

Court No. - 35

Case :- WRIT - A No. - 10962 of 2023

Petitioner :- Girijesh Kumar Rai

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Vinod Kumar Singh, Sanjai Kumar Rai

Counsel for Respondent :- C.S.C., Siddharth Khare

Hon'ble Vikas Budhwar, J.

1. Heard Sri V.K. Singh, learned Senior Counsel, assisted by Sri Vinod Kumar Singh, learned counsel for the writ petitioner, Sri Shailendra Singh, learned Standing Counsel, who appears for the respondent nos.1 to 4 and Sri Ashok Khare, learned Senior Counsel, assisted by Sri Jigar Khare, learned counsel, who appears for the respondent no.7.
2. In view of the order, which is being proposed to be passed, notices are not being issued to the fifth and the sixth respondent.
3. Though, a statement has been made by Sri V.K. Singh, learned Senior Counsel, assisted by Sri Vinod Kumar Singh, learned counsel for the writ petitioner that there is neither any authorized controller or a legally elected Committee of Management of the fifth respondent institution, Sant Devarhawa Baba Inter College, Majhwara, District – Mau.
4. A joint statement has been made by the counsel for the parties that they do not propose to file any further response to the writ petition, thus with the consent of the parties, the writ petition is being disposed of at the fresh stage.
5. The case of the writ petitioner is that there happens to be an institution by the name of Sant Devarhawa Baba Inter College, Majhwara, District – Mau, fifth respondent, which is an institution

recognized under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No.5 of 1982, stands applicable.

6. As per the writ petitioner, there happened to be one regularly selected Principal of the institution in question, Sri Rajiv Kumar Singh, who was recommended by U.P. Secondary Education Services Selection Board, Prayagraj and who joined in 2020 in the fifth respondent in question, however he tendered his resignation on 18.11.2020. It is the case of the writ petitioner that he was allowed to officiate as a Principal of the institution in question and the papers whereof were transmitted to the District Inspector of Schools, District - Mau, fourth respondent.

7. It is the further case of the writ petitioner that his signatures as an Officiating Principal was attested by the District Inspector of Schools, Mau on 16.12.2020. Since, there was no regular Principal manning the institution in question. A requisition is stated to have been sent by the fifth respondent-Committee of Management to the fourth respondent, District Inspector of Schools, Mau for filling up the post through direct recruitment on 24.12.2020 received on 26.12.2020.

8. In paragraph no.12 of the writ petition, it is further asserted that in the meantime, the dispute had arisen with respect to the office bearers of the institution in question and the matter stood referred to the Regional Level Committee, who decided the same on 21.03.2022 discarding the election of the rival claims of the Committee of Management and issued a direction to the District Inspector of Schools, Mau to disburse the salary of the teachers and non teaching staffs under single operation. Though, the writ petitioner was continuing as an Officiating Principal of the fifth respondent institution, but according to the writ petitioner, he came

to know that the seventh respondent, Sri Ishwar Chand Vidya Sagar, who was earlier the Principal of Sri Krishna Inter College, Bachhapar, Ballia was being sought to be transferred, as proceedings were being undertaken.

9. It is the case of the writ petitioner that on 30.06.2023, an order has been passed by the third respondent, Additional Director of Education (Secondary), U.P. at Prayagraj, whereby the seventh respondent has been transferred in the fifth respondent institution in question.

10. Questioning the order dated 30.06.2023, passed by the third respondent transferring the seventh respondent to the fifth respondent institution, the writ petitioner had filed the present writ petition.

11. The writ petition was entertained on 13.07.2023 and on 18.07.2023, following orders were passed :-

"The instructions filed today are taken on record.

This writ petition raises an important and interesting question with regard to the fact as to what would be the fate of requisition sent through offline mode in the wake of the fact that a stand has been taken by the educational authorities that now online mode for sending requisition is acceptable.

This Court on 13.07.2023 passed the following order :-

"Sri V.K.Singh, learned Senior Advocate assisted by Sri Vinod Kumar Singh has argued that once the vacancy on the post of Principal in the fifth respondent-institution has been notified on 24.12.2020 and the petitioner, prior to it from 16.12.2020 is already officiating on the post of Principal and his signature has been attested, then transferring the seventh respondent in the fifth respondent-institution by virtue of the order dated 30.06.2023 is patently illegal, contrary to law as well as in the direct teeth of the judgment governing the field.

