

Court No. - 35

Case :- WRIT - A No. - 12635 of 2023

Petitioner :- Smt. Arti Mishra

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

Counsel for Petitioner :- Pramod Kumar Sahani, Sujeet Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. Heard Sri Sujeet Kumar, learned counsel for the petitioner and Sri P.K. Shahi, learned Addl. Chief Standing Counsel, who appears for Respondent Nos.1 to 4.

2. The case of the writ petitioner is that the fifth respondent, D.A.V. Inter College, Maunath Bhanjan, District Mau is an institution recognized under the provisions of U.P. Intermediate Education Act, 1921. As per the writ petitioner, the fifth respondent, is being manned through an authorized controller being District Inspector of Schools. Probably for the said reason, nobody has put in appearance on behalf of the fifth respondent, as there is no validly elected Committee of Management of the Institution in question. It is also the case of the writ petitioner that the said Institution is upgraded to upto the Intermediate, but the college is in grant of aid upto High School and the provisions of U.P. Act No.5 of 1982 and 24 of 1971 stand applicable.

3. Pleadings reveal that the petitioner claims to have possessed the academic qualification of M.A., B.Ed. and he was appointed on 25.1.1988 consequent to the promotion of one Sri Manu Rani Tripathi as an Assistant Teacher, CT Grade on 15.07.1988. The petitioner claims to have joined the post of Assistant Teacher, CT Grade on 25.1.1988. Since the approval of the ad hoc appointment of the writ petitioner was not acceded to so the writ petitioner preferred a writ petition, Writ-A No.25216 of 1998, which came to be disposed of on 06.11.1996, requiring the District Inspector of Schools to address the claim of the writ petitioner. On 06.02.1997, an order is stated to have been passed by District Inspector of Schools, Mau granting approval to the writ petitioner on 22/23.04.1997 w.e.f. 06.02.1997. It is also the case of the writ petitioner that though the writ petitioner was allowed to join on 25.01.1988 and she became an LT Grade Teacher on 06.02.1997, but she was not paid salary for the period from 1988 to 1997. This led to filing of the Writ Petition No.7969 of 1998, *Smt. Arti Mishra Vs. District Inspector of Schools*, which came to be

disposed of by this Court wherein the following orders were passed:

"The petitioner was appointed in the vacancy in 1988 in C.T. Grade. Subsequently, by an order dated 23rd April, 1997 Contained in Annexure-5, the petitioner's appointment was approved. The petitioner was allowed to Join in L.T.Grade with effect from 6th February, 1997. But the petitioner was not allowed to any salary from 1988 to 1997. The respondents have overlooked the said situation and should have permitted the salary in C.T. Grade from 1988. It is alleged that the School authority could not produce the attendance Register.

Be that as it may. Petitioner's appointment having been approved, and since who is entitled it is open to her to prove to salary from 1988, that she had actually worked for this period so the said benefit. If it is found that the petitioner had actually worked and the school authority certified that the petitioner had worked in this period in that event; the salary for the period 1988 till 5th January, 1997 may be paid to the petitioner.

With these observations, the writ petition is dismissed. No costs.

Let a certified copy of this order be given to the learned counsel for the petitioner on payment of usual charges."

4. According to the writ petitioner, she served certified copy of the order of the Writ Court upon the respondents, however, she was not made the payment of the salary for the period from the year 1988 to 1997. In paragraph-13 of the writ petition, it is further asserted that the District Inspector of School, by virtue of order dated 09.12.2003 required the Manager/ Principal of the Institution in question to submit a certificate which according to the writ petitioner was submitted, wherein the writ petitioner was shown to have been working since 1988 to 1997. In the wake of the insertion of Section 33-B of U.P. Act No.5 of 1982, the writ petitioner staked her claim for being considered for regularization and on the said motion, at the end of the writ petition, the Joint Director of Education on 05.11.2016 sought certain inputs in that regard. In paragraph-17, it is further asserted that the said Institution was superseded and an authorized controller was appointed who is manning the Institution being the District Inspector of Schools. Since the claim of the writ petitioner was not being considered, so he preferred Writ-A No.16785 of 2017, which came to be disposed off on 20.04.2017 requiring the Joint Director of Education, Azamgarh Division, Azamgarh to decide the claim of the writ petition for regularization.

