

Reserved on: 07.12.2023

Delivered on: 13.12.2023

Court No. - 35

Case :- WRIT - A No. - 14957 of 2020 (Leading writ petition)

Petitioner :- Sanjay Kumar Singh

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

Counsel for Petitioner :- Sunil Kumar Srivastava, Sr. Advocate Ashok Khare

Counsel for Respondent :- C.S.C., Ajay Singh, Braj Bhushan Singh Chauhan

With

Case :- WRIT - A No. - 6756 of 2020 (Connected C1 writ petition)

Petitioner :- Sanjay Kumar Singh

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Rajeshwar Singh, Sunil Kumar Srivastava, Sr. Advocate (P.N. Saxena)

Counsel for Respondent :- C.S.C., A.K.S. Parihar, Ajay Singh, Kushmondeya Shahi

With

Case :- WRIT - A No. - 4851 of 2022 (Connected C2 writ petition)

Petitioner :- Shiv Kumar

Respondent :- State Of U P And 6 Others

Counsel for Petitioner :- Ram Pravesh Pandey

Counsel for Respondent :- C.S.C., A.K.S. Parihar, Kushmondeya Shahi

Hon'ble Vikas Budhwar, J.

1. Writ A No. 14957 of 2020 (Sanjay Kumar Singh Vs. State of U.P. & 6 Others) (leading writ petition), Writ A No. 6756 of 2020 (Sanjay Kumar Singh Vs. State of U.P. & 5 Others) (connected C1 writ petition) and Writ A No. 4851 of 2022 (Shiv Kumar Vs. State of U.P. & 6 Others) (connected C2 writ petition).

2. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Sunil Kumar Srivastava, learned counsel for the writ petitioner in leading and connected C1 writ petitions, Sri Shailendra Singh, learned Standing Counsel who appears for respondents No. 1, 3 and 4 in all the writ petitions, Sri Tanuj Shahi holding brief of Sri Kushmondeya Shahi, learned counsel for the respondent No. 2 in all the writ petitions and Sri G.K. Singh, learned Senior Counsel assisted by Sri Ajay Singh, learned counsel who appears for respondent No. 7 in the leading writ petition, respondent No. 6 connected C1 writ petition and writ petitioner in the connected C2 writ petition.

3. Though notices were issued on 18.01.2021 in the leading writ petition to the Committee of Management/Principal Shri Tilak Vidyalaya Inter College, Firozabad but there is an office report dated 02.03.2021 that the service upon the Principal/C/M of the institution in question respondents No. 5 and 6 is confirmed. So far as the connected C1 writ petition is concerned, it appears that notices were not issued to the respondent Committee of Management of the institution in question who was impleaded as respondent No. 5 and as regards the connected C2 writ petition, notices were issued to the Committee of Management, fifth respondent on 07.04.2022 office report dated 11.07.2022 shows that service upon the Committee of Management, fifth respondent is confirmed.

4. Learned counsels for the rival parties have made a statement at Bar that they do not propose to file any further affidavits and the writ petitions be decided on the basis of the documents available on record and, thus, the writ petitions are being decided at the admission stage by a common order.

5. It is the case of Sanjay Kumar Singh that there is an institution by the name of Shri Tilak Vidyalaya Inter College, Firozabad which is an aided Inter College recognized under the provisions of U.P. Intermediate Education Act, 1921, U.P. Act No. 5 of 1982 and U.P. Act No. 24 of 1971 stand applicable.

6. As per the writ petitioner consequent to the selection was held by the U.P. Secondary Education, Prayagraj for the post of Assistant Teacher L.T. Grade in various subjects the writ petitioner was selected and recommended for appointment in the institution in question by virtue of the recommendation of the Board dated 06.07.2010 and an appointment order is stated to have been issued by the Committee of Management on 09.09.2010 appointing the writ petitioner as Assistant Teacher L.T. Grade "Hindi". The writ petitioner claims that the post of Lecturer "History" which was earlier manned by Sri Prahalad