Sri Ashok Khare, learned Senior Counsel assisted by Sri Siddharth Khare, who appears for the seventh respondent on the other hand submits that on the basis of the document dated 26.06.2023 issued under the signature of the fourth respondent, the District Inspector of Schools, District Mau so as to contend that the vacancy has not been notified till date and as per the procedure prescribed therein only online applications are to be

submitted and not offline.

While inviting attention of the Court towards page-35 of the paper-book, it is also submitted by Sri Khare that the alleged resolution does not even bear the signature of the DIOS or the Deputy Director of Education.

Sri Daya Prasad Singh, learned Standing Counsel, who appears for Respondents 1 to 4 on the other hand submits that he may be allowed to seek instructions in the matter as to whether the vacancies were notified or not and what is the position with regard to the status of the seventh respondent.

Put up on 18.07.2023 as fresh.

The documents dated 26.06.2023 and 11.06.2023 forwarded by Sri Khare is kept on record."

Today Sri Gaya Prasad, learned Standing Counsel has produced before this Court the instructions dated 17.07.2023 under the signatures of District Inspector of Schools, Mau. As per the instructions a stand has been taken that the requisition for filling up the vacancy has not been received and thus, the action of the educational authorities in transferring the seventh respondent cannot be faulted with. Learned Senior Counsel for the writ petitioner has relied upon the judgment in the case of Hari Pal Singh Vs. State of U.P. 2016 (8) ADJ 622 so as to contend that it is the institution in question who has the absolute right to fill up the vacancies in the manner in which it proposes and there cannot be any interference by the educational authorities in that regard. Sri V.K. Singh learned Senior Counsel further submits that already requisition has been sent a copy whereof is being shown to be annexed as Annexure 3 at page 33 of the paper book through speed post a copy of the same was marked to Commission as well as Joint Director of Education. The submission is the vacancies were notified that once the requisition was sent then subsequent to it on 30.06.2023 the impugned proceedings for transfer of the seventh respondent is illegal.

Sri Khare learned Senior Counsel appearing for the seventh respondent submits that from the perusal of the requisition it would reveal that the same is not marked to the District Inspector of Schools which is required under sub-rule (I) of Rule 11 of the 1998 Rules and, thus, it does not partake the character of a valid requisition. It is further submitted that now only online requisitions are to be sent and not offline and further the said requisition also does not contain the signature of Joint Director of Education or the District Inspector of Schools.

Sri Gaya Prasad Singh learned Standing Counsel, on the other hand, submits on instructions that now with the advent of new policy requisition is to be sent by online mode, any requisition sent offline would not be entertained. He seeks time to obtain complete instructions fortifying the said stand. At this juncture learned Standing Counsel as well as Sri Khare who appears for the seventh respondent seeks time to file their response.

On their request put up this case on 01.08.2023 as fresh by which date the learned Standing Counsel shall file a detailed para-wise counter affidavit specially disclosing the stand of the respondents in view of the discussions made hereinabove"

12. After exchange of the affidavits by the respective parties, as noticed above, this Court further proceeded to pass an order on 29.08.2023 :-

"Rejoinder Affidavit filed today is taken on record.

Today, when the matter was being heard, Sri V.K. Singh, learned Senior Counsel has invited the attention of the Court towards the counter affidavit filed on behalf of Respondent nos. 1, 2, 3 and 4 sworn on 19.8.2023 while inviting further attention on page-11, which happens to be a set of orders dated 07.06.2019, according to which w.e.f. 01.07.2019, only online requisitions are being accepted and not offline.

Further attention was invited towards page-13, which happens to be letter of Secretary, U.P. Madhyamik Shiksha Chayan Board, Prayagraj addressed to the District Inspector of Schools through out the State of U.P. on 02.12.2021, whereby with respect to the academic Session 2022 in paragraph-1 it has been stated that from 3rd December 2021 to 17th December 2021, the online portal is to be opened and the applications are to be sent through online mode. Learned counsel for the writ petitioner has further invited the attention of this Court towards paragraph-4 of the Rejoinder Affidavit, whereby it is being sought to be demonstrated that the online portal was not opened and, there was no occasion for the writ petitioner to have sent the application online.

