

Court No. - 35

Case :- WRIT - A No. - 13379 of 2023 (Leading)

Petitioner :- C/M Hindu Inter College And Another

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

Counsel for Petitioner :- Vashishtha Tiwari,Dinesh Kumar

Counsel for Respondent :- CSC,Prabhakar Awasthi

Connected with

Case :- WRIT - A No. - 8603 of 2021 (Connected)

Petitioner :- Girraj Prasad Sharma

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

Counsel for Petitioner :- Prabhakar Awasthi

Counsel for Respondent :- C.S.C.,Dinesh Kumar

Hon'ble Vikas Budhwar,J.

Rejoinder affidavit filed in the leading writ petition is taken on record.

Heard Sri Vashishtha Tiwari, along with Sri Dinesh Kumar, learned counsel for the writ petitioners in the leading writ petition and the fourth respondent in connected writ petition, Sri H.K. Shukla, learned Standing Counsel, who appears for the respondents no. 1 to 3 in the leading and the connected writ petition and Sri Prabhakar Awasthi, who appears for the fourth respondent in the leading writ petition and writ petitioner in the connected writ petition.

Learned counsel for the parties have made a statement at bar that both the writ petitions be decided together. A further statement has been made by the learned counsel for the parties that they do not propose to file any further response and the writ petitions be decided on the basis of the affidavits available on record.

In nutshell, the case of the writ petitioner, Committee of Management in the leading writ petition is that there happens to be one sanctioned post of Head Clerk, three Assistant Clerk and eleven post of Class-IV post in the institution in question. It is also the case of the writ petitioners that in the institution in question one Sri Vishnu Kumar Agarwal, Head Clerk, Smt. Renu

Bharadwaj, along with Sri Tanuj Tiwari are working on the post of Assistant Clerk. It is also the case of the writ petitioner-Committee of Management, that the name of the writ petitioner finds place at serial no.4 in the seniority list of Class-IV employees. It is also the case of the writ petitioners that owing to certain acts and omissions on the part of the employee Giriraj Prasad Sharma, a punishment order was passed whereby his two increments were withheld. The employee in question preferred writ proceedings before this Court for consideration of his claims, promotion as a Class-III employee bearing no.Writ-A No.340 of 2001 which came to be disposed of on 22.1.2021 requiring the concerned authority to pass orders. Thereafter an order is stated to have been passed by the District Inspector of Schools, Mathura on 20.4.2021 negating the claim of the employee which led to filing of the connected writ petition. However, during the pendency of the writ petition according to the writ petitioner-Committee of Management as well as the employee an order is stated to have been passed whereby the said order withholding the two increments was withdrawn. When the matter travelled to the District Inspector of Schools, Mathura pursuant to the order passed by this Court in the writ petition preferred by the employee now an order has been passed on 25.7.2023 by the District Inspector of Schools, Mathura whereby in the wake of the fact that the punishment order so inflicted upon the employee stands withdrawn and cancelled thus a direction has been issued to accord promotion and joining to the employee.

Questioning the order dated 25.7.2023 passed by the District Inspector of Schools, Mathura the leading writ petition has been filed. As noticed above, affidavits have been exchanged and since the parties do not propose to file any further affidavits, thus the writ petitions are being decided at the fresh stage.

The facts of the case are not in dispute, that initially a punishment order was imposed upon the employee which stood withdrawn however, the writ petitioner in the leading writ petition is aggrieved against the part of the order dated 25.7.2023 in so far as it pertains to issuance of a direction for according promotion and joining to the employee concerned.

Since in the order impugned in the leading writ petition three Class-III employees are senior to the employee who has preferred the connected writ petition thus such type of a direction could not have been issued which even otherwise is akin to a mandamus under Article 226 of the Constitution of India. In case, as admitted by the parties the punishment order is no more in existence as the same stands erased from the service book then the matter ought to

have been sent to the Appointing Authority/Committee of Management to take decision in accordance with law considering the eligibility, suitability of the deserving candidates including the employee who is the writ petitioner in the connected writ petition and the other incumbents. Though, at this stage, Sri Awasthi who appears for Sri Giriraj Prasad Sharma submits that none of the other incumbents who are working in Class-IV post are eligible or qualified thus the said aspect needs to be considered in that regard.

Accordingly, the order dated 25.7.2023 passed by the District Inspector of Schools, Mathura is modified to the extent that now the Committee of Management of the institution in question shall proceed to consider the claim of the writ petitioner and other deserving candidates for promotion strictly in accordance with law bearing in mind eligibility, suitability and also the fact that the punishment of withholding of Sri Giriraj Prasad Sharma stood erased from the service book within a period of two months from the date of production of the certified copy of the order.

So far as the connected writ petition is concerned questioning the order dated 20.4.2021 passed by the District Inspector of Schools, Mathura the same renders infructuous in view of the order which is being passed in the leading writ petition.

Resultantly, the connected writ petition is **dismissed** as infructuous.

Order Date :- 30.11.2023

piyush