Kumar Yadav fell vacant consequent to his death on 11.11.2021 and a requisition was sent on 03.10.2013 by the institution in question to the District Inspector of Schools, Firozabad notifying the said vacancy. It is also asserted that the said requisition was forwarded by the District Inspector of Schools, Firozabad to the Board on 14.05.2015. Since in the institution in question the teaching work was being jeopardized so according to the writ petitioner he being fully eligible and qualified in all respects for promotion on the post of Lecturer "History", the Committee of Management of the institution in question passed a resolution recommending the promotion of the writ petitioner on the post of Lecturer "History" on 17.01.2016. The Regional Promotion Committee headed by Joint Director of Education, Agra accorded approval to the promotion of the writ petitioner as Lecturer "History" on 25.06.2016 and an order to the said extent passed by the Regional Joint Director of Education, Agra on 30.06.2016 followed by a consequential order dated 20.06.2016 by the District Inspector of Schools, Firozabad and a promotion order was issued by the Committee of Management on 05.07.2016 and the writ petitioner claims to have been working on the post in question. It is also the case of the writ petitioner that in the meantime an advertisement was published by the Selection Board for making direct recruitment and the date of filling of online application form was 06.06.2016. In the meantime, according to the writ petitioner on 18.11.2016 a communication was stated to have been issued by the Manager of the institution in question to the Secretary of the Selection Board that since a requisition had been sent for making direct recruitment on the post of Lecturer "History" owing to the occurrence of the substantive vacancy and since no selections and appointment was made so the Committee of Management proceeded to promote the writ petitioner on the post of Lecturer "History", thus, the requisition be canceled. The communication of the Committee of Management dated 18.11.2016 was noticed by the District Inspector of Schools, Firozabad and he also issued a communication dated 04.06.2018

addressed to the Secretary of the Selection Board annexing the copy of the said request letter dated 18.11.2016. According to the writ petitioner, though the writ petitioner was working on the post of Lecturer “History” but now on 31.08.2020 the District Inspector of Schools, Firozabad issued a communication to the Management of the institution in question for cancellation of the promotion of the writ petitioner in the wake of the fact that Sri Shiv Kumar son of Sri Harendra Singh had been selected by the Commission as Lecturer in the institution in question pursuant to the recruitment exercise undertaken by the Commission on the basis of the advertisement No. 2 of 2016. A consequential order was stated to have been passed by the Manager of the institution in question canceling the promotion of Sri Sanjay Kumar Singh as Lecturer.

7. Questioning the said orders, Sri Sanjay Kumar Singh had preferred the leading writ petition in which an interim order had been passed on 18.01.2021. A counter affidavit has been filed by the learned Standing Counsel sworn by the District Inspector of Schools, Firozabad dated 13.12.2021 to which a rejoinder affidavit has been filed. A stay vacation application along with counter affidavit has been filed on behalf of Sri Shiv Kumar to which a rejoinder affidavit has been filed.

8. Assailing the advertisement No. 2 of 2016 insofar as it relates to P.G.T. History referable to the institution in question and the panel dated 09.07.2010 according placement to Sri Shiv Kumar son of Harendra Singh as Lecturer in the institution in question the connected writ petition has been preferred by Sri Sanjay Kumar Singh in which a short counter affidavit has been filed by the Commission itself.

9. Insofar as the connected C2 writ petition is concerned it has been preferred by Sri Shiv Kumar son of Sri Harendra Singh questioning the order dated 13.02.2022 passed by the Secondary Education Service Selection Board, Alenganj wherein the writ

petitioner has been adjusted in Harivans Singh Inter College, Rewari District Fatehpur. In the said writ petition, the following interim order has been passed.-

“Learned Standing Counsel has accepted notice on behalf of respondent Nos.1, 3, 4 & 6 and Sri A.K.S.Parihar, Advocate, has accepted notice on behalf of respondent No.2.

Issue notice to the respondent Nos.5 and 7 through ordinary process and R.P.A.D. returnable within four weeks.

Steps be taken within one week.

All the respondents will file their counter affidavits within three weeks.

Rejoinder affidavit, if any, may be filed within one week thereafter.

List this case on 11.7.2022.