5. Subsequently, according to the writ petitioner on 06.11.2017, the claim of the writ petitioner for regularization was turned down by

the Joint Director of Education, Azamgarh Region, Azamgarh on the premise that the writ petitioner was not paid salary from 1st October 1988 to 5th January 1997, thus the writ petitioner does not come within the purview of Regularization Rules. In terms of the order dated 31.07.2000 passed in Writ Petition No.7969 of 1998, the District Inspector of Schools Mau proceeded to pass an order on 23.10.2017, pursuant where to, a stand taken by the Principal of the Institution in question regarding the dates when the writ petitioner was not working was doubted by him and the approval was granted for the payment of salary to the writ petitioner for the said period.

6. Since the writ petitioner had not been paid salary despite determination by the District Inspector of Schools, Mau, so the writ petitioner preferred Writ-A No.12002 of 2018, which came to be decided on 18.05.2018 by passing the following order:-

"Petitioner had earlier filed writ petition no.7969 of 1998, before this Court, which was decided on 31.7.2000 with a direction upon the authority concerned to examine the claim of petitioner for payment of arrears of salary between 1988 to 1997. It is alleged that a consequential order has been passed after much delay by the District Inspector of Schools on 23rd October, 2017, which has been further corrected on 6th November, 2017. Grievance is that although petitioner's claim has been accepted, yet the amount payable is not being released.

Learned Standing Counsel states that grievance of petitioner shall be examined, in accordance with law.

In the facts and circumstances, noticed above, it would be appropriate to dispose of this writ petition with a direction upon the respondent no.2 to examine the grievance of petitioner, as noticed above, after affording opportunity of hearing to the respondent no.5, in the matter, within a period of three months from the date of presentation of certified copy of this order. In case the claim of petitioner which has already been accepted by the District Inspector of Schools, is sustained, then all consequential benefits would be extended to the petitioner, within a further period of two months, thereafter.

Writ petition is, accordingly, disposed of."

7. By virtue of the order dated 21.08.2019, the claim of the writ petitioner for regularization has been turned down on the premise that the writ petitioner was not paid salary from 1st of October 1988 to 5th of February 1997, thus he cannot be considered for regularization.

8. Questioning the order dated 21.08.2019, the writ petitioner has filed the present writ petition. This Court has entertained the writ

petition on 03.08.2023:

"Learned counsel for the writ petitioner submits that the order dated 21.08.2019 passed by the second respondent, Joint Director of Education Azamgarh Division, Azamgarh proceeds on misconception of facts and law particularly when the writ petitioner was appointed as an Assistant Teacher (C.T.) Grade in the institution in question on 25.01.1988, since approval was not being accorded, he filed Writ A No. 25416 of 1988 in which the writ petitioner was arrayed as petitioner No. 2 and the writ petition was preferred by Smt. Madhuri Rani Tripathi and 2 others Vs. State of U.P. & Others wherein direction was issued for according consideration for the approval. The District inspector of Schools on 22/23.04.1997 proceeded to granted approval, however, according to the writ petitioner approval for making payment of salary with effect from 06.02.1997, however, the writ petitioner was denied arrears of salary with effect from 1988 to 1997 which again compelled the writ petitioner to prefer Writ A No. 7969 of 1988 which was disposed of on 31.07.2000 requiring the educational authorities to verify the working of the writ petitioner and to pass orders. As per the writ petitioner, in the wake of the provisions under Section 33B of the U.P. Act No. 5 of 1982 the writ petitioner was entitled to be considered for regularization, however, he kept on pursuing in the matter and since no decision was taken with regard to the consideration of his claim for regularization so the writ petitioner again approach this Court by filing Writ A No. 16785 of 2017 which came to be disposed of on 20.04.2017 directing the authorities to consider the claim of the writ petitioner and in the meantime according to the writ petitioner the Joint Director of Education Azamgarh Mandal Azamgarh proceeded to pass an order dated 06.11.2017 whereby the claim of the writ petitioner was directed to be considered only when he is made admissible for the payment of salary with effect from 01.10.1988 to 05.01.1997. It is further the case of the writ petitioner that on 23.10.2017 an order was issued by the District Inspector of Schools, to which a corrigendum was issued whereby the writ petitioner was made admissible for payment of salary from 01.10.1988 to 05.01.1997 however, though the writ petitioner was made admissible to the payment of salary but actual salary was not paid so the writ petitioner preferred Writ A No. 12002 of 2018 which came to be disposed of directing the second respondent, District Inspector of Schools to ensure payment, however, now the claim of the writ petitioner has been negated with regard to regularization by virtue of the order dated 21.08.2019 on the pretext that since the approval has been accorded for payment of salary from 01.10.1988 to 05.02.1997 but since actual payment has not been made so the writ petitioner's claim cannot be regularized. According to the learned counsel for the writ petitioner once the approval has been accorded then payment or no payment is of no relevance and the same cannot be a ground to negate the claim for regularization. Sri Mishra learned Standing Counsel who appears for respondents No. 1 to 4, on the other hand, submits that he may be granted time to obtain instructions and according to him the writ petition is barred by delay and laches and as an order of the year 2019 is being challenged in the year 2023.

