

Court No. - 35

Case :- WRIT - A No. - 14214 of 2020

Petitioner :- Vijay Singh Rajpoot

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

Counsel for Petitioner :- Sanjay Kumar Dubey, Radha Kant Ojha (Senior Adv)

Counsel for Respondent :- C.S.C.

with

Case :- WRIT - A No. - 17629 of 2023

Petitioner :- Vijay Singh Rajpoot

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

Counsel for Petitioner :- Sanjay Kumar Dubey

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

On the oral request of learned counsel for the writ petitioner, he is permitted to implead the Director of Education (secondary) U.P. at Prayagraj in both the writ petition.

Writ A No. 14214 of 2020, Vijay Singh Rajpoot Vs. State of U.P. (leading writ petition) and Writ A No. 17629 of 2023 Vijay Singh Rajpoot Vs. State of U.P. (Connected writ petition).

Heard Shri Sanjay Kumar Dubey, learned counsel for the writ petitioner in the leading as well as connected writ petition, Shri H.K. Shukla, learned Standing Counsel who appears for the respondent Nos. 1, 2 and 4 in the leading and respondent Nos. 1, 2 and 5 in the connected writ petition as well as Shri Ashwani Kumar Mishra who appears for the third respondent in the leading and the respondent Nos. 3 and 4 in the connected writ petition.

Learned counsel for the parties have made a statement at bar that both the writ petitions are interconnected with each other,

thus, this Court is deciding the same by a composite order.

A further statement has been made by the learned counsel for the rival parties that they do not propose to file any further affidavits and they have full instructions in the matter thus without granting any more time to file affidavits, the writ petition is being decided at the stage.

The case of the writ petitioner is that the third respondent, Sri Nehru Smarak Bhagwan Das Inter College, Maindu, District Hathras is an institution recognised under the provisions of U.P. Intermediate Education Act, 1921 and provisions of U.P. Act No. 24 of 1971 stands applicable. The writ petitioner claims to have been appointed as an assistant teacher in the primary section attached to the said institution on 28.06.1985 and he was accorded joining on 01.07.1985, approval whereof was granted on 09.02.1990 by the District Inspector of Schools, Hathras. It is also the case of the writ petitioner that he possesses the academic qualification of M.A. in Political Science and B.Ed. and he is eligible in all respects. According to the writ petitioner, the committee of management of the institution in question proceeded to pass a resolution on 08.08.2004 for promotion from as an assistant teacher in the primary section to assistant teacher in L.T. Grade pursuant whereunto the writ petitioners staked his claim, however, the same was not crystalized so the writ petitioners preferred Writ A No. 46997 of 2004 which came to be disposed of on 05.11.2014 and 06.05.2006, the District Inspector of Schools, Hathras proceeded to accord approval in that regard. It is also the case of the writ petitioner that though he was getting his salary but all of a sudden on 19.10.2020 his salary was stopped on the basis that the educational qualifications of the writ petitioner was not verifiable. The same led to filing of leading writ

petition in which the following orders were passed:

"The present writ petition has been filed challenging the order dated 19.10.2020 passed by the District Inspector of Schools, Hathras directing that the salary of the petitioner be withheld and for instituting appropriate proceedings for cancelling the appointment of the petitioner.

From the records, it appears that no orders have yet been passed either cancelling the appointment of the petitioner or terminating his service.

It has been argued by the counsel for the petitioner that in the circumstances, the petitioner is entitled to salary.

The matter requires consideration.

The Standing Counsel represents the respondent no.1 & 2.

Issue notice to respondent no.3.

The respondents pray for and are granted eight weeks' time to file their counter affidavit. The petitioner shall have four weeks' thereafter to file his rejoinder affidavit.

List after expiry of the aforesaid period.

Meanwhile, the operation of the order dated 19.10.2020 so far as it withholds the salary of the petitioner shall remain stayed."

A counter affidavit have been filed by the State official respondents to which a rejoinder affidavit has been filed.

As per the writ petitioner, he continued to function in the post in question on the basis of the interim order passed by this Court on 12.01.2021 in the leading writ petition, however on 28.04.2022, another order is stated to have been passed by the District Inspector of Schools, Hathras whereby the writ petitioner was directed to be restrained to function on the post in question and he was also prohibited and forbidden from taking examination work of the Board in that regard. This led to

filing of the connected writ petition.

Pursuant to the order of the Writ Court passed in the connected writ petition, the leading writ petition was attached. Accordingly, both the writ petitions are before this Court.

Shri Dubey, learned counsel for the writ petitioner while assailing the orders dated 19.10.2020 and 28.04.2022 has sought to argue that without there being any cancellation of the appointment or termination of the services, the salary of the writ petitioner has been stopped without putting him to notice which is not permissible under law. He further submits that though the writ petitioner was accorded interim protection in the leading writ petition but he has been divested from functioning on the post in question which itself is illegal. He submits that in case the educational qualifications of the writ petitioner was not verifiable then appropriate proceedings could have been drawn after issuing show cause notice or proceedings with departmental proceedings giving it to a logical end. He, thus, submits that the order in question be set aside.

Shri H.K. Shukla, learned Standing Counsel for official respondents submits that though on merits, the writ petitioner has no case as his promotion has been based upon fraud but according to him, neither the appointment of the writ petitioner has been cancelled nor his services have been terminated but by virtue of the order dated 19.10.2020 only the salary has been stopped and further by virtue of the order dated 28.04.2022, he is not being allowed to perform duties thus according to him, the orders be set aside and the matter be remitted back to authority to pass afresh order strictly in accordance with law after putting notice to the writ petitioner.

Shri Mishra who appears for the committee of management and

the principal supports the contention of the writ petitioner.

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

It is apparent from the record that allegations have been levelled and according to the respondents, there happens to be certain findings recorded against the writ petitioner that the promotion of the writ petitioner is based upon fraud and fictitious certificate. Apart from the same, on pointed query being raised to the learned Standing Counsel as to whether the appointment/promotion of the writ petitioner has been cancelled or his services have been terminated according to him, no such exercise has been undertaken in this regard. However, the salary has been withheld on 19.10.2020 and on 28.04.2022 his normal work has been withdrawn. Bearing in mind the nature of the allegations as well as the facts and circumstances so emerging herein, this Court is of the opinion that until and unless legal proceedings are drawn either by way of departmental proceedings or while issuing show cause notice for cancellation of the appointment, the salary could not have been withheld and the writ petitioner cannot be denuded from normal functioning.

Accordingly, the writ petition is being decided in the following terms:

- a). The order dated 19.10.2020 passed by the District Inspector of Schools, Hathras in the leading writ petition and 28.04.2022 passed in the connected writ petition are set aside.
- b). The matter stands remitted back to the Director of Education Madhyamik U.P. at Prayagraj/Allahabad to take appropriate action as if required in terms of the provisions contained under the U.P. Intermediate Education Act, 1921 strictly in accordance

with law and in case a decision is taken in that regard then the same shall be within a period of two months from the date of the production of the certified copy of this order.

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

Order Date :- 20.11.2023

A. Prajapati