Till the next date of listing, the effect and operation of order dated 13.02.2022 passed by U.P. Secondary Education Services Selection Board, Allenganj, Prayagraj, shall remain stayed, so far as the petitioner is concerned.”

10. Since all the three writ petitions consolidated together, thus, they are before this Court.

11. Sri Ashok Khare, learned Senior Counsel for the writ petitioner while assailing the order dated 31.08.2020 passed by the District Inspector of Schools, Firozabad directing for cancellation of the promotion of the writ petitioner as well as the order dated 05.10.2020 passed by the Principal Shri Tilak Vidyalaya Inter College, Firozabad has sought to argue that once the writ petitioner was promoted on the post of Lecturer “History” in the year 2016 after obtaining approval by the Regional Promotion Committee and he continued to function on the post in question then it was not open for the respondents to have canceled his promotion.

12. Elaborating the said submission, learned Senior Counsel for the writ petitioner submits that it is not a case wherein the writ petitioner

had obtain promotion by fraud, concealment or misrepresentation as all the facts were before the Educational Authorities and they proceeded to consider the claim of Sri Sanjay Kumar Singh on merit and, thus, the orders impugned are liable to be set aside. Further submission is that the entire exercise is in violation of the principles of natural justice.

13. Additionally, it is being sought to be argued that the District Inspector of Schools, Firozabad has no authority under the relevant statute to pass such type of orders. The submission is that though the vacancy in question on the post of Lecturer “History” was notified on 03.10.2013 to the District Inspector of Schools, Firozabad and the papers were transmitted to the Board on 14.05.2015, however, on 18.11.2016 a communication had been made by the institution in question for cancellation of the requisition since earlier the vacancy was notified but since no selections were conducted, thus, Sri Sanjay Kumar Singh was accorded promotion as Lecturer and the said letter stood received and was also communicated to the Secretary/Board on 04.06.2018 then by no stretch of imagination the promotion of the writ petitioner could have been canceled.

14. Sri G.K. Singh, learned Senior Counsel who appears for Shiv Kumar son of Harendra Singh who was accorded selection pursuant to the advertisement No. 2 of 2016 has submitted that the vacancy on the post of Lecturer “History” fell vacant on 11.11.2011 consequent to death of Sri Prahlad Kumar Yadav, Lecturer “History”, however since the writ petitioner was issued an appointment order on 09.09.2010 as Assistant Teacher L.T. Grade in subject “Hindi” and he assumed the charge in the month of September, 2010, thus, on the date of occurrence of the vacancy he did not have eligibility to be accorded promotion as he did not possess the minimum eligibility.

15. Sri G.K. Singh, learned Senior Counsel has sought to rely upon the Full Bench decision of this Court in the case of **Smt. Sadhna Vs.**

State of U.P. 2017 (6) ADJ 418. He further submits in view of the law laid down in the case of **Prashant Kumar Katiyar reported in 2013 (2) UPLBEC 971**, once the post in question had been notified and a requisition had been sent to the District Inspector of Schools to Board then the same cannot be modified, amended or canceled in that regard. Submission is that even otherwise the writ petitioner being thoroughly ineligible was not liable to be considered for promotion on the post of Lecturer “History”.

16. Sri Shailendra Singh, learned Standing Counsel has adopted the argument of Sri G.K. Singh, learned Senior Counsel who appears for Sri Shiv Kumar and he submits that on the date of occurrence of the vacancy in view of the provisions contained under Regulation 6(1) of Chapter II of the U.P. Intermediate Education Act, 1921, Sri Sanjay Kumar Singh did not possess minimum 5 years of continuous service to his credit and, thus, rightly so the impugned orders has been passed.

17. Sri Kushmondey Shahi, learned counsel who appears for the Board has submitted that in view of the provisions contained under Rule 14 of the U.P. Secondary Education Service Selection Board, 1998 as well as the provisions contained under Regulation 6(1) of Chapter II of the U.P. Intermediate Education Act, 1921 the writ petitioner was not eligible for being accorded promotion as he did not have minimum 5 years of experience to his credit, he seeks to rely upon a decision of Coordinate Bench in Service Single No. 4386 of 2021 (C/M Sri Gopal Inter College Vs. State of U.P.) decided on 11.02.2021.