Since relevant facts have come in the Rejoinder Affidavit, thus in the interest of justice, Sri Shailendra Singh, learned Standing Counsel shall give a specific reply to the same and also give factual backdrop of the fact as to whether during the ensuing period there was any acceptance through offline mode or not and in case, it was there, the instances be also

produced and specific stand be also placed on the affidavit. Since it is the stand of the writ petitioner that the requisition was sent on 24.12.2020, thus a specific averment is to be made as to whether during the said period, the online portal was open or not in that regard and they had accepted any off-line application within the said period or not.

Affidavit be filed by 18.09.2023.

Put up this case on 18.09.2023 as fresh."

13. A counter affidavit has been filed on behalf of the respondent nos.1, 2, 3 and 4 sworn by the District Inspector of Schools, Mau, dated 19.08.2023, followed by a supplementary counter affidavit sworn by District Inspector of Schools, Mau, dated 18.09.2023. A counter affidavit has been filed by the seventh respondent, dated 31.07.2023. The writ petitioners have filed rejoinder affidavit to the counter affidavit filed by the seventh respondent and a supplementary counter affidavit filed on behalf of the respondent nos.1, 2, 3 and 4 sworn on 18.09.2023.

14. Since, a statement has been made by the learned counsel for the rival parties that they do not propose to file any further response, thus the writ petition is being decided at this stage.

15. Sri V.K. Singh, learned Senior Counsel, assisted by Sri Vinod Kumar Singh, learned counsel for the writ petitioner while seeking to challenge the order dated 30.06.2023, passed by the third respondent transferring the seventh respondent to the fifth respondent institution has sought to argue that once the post in question stood requisitioned and the vacancy of the post of Principal stood notified on 24.12.2020, then in view of the provisions contained under the Regulations – 55 to 61 of the Chapter - III of the U.P. Intermediate Education Act, 1921, it was not open for the third respondent to have transfer the seventh respondent in the fifth respondent institution.

16. Learned counsel for the writ petitioner has invited the attention of the Court towards paragraph no.11 of the writ petition, so as to

contend that the requisition was sent on 24.11.2020, which was duly received in the Office of the District Inspector of Schools, Mau, fourth respondent on 26.12.2020 and according to him, though the requisition was sent offline, but once the same stood received in the Office of the District Inspector of Schools, Mau, then in these circumstances, it was the duty of the District Inspector of Schools, Mau to have forwarded the same to the Board and for no fault of that, the writ petitioner can be held to be responsible and thus no fault whatsoever can be attributed in this regard.

17. Learned counsel for the writ petitioner further submits that though there exist a Government Order dated 07.06.2019, providing that with effect from 01.07.2019, only online applications will be entertained for the purposes of transfer, but since it is the stand of the respondent themselves as encapsuled in supplementary counter affidavit filed by the District Inspector of Schools, Mau with relation to paragraph nos.3 and 4 that though on 24.12.2020, the portal was not open for sending the requisition of the Head of the institution but it was also mentioned that the same was open from 01.07.2019 to 31.07.2019 and from 03.12.2021 to 17.12.2021.

18. The submission of the learned Senior Counsel for the writ petitioner is that in the light of the provisions contained under Rule - 10 read with Rule - 11 of the U.P. Secondary Education Service Selection Board Rules, 1998 for the purposes of direct recruitment to the post of a teacher or of the head of the institution, the determination and the notification of the vacancies is to be made at the instance of the management and it has to determine the number of the vacancies in accordance with Sub-Rule - 1 of Rule - 10 and it is to be sent to the Board through, District Inspector of Schools.

20. The submission is that once under the relevant statute a time frame had already been providing for sending of the requisition and the same has been sent, though offline and not online and the same stands received in the Office of the District Inspector of Schools, Mau, then the respondents cannot take a plea that it ought to have been sent through online, particularly when the portal was not open.

