 17.11.2023 proceeded to pass the following order:-

"Though the writ petition was tagged with 5537 of 2023 (Nand Lal Yadav Vs. State of U.P. & 6 Others) and was heard and judgment was reserved on 17.11.2023, however, while dictating the order in the chamber certain aspects have cropped up which need clarification.

Put up this case on 30.11.2023 at 2:00 P.M. as fresh."

The court finds that from the appointment order which has been annexed to the writ petition dated 05.09.2007, that the writ petitioner was accorded appointment on the said date pursuant to the interviews conducted on 31.07.2007 to 07.08.2007 as prior to which a writ petition was filed being Upendra Narayan Singh Vs. State of U.P. and others, in which final orders were passed on 08.08.2006. The question arises whether the writ petitioner is entitled to be treated under Old Pension Scheme or New Pension Scheme.

Shri Shailendra Singh, learned Standing counsel is directed to obtain instructions by all eventualities by Monday. The instructions shall be provided by the Director, Training and Employment Directorate, U.P. Rojgar Bhawan Guru Govind Singh Marg, Lucknow.

Put up this case on 05.12.2023, as fresh."

Today, when the matter has been taken up, Sri Shailendra Singh, learned Standing Counsel has forwarded a copy of the instructions dated 04.12.2023 under the signatures of Joint Director of Education (Employment/ Training), according to which entire exercise, pursuant where to the writ petitioner has been selected and accorded appointment in the year 2007 is relatable to a fresh Advertisement dated 18.12.2006.

At this stage, Shri Agnihotri Kumar Tripathi, learned counsel for the writ petitioner submits that the writ petitioner would approach the first respondent, Chief Secretary, State of UP, Government of Uttar Pradesh at Lucknow for redressal of the grievances relatable to their claim that they should be considered under old pension scheme and not under new pension scheme. Thus, he confines his prayer to the said extent.

Shri Shailendra Singh, learned Standing Counsel, who appears for the respondent, has no objection to the same.

Considering the submissions of the rival parties and the stand taken by them, the writ petitions stand disposed of, granting liberty to the direct petitioner to approach the Chief Secretary, Government of UP at Lucknow/ Additional Chief Secretary of the concerned department by filing a comprehensive representation along with the self-attested copy of the writ petition and on the receipt of the same, said authority shall pass a speaking and reasoned order within a period of four months thereafter.

In case the said authority is of the opinion that the matter needs to be addressed by any other competent authority, then the papers be transmitted to it with due communication to the writ petitioner.

Needless to point out that this court has not adjudicated the matter

on merits.

With the aforesaid observations, the writ petitions stand disposed of.

Order Date :- 5.12.2023

N.S.Rathour