18. Insofar as the connected C2 writ petition is concerned, Sri G.K. Singh, learned Senior Counsel who appears for the writ petitioner, Shiv Kumar has sought to argue that once he was selected on the post of Lecturer “History” pursuant to a regular selection conducted by the Board then he is entitled to be accorded joining in the institution in question and, thus, the entire exercise undertaken by the Board while

according placement in the institution, Harivans Singh Inter College, Rewari, District Fatehpur was not legal as the writ petitioner in the leading and the connected C1 writ petition Sri Sanjay Kumar Singh has no right to usurp the post which is legally entitled to be filled by Sri Shiv Kumar.

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

20. Undisputedly, the vacancy on the post of Lecturer “History” fell vacant on 11.11.2021. It is also not in dispute that Sri Sanjay Kumar Singh was appointed as Assistant Teacher L.T. Grade on 09.09.2010, thus, he did not possess eligibility on the date of occurrence of the vacancy particularly in view of the provisions contained under Regulation 6(1) of Chapter II of the U.P. Intermediate Education Act, 1921, 5 years of continuous substantive service was required on the date of occurrence of the vacancy.

21. Nonetheless, Rule 14 of the U.P. Secondary Service Selection Board Rules, 1998 also envisages the procedure for recruitment by promotion and according to which where any vacancy is to be filled by promotion all the teachers working in the trained graduate grade or certificate of teaching grade, if any, who possess qualifications prescribed for the post and have computed 5 years of continuous regular service as on the first day of recruitment shall be considered for promotion to the Lecturer Grade. Since there is no dispute to the date of appointment of Sri Sanjay Kumar Singh as Assistant Teacher L.T. Grade and also the date of occurrence of the vacancy on the post of Lecturer “History”, thus, in the opinion of the Court Sri Sanjay Kumar Singh did not possess eligibility on the date of occurrence of vacancy. The said issue is no more res integra as the said issue stands decided by a full bench judgment of this Court in the case of **Sadhna (supra)**. The said judgment has been followed in **Service Single No. 18977 of 2017 (Sunil Kumar Verma Vs. State of U.P.)** decided on

19.09.2017 and **Service Single No. 20041 of 2016 (Tribhuvan Nath Vs. State of U.P. & Others)** decided on 08.01.2020.

22. There is another facet of the matter which needs to be noticed at this stage that Committee of Management of the institution in question had notified the said vacancy while sending a requisition to the District Inspector of Schools to be forwarded to the Board on 03.10.2013. As per the counter affidavit of the District Inspector of Schools, Firozabad, the said requisition was forwarded to the Board on 14.05.2015. The vacancy in question stood advertised by the Board by virtue of an advertisement No. 2 of 2016 wherein the date of submission of the application form was shown to be 06.06.2010. Though documents are to the effect that on 18.11.2016 the Committee of Management of the institution sent a letter to the Secretary/Board for cancellation of the requisition in the wake of the fact that Sri Sanjay Kumar Singh has been accorded promotion on the post of Lecturer "History" as no selections were finalized for making direct recruitment and the said requisition letter is claimed to have been forwarded by the District Inspector of Schools, Firozabad to the Secretary of the Board but in the opinion of the Court the said communication for cancellation of the requisition would not be of much relevance, aid or assistance to Sri Sanjay Kumar Singh particularly when promotion had been accorded to Sri Sanjay Kumar Singh during the pendency of requisition notifying the said vacancy. As rightly pointed out by Sri G.K. Singh, learned Senior Counsel who appears for Shiv Kumar the requisition could not have been altered or canceled in view of the judgment in the case of Prashant Kumar Katiyar (supra). The said view further stands endorsed from a decision in the case of Committee of Management Sri Gopal Inter College (supra) which has dealt with the said issue.