21. Sri V.K. Singh further submits that the intimation of the vacancy and the requisition so sent cannot be deferred or delayed on account of non opening of the portal, as once Statute itself provides for the same, then once it is accepted that the requisition was before the District Inspector of Schools, Mau, then it was the duty of the District Inspector of Schools, Mau to have forwarded to the Board. According to him, the order in question is *per se* illegal and it is liable to be set aside.

22. Sri Ashok Khare, learned Senior Counsel, assisted by Sri Jigar Khare, learned counsel, who appears for the seventh respondent submits that in pursuance of the transfer order dated 30.06.2023, passed by the third respondent, the seventh respondent has already joined the post in question and he is getting salary. He further submits that from the perusal of the requisition notifying the vacancies, as stated by the writ petitioner, the same cannot be considered even for a single moment, particularly in view of the fact that the provisions regarding requisition for notifying the vacancy would stand crystalized only when the same reaches the Board and further according to him, the Committee of Management has not signed the said requisition itself and thus it does not partake the character of a requisition, as per the statutes. He further submits that the writ petitioner is not entitled to any benefits, particularly when once it is the policy of the State

Government that the online application is to be only entertained, then by no stretch of imagination, the writ petitioner can resist the transfer of the seventh respondent to the fifth respondent.

23. Sri Shailendra Singh, learned Standing Counsel, who appears for the respondent nos.1 to 4 on the basis of the averments contained in the counter affidavit as well as supplementary counter affidavit contends that once a Government Order has been issued on 07.06.2019 providing for taking recourse to the transfer by online system only, then the writ petitioner cannot resist the transfer and particularly there is nothing on record that even an attempt has been sought to be made by the Committee of Management or the Authorized Controller as the case may be for sending the requisition through online mode.

24. At this juncture, Sri V.K. Singh, learned Senior Counsel, assisted by Sri Vinod Kumar Singh, learned counsel for the writ petitioner submits that it has been the case of the respondents themselves that even the offline applications were processed along with the online applications in that regard in other cases also.

25. To such a submission, Sri Shailendra Singh, learned Standing Counsel submits that might be it is the case of the writ petitioner but the said issues need not detain this Court at this juncture, as these aspects which the writ petitioner is seeking to raise are to be decided by the first instance by the Director of Education (Secondary), U.P. at Prayagraj, second respondent. He submits that let the writ petitioner raise his grievance before the second respondent.

26. To such a submission, Sri V.K. Singh, learned Senior Counsel, assisted by Sri Vinod Kumar Singh, learned counsel, who appears for the writ petitioner and Sri Ashok Khare, learned Senior Counsel, assisted by Sri Jigar Khare, learned counsel, who appears

for the seventh respondent have no objection, however they submit that the exercise be undertaken within the time stipulated by this Court.

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

28. Though, in ordinary circumstances, this Court would have addressed the issues on merits, however as rightly stated by Sri Shailendra Singh, learned Standing Counsel that the said issues need determination at the first instance by the second respondent, Director of Education (Secondary) U.P. at Prayagraj. Thus, this Court is not addressing the said issues at this stage leaving it open for the writ petitioner to approach the second respondent, Director of Education (Secondary) U.P. at Prayagraj raising all the contentions before it.

29. Considering the submissions of the rival parties as well as the stand taken by them, the writ petition is being disposed of granting liberty to the writ petitioner to represent his cause before the second respondent, Director of Education (Secondary), U.P. at Prayagraj, who shall on the receipt of the same put to notice the fifth, sixth and the seventh respondent and thereafter post seeking their version pass a reasoned and a speaking order within a period of three months from the date of the production of the certified copy of the order dealing with each and every contention raised by the parties without granting unnecessary adjournment.

30. Since, it has not been disputed by Sri V.K. Singh, learned Senior Counsel, assisted by Sri Vinod Kumar Singh, learned counsel, who appears for the writ petitioner that the seventh respondent has already joined the fifth respondent institution is getting salary, thus this Court at this juncture is not going into the said issue, however the continuance of the seventh respondent

shall be subject to the final orders to be passed by the second respondent, Director of Education (Secondary), U.P. at Prayagraj.

31. With the aforesaid observations, the writ petition stands ***disposed of.***

Order Date :- 30.10.2023

S Rawat