Put up this case on 18.08.2023 as fresh.

Let Sri Mishra obtain instructions or file affidavit by the next date.

Notice on behalf of respondents No. 1 to 4 has been accepted by the learned Standing Counsel.

Issue notice to fifth respondent by both ways.

Steps be taken by tomorrow i.e. 04.08.2023.

Affidavit of service be filed before the next date.

All the respondents shall file their response before the next date."

9. A counter affidavit has been filed by the District Inspector of Schools, Mau sworn on 16.10.2023 to which no rejoinder affidavit has been filed. Records further reveal that the writ petitioner has filed a supplementary affidavit.

10. On a specific query being made to the writ petitioner, as to whether he proposes to file any rejoinder affidavit to the counter affidavit filed by the official respondent, he submits that he does not propose to file any response.

11. The learned counsel for the writ petitioner while assailing the order dated 21.08.2019 passed by the second respondent, Joint Director of Education, Azamgarh Division, Azamgarh, has sought to argue that the main premise on the basis whereof the said order has been passed is faulty and erroneous, particularly in view of the fact that from the perusal of the order in question, it is clear that the writ petitioner was appointed on the post of Assistant Teacher, CT Grade in the Institution in question on 25.01.1988 consequent to the ad hoc promotion of one Madhuri Rani Tripathi as an Assistant Teacher, LT Grade. He submits that once there happens to be an order in his favour dated 22/23.04.1997 passed by the District Inspector of Schools according approval to the appointment of the writ petitioner on 06.02.1997 and also the fact that the District Inspector of Schools pursuant to the order dated 31.07.2000 passed in Writ Petition No. 7969 of 1998 had itself taken the stand of the Institution was doubted and the approval was accorded for payment of salary to the writ petitioner for the period from October 1988 to February 1997 on 23.10.2017, then there cannot be any objection in that regard, as mere non-payment of salary for the said period will not be a ground germane to negate the claim of the petitioner for regularization, as obviously, approval was granted, but due to lethargy and apathy of the Institution, the payment has not been made. He seeks to rely upon the judgment of ***Pramod Kumar Vs. State of U.P. and others, Writ-A No. 8234 of 2020, decided on 17.04.2021.*** He further submits that the writ petitioner was not in deep slumber, but he

was agitating its legal right after passing of the order dated 23.10.2017, the writ petitioner preferred Writ-A No.12002 of 2018, which also came to be disposed off while directing the respondents to consider the claim of the writ petitioner for payment of salary. He thus submits that the order impugned cannot be sustained and is liable to be quashed.

12. Countering the said submission, Sri P.K. Shahi, learned Addl. Chief Standing Counsel, who appears for Respondent Nos. 1 to 4 on the other hand submits that as per the instructions received by him and the averments made in the counter affidavit, the order dated 23.10.2017 is still in existence, which entitles an approve the claim of the writ petitioner for payment of salary for the period October 1988 to February 1997. He while drawing attention of the Court towards counter affidavit further submits that there happens to be an order dated 23.10.2017, but on account of inaction of the functionaries of the Institution in question, the claim of the writ petitioner cannot be considered.