23. Sri Ashok Khare, learned Senior Counsel who appears for Sri Sanjay Kumar Singh might be right in contending that no fraud, misrepresentation or concealment was committed by his client but the

same would not be of any benefit to his client particularly when Sri Sanjay Kumar Singh was not eligible on the date of occurrence of the vacancy. Equity also does not tilt in favour of Sri Sanjay Kumar Singh as this Court would obviously not shut its eyes and accord relief to an incumbent who was even otherwise not eligible for being considered for promotion. More so Sri Shiv Kumar happens to be a regularly selected candidate, thus, his selection and appointment cannot be resisted. So far as the argument of Sri Khare that on the basis of the letter dated 18.11.2016 for cancellation of the requisition dated 03.10.2013, a notification had been issued by the Board on 11.03.2019 whereby the post of Lecturer "History" which was initially 46 was reduced to 42, thus, it would be inferred that post of Lecturer "History" of the institution in question was not advertised is patently misconceived particularly in view of the fact that there is no document even on record to show that the requisition was canceled. As regards the submission of Sri Khare, learned Senior Counsel who appears for Sri Sanjay Kumar Singh there has been virtually no determination of fact as to whether the post of Lecturer "History" fell within the promotion of direct recruitment quota, thus, the writ petitioner's promotion could not have been canceled is neither here nor there particularly when on the date of occurrence of the vacancy Sri Sanjay Kumar Singh did not possess eligibility. Furthermore, none of the candidates who sought promotion on the post of Lecturer "History" have either approached the Court or raised any grievance in this regard, thus, on this count also Sri Sanjay Kumar Singh is not entitled to relief. Lastly, the objection raised by the learned Senior Counsel who appears for Sri Sanjay Kumar Singh that District Inspector of Schools, Firozabad has no authority to pass an order dated 31.08.2020 is concerned the same is not liable to be accepted in view of the fact that the said communication only provides for according of joining of Sri Shiv Kumar as a Lecturer "History" the said aspect of the matter came to be considered in the case of Sunil Kumar Verma (supra) wherein in para 27 the following was observed.-

“27. Learned counsel for the petitioner has also contended that it is the Director alone, who had jurisdiction to set aside the order of approval, and that the Regional Level Committee could not have reviewed its decision. The argument in that regard is noticed to be rejected for more than one reason. First and foremost, it is to be noticed that Regional Level Committee has merely corrected its stand to bring it in conformity with the provisions of law. Its earlier decision not to accord approval being in consonance with the law declared by larger Bench in Sadhna (Supra) has been restored. It is also relevant to note that the promotion of petitioner had already been challenged by respondent no. 6, by way of representation, and the Regional Level Committee had otherwise taken note of it, and all parties were put to notice in that regard. The subsequent order is otherwise in conformity with the position of law, as is interpreted by the larger Bench. The issue as to whether only the Director could pass such an order under Section 16 (E) 10, need not detain this Court any further, inasmuch as any interference with the decision of the Regional Level Committee, under challenge, would revive the approval granted to the petitioner's promotion on 30th December, 2016, based upon the judgement in Raeesul Hasan (Supra). Law is settled that this Court would not interfere with an order, which would revive an illegality. Such being the situation, I am of the opinion that approval to petitioner's promotion has rightly been withdrawn by the Regional Level Committee, in the facts and circumstances of the present case.”

24. For the aforesaid reasons, the leading writ petition seeking to challenge the order dated 31.08.2020 of the District Inspector of Schools, Firozabad and 05.10.2022 of the Principal of Sri Tilak Vidyalaya Inter College, Firozabad is dismissed. Since the leading writ petition stands dismissed, thus, the connected C1 writ petition wherein challenge has been made to the advertisement No. 2 of 2016 and the placement of Sri Shiv kumar dated 09.07.2020 by the Board is also dismissed. As regards the connected C2 writ petition preferred by Sri Shiv Kumar is concerned, the same stands allowed, the order dated 13.02.2022 passed by the U.P. Secondary Education Service Selection Board, Prayagraj is set aside. A mandamus is issued to the respondents to accord joining to Sri Shiv Kumar in the institution, Sri Tilak Vidyalaya Inter College, Firozabad on the post of Lecturer “History” within a period of one month from the date of production of certified copy of the order.

Order Date:- 13.12.2023
Rajesh