

Court No. - 10

Case :- WRIT - A No. - 13264 of 2004

Petitioner :- Shyam Bihari Sharma

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Chandra Shekhar Srivastav, G K Singh, Govind Kumar Singh, Rajesh Kumar Singh, Shubham Dwivedi, V K Singh

Counsel for Respondent :- C.S.C., D.P. Singh, G. Baghel, G.K. Singh, Hari Narayan Singh, Prabhakar Awasthi, V.K. Agarwal, V.K. Singh, Vijay Gautam, Yogendra Singh Bohra

Hon'ble Kshitij Shailendra, J.

1. Heard Sri Rajesh Kumar Singh assisted by Sri Shubham Dwivedi, learned counsel for the petitioner, learned Standing Counsel for State - respondent no.1, Sri Hari Narayan Singh, learned counsel for respondent no.2- Basic Education Officer, Aligarh and Sri Saurabh Tripathi, learned counsel for respondent no.3 - Committee of Management, Indira Gandhi Uchchattar Madhyamik Vidyalaya, Aligarh.

2. Perused the record.

3. The petitioner was appointed on the post of 'Clerk' in Indira Gandhi Uchchattar Madhyamik Vidyalaya, Aligarh on 3.9.1983 and he joined his post on 5.9.1983. It is contended by learned counsel for the petitioner that for certain period of time, the petitioner was paid his salary, however, salary was stopped thereafter on account of criminal prosecution lodged against him, that he did not possess requisite qualification, but somehow obtained appointment. He further submits that final report was submitted in the criminal proceedings and the same was accepted by the Court concerned, however, the petitioner was suspended by the Committee of Management in the year 2002, but suspension order was revoked in the same year and the petitioner was permitted to continue on his post. Later on, by the orders impugned dated 21.2.2004 and 25.2.2004, the services of the petitioner have been terminated on the ground that he fraudulently obtained appointment.

4. Learned counsel further submits that at the time when the petitioner was appointed, the Institution was not included in grant-

in-aid list of the State and it came on the said list in July, 1984. He further submits that rules and regulations were framed in June, 1984 and, for the first time, intermediate qualification was declared as the minimum required qualification for appointment on the post of clerk, but since the petitioner was appointed prior to framing of rules, he, at the strength of his High School qualification, was rightly appointed. He further submits that, later on, the petitioner also passed 'Madhyama' qualification from Hindi Sahitya Sammelan, Prayag prior to inclusion of the Institution in the grant-in-aid list and, therefore, termination of his services is *per se* illegal. He further submits that when the institution came on grant-in-aid, the petitioner was having sufficient requisite qualification.

5. On the other hand, learned counsel for all the respondents submit that as per Assistant Director of Education's clarificatory letter dated 2.12.1975, minimum qualification for the post of clerk was intermediate since 2.12.1975. Learned counsel further submit that necessary pleadings are contained in this regard in para 9 of the counter affidavit filed by the Basic Education Officer, which is accompanied by the said letter. It is further contended that on inquiry, the 'Madhyama' qualification certificate was found to be forged and, therefore, no interference is warranted.

6. Learned counsel for the petitioner, by replying the said arguments, submits that the aforesaid letter dated 2.12.1975 would not apply in the case of the petitioner as it refers to appointments under Section 16-G of the U.P. Intermediate Education Act, 1921 and regulations framed thereunder, whereas the institution in question was an unaided Uchchattar Madhyamik Vidyalaya.

7. Having heard learned counsel for the parties, I find that admittedly the petitioner possessed only High School qualification at the time of his appointment. The question to be examined in the present case is as to whether he was qualified for the said post. In view of the stand taken in the counter affidavit as referred to hereinabove, the Court has perused the letter dated 2.12.1975 issued by the Assistant Director of Education which, apart from referring to the appointments corresponding to Section 16-G of the U.P. Intermediate Education Act, 1921 and the regulations framed thereunder, also clarifies that in case of any aided institution, the minimum qualification for the appointment of clerk is intermediate and the same qualification would be applicable for unaided recognized Junior High Schools for appointments of clerk. Insofar as the High School qualification is concerned, para 3 of the communication clearly stipulates that High School would be

sufficient qualification only in respect of those clerks who had been appointed prior to the year 1975. Admittedly, the petitioner was appointed in 1983 and, therefore, in absence of any challenge to the clarificatory letter of the Assistant Director of Education dated 2.12.1975 or otherwise, this Court is of the considered opinion that the petitioner lacked necessary qualifications at the time of his appointment and, hence, the orders impugned do not warrant any interference.

8. The writ petition lacks merits and is, accordingly, **dismissed**.

In Re: Civil Misc. Impleadment Application No. 271785 of 2009

1. By means of this application, impleadment of one Sri Dilip Kumar Gautam has been sought.

2. No one is present to press the impleadment application. Even otherwise, impleadment of Dilip Kumar Gautam is not necessary in the present case as the writ petition has already been dismissed today and hence, the impleadment application renders infructuous.

3. It is, accordingly, **dismissed**.

Order Date :- 24.11.2023

CS/-