13. I have heard the learned counsel for the parties and perused the records.

14. Undisputedly, the writ petitioner was appointed as an Assistant Teacher on 25.01.1988. He was accorded joining on the said date, however, when he was not paid salary, he preferred Writ Petition No.25416 of 1998, which came to be disposed off on 06.11.1996 requiring the respondents to consider the claim of the writ petitioner, which came to be decided on 22/23.4.1997 w.e.f. 1997. The writ petitioner preferred Writ Petition No. 7969 of 1998, which came to be disposed of on 31.07.2000, wherein the writ petitioner was directed to prove that she had actually worked for the period 1988-97 in order to obtain benefits. The District Inspector of Schools in turn on 23.10.2017 proceeded to pass an order according sanctioning of payment of salary to the writ petitioner from the year 1988 to the year 1997. In the meantime, the petitioner preferred Writ Petition no.16785 of 2017, Smt. Arti Mishra Vs. State of U.P. seeking regularization under Section 33-B of U.P. Act No.5 of 1982, which came to be disposed of on 20.04.2017 requiring the competent authority to take decision. The claim of the writ petitioner for regularization stood negated by the Joint Director of Education, Azamgarh Division, Azamgarh, second respondent on 06.11.2017 on the ground that the claim of the writ petitioner for regularization cannot be considered, as she had not been paid salary w.e.f. 01.10.1988 to 05.02.1997 and in case, the writ petitioner is accorded salary, then her claim will be considered. The writ petitioner here preferred Writ-A No. 12002/

2018 for payment of salary for the said period armed with the order dated 23.10.2017 passed by the District Inspector of Schools, which came to be disposed of on 18.05.2018 granting liberty to approach the District Inspector of Schools, who was to consider the claim of the writ petitioner. On 21.08.2019, the claim of the writ petitioner for regularization has been rejected by the second respondent, Joint Director of Education, Azamgarh Division, Azamgarh. The facts as noticed above are not in dispute. Once it is admitted that on 23.10.2017, the District Inspector of Schools had accorded consideration and found that the writ petitioner was entitled to payment of salary for the period from 1988-1997, coupled with the fact that in paragraph-17 of the counter affidavit filed by Respondent nos.1 to 4 sworn by District Inspector of Schools, Mau dated 16.10.2023, it has come on record that pursuant to the order dated 31.07.2000 passed in Writ-A No.7569 of 1998, the claim of the writ petitioner for payment of salary for the said period stood approved, however, the Manager/ Principal of the Institution has not initiated any process for calculation and submission of bills regarding arrears of salary, then obviously the order passed by the second respondent, Joint Director of Education, Azamgarh Region, Azamgarh dated 21.08.2019 negating the claim of the writ petitioner for being considered for regularization under the provisions of Section 33-B of the U.P. Act No.5 of 1982 is unsustainable in the eyes of law and is liable to be set aside.

15. Sri P.K. Shahi, learned Addl. Chief Standing Counsel, who appears for Respondent Nos. 1 to 4 submits that since the order dated 21.08.2019 passed by the second respondent, Joint Director of Education, Azamgarh Region, Azamgarh has completely overlooked and skipped the crucial issues, thus according to him, the order in question be set aside and the matter be remitted back to the competent authority to pass a fresh order strictly in accordance with law.

16. To such a submission, learned counsel for the writ petitioner has no objection and he gracefully accepts the same.

17. In view of the stand taken by the learned Addl. Chief Standing Counsel, the writ petition is being decided in the following terms: (a) The Order dated 21.8.2019 passed by the second respondent, Joint Director of Education, Azamgarh Division, Azamgarh is set aside; (b) the matter is remitted back to the second respondent to decide the matter afresh in accordance with law after putting to notice the writ petitioner and the fifth respondent in view of the discussions made hereinabove within a period of three months

from the date of production of certified copy of the order; (c) In case, the second respondent, is of the opinion that some other authority shall address the claim of the writ petitioner, then the papers be transmitted to the concerned authority with due communication to the petitioner as well as fifth respondent in advance in writing so as to facilitate early disposal of the claim.

18. With the aforesaid observations the writ petition stands **disposed off**.

Order Date :- 8.11.2023

N.S.Rathour