

Court No. - 35

Case :- WRIT - A No. - 7972 of 2009 (Leading Writ Petition)

Petitioner :- Mahendra Kumar Saxena And 6 Others

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Pramod K. Sinha, Saumitra Dwivedi

Counsel for Respondent :- C.S.C., Sushant Misra, Sushil Tiwari, Syed Faheem Ahmad

Connected with

Case :- WRIT - A No. - 15169 of 2023 (Connected Writ Petition)

Petitioner :- Jitendra Kumar Saxena

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

Counsel for Petitioner :- Pramod Kumar Sinha

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

Heard Sri Pramod Kumar Sinha, learned counsel for the petitioners in both the writ petitions and Sri H.N. Shukla learned Standing Counsel, who appears for the official respondents and Sri Sushant Mishra, who appears for the third respondent.

Since common question of facts and law are involved in both the writ petitions, thus they are being decided by a consolidated order.

The case of the writ petitioners is that the third respondent, Jain Basic Primary Vidyalaya is an institution attached with Jain Inter College, in para 3 and 4 to the leading writ petition it is asserted that the writ petitioners were duly selected/appointed as Assistant Teachers in the Primary Section which is an institution attached with the Committee of Management, Jain Inter College. It is the case of the writ petitioner that the said institution was put in grant in aid pursuant to the Government Order dated 6.9.1989 of the payment of the salary was accorded under Section U.P. Act No.24 of 1971 w.e.f. 30.3.1990.

The writ petitioners claim to have been appointed on 2.4.1974, 1.7.1972, 1.7.1979, 2.7.1983, 2.7.1987, 2.7.1987 and 1.8.1988 however the third respondent institution manipulated and the date of the joining was shown to be July, 1989. It is the further case of

the writ petitioners that a notice was issued and the services of the writ petitioners were ceased on 30.6.1990 which was subject matter of challenge in Writ Petition No.13739 of 1990, Bishan Chandra Agrawal & others vs. State of U.P. & others in which on 24.5.1990 an interim order was passed in favour of the writ petitioners. The third respondent is stated to have initiated recruitment exercise while publishing advertisement on 30.5.1990.

It is further the case of the writ petitioners that they were paid salary till June, 1990 and thereafter they were not allowed to assume the charge on the post in question since July, 1990 thus they preferred representation. In the pending writ petition according to the writ petitioners a counter affidavit was filed by the Principal in which there was no claim set up that the institution in question is a minority institution.

In para 15 of the writ petition it is further asserted that illegally 12 incumbents details whereof has been given in para 15 were accorded appointment. According to the writ petitioners the Writ Petition No.13739 of 1990, Bishan Chandra Agrawal & others vs. State of U.P. & others came to be decided on 18.3.2005 requiring the District Inspector of Schools, Rampur to accord consideration to the claim of the writ petitioners, second respondent which in turn came to be decided in favour of the writ petitioners on 4.7.2005 holding that the termination of the services of the writ petitioners was illegal.

The writ petitioners claim to have preferred a modification application in the decided writ petition which came to be disposed of on 21.10.2005. In the meantime, according to the writ petitioners a writ petition stated to have been filed by the Committee of Management of the institution in question, third respondent being Writ Petition No.61477 of 2005 in which an interim was passed on 19.9.2005. It has also come on record through the supplementary counter affidavit filed on behalf of the third respondent institution sworn by one Sri Ravi Shankar who claims himself to be the Assistant Clerk in the third respondent institution that the said writ petition came to be dismissed on 7.2.2017 reference whereof has been made in page 11 of the said writ petition. As the writ petitioners were not being paid salary and they were not allowed to function so the leading writ petition was preferred with the relief for payment of salary and according reinstatement in service.

A counter affidavit has been filed by the third respondent followed by a supplementary affidavit dated 17.4.2023 wherein in para 2

and 3 it has been stated that the writ petitioners have been accorded joining w.e.f. 15th April, 2023.

During the pendency of the said writ petition now a connected writ petition has been preferred with the further relief for payment of arrears of salary to the writ petitioners as now they have joined the post in question.

Learned counsel for the writ petitioners submits that once the order dated 4.7.2005 of the District Inspector of Schools, Rampur has attained finality then the writ petitioners are entitled to be accorded benefits from the date when they were legally entitled and there has been a huge delay for reinstating the writ petitioners and further they are entitled to payment of salary and probably some of the writ petitioners stand superannuated also.

Sri Sushant Mishra, who appears for the third respondent, institution submits that now there is no obstacle in considering the claim of the writ petitioners as the writ petition preferred by them questioning the order dated 4.7.2005 has been withdrawn and they have accorded joining to the writ petitioners on 15.4.2023.

Sri H.K. Shukla, learned Standing Counsel who appears for the official respondents in both the writ petitions submits that be that as it may be since the order of the District Inspector of Schools, Rampur dated 4.7.2005 still in existence and it has attained finality and a writ petition preferred against the same has been dismissed and according to the third respondent the writ petitioners have been accorded appointment on 15.4.2023 thus let the District Inspector of Schools, Rampur take a follow up action and consider the claim of the writ petitioners for the payment of salary, current salary, arrears and also with regard to the fact as to whether they are entitled for pension or not.

They further submit that let the writ petitioners approach the District Inspector of Schools, Rampur who is take a final call and in case the management resist then appropriate action would be taken.

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

Considering the submissions of the rival parties as well as stand taken by them, the writ petition is being disposed off without seeking any response from the respondents granting liberty to the writ petitioner to prefer a comprehensive representation along with

the self-attested copy of the writ petition before the second respondent, District Inspector of Schools, Rampur by 10th November, 2023 and on the receipt of the same, the Committee of Management be put to notice and consequential follow up orders be passed subject to any legal impediment regarding the payment of the arrears of salary after verifying the records and also current salary and also attempts is to be taken in order determine the fact as to whether the writ petitioners are entitled to interest within a period of two months from the date of production of certified copy of the order.

Needless to point out that the writ petition has been decided without seeking any response from the respondents. Thus, passing of this order may not be construed to an expression that this Court has gone into the merits of the case.

With the aforesaid observation, both the writ petitions stands **disposed off**.

Order Date :- 2.11.2023

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