

Court No. - 35

Case :- WRIT - A No. - 16787 of 2021

Petitioner :- Raj Mani Singh

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

Counsel for Petitioner :- Shashi Kant Shukla, Ved Prakash Singh

Counsel for Respondent :- C.S.C.

with

Case :- WRIT - A No. - 14761 of 2023

Petitioner :- Rajmani Singh

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

Counsel for Petitioner :- Ved Prakash Singh, Shashi Kant Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. Heard Shri Shashi Kant Shukla, learned counsel for the writ petitioner in the leading and connected writ petition, Shri Santosh Kumar Mishra, learned Standing Counsel who appears for the respondent Nos. 1 to 4.

2. Since common question of facts and law are involved in Writ - A No. - 16787 of 2021 Raj Mani Singh Vs. State Of U.P. And 4 Others (in short 'leading writ petition') and Writ - A No. - 14761 of 2023 Rajmani Singh Vs. State Of U.P. And 4 Others (in short 'connected writ petition'), thus, with the consent of the parties the writ petition is being consolidated and decided by a composite order.

3. The counsel for the rival parties have made a joint statement that they do not propose to file any further affidavits, thus, with the consent of the parties, writ petitions are being decided at the fresh stage.

4. So far as the fifth respondent institution in both the writ petitions are concerned the same is committee of management Ram Lakhan Singh Inter College, Rampur Baijapur, District Jaunpur. The leading writ petition was entertained on 13.12.2021 while issuing notice to the fifth respondent, there is an office report dated 08.02.2022 and 06.12.2023 that the service is not confirmed upon the fifth respondent. As regards the connected writ petition is concerned the same was entertained on 03.10.2023, notices were issued and the office report dated 26.10.2023 shows item delivered. However, till the dictation of the order, nobody has put in appearance on behalf of the fifth respondent.

5. A counter affidavit has been filed on behalf of respondent Nos. 1 to 4 in the leading writ petition sworn by District Inspector of Schools, Jaunpur dated 30.03.2022 to which a rejoinder affidavit has been filed.

6. The case of the writ petitioner, Raj Mani Singh is that the fifth respondent-institution is recognized under the provisions of U.P. Intermediate Education Act, 1921, provisions of U.P. Act No. 05 of 1982 and U.P. Act No. 24 of 1971 stands applicable.

7. As per the writ petitioner on 30.06.1991, a vacancy stood arisen on the post of Assistant Teacher consequent to the superannuation of one Shri Raghu Nath Dubey. A requisition is stated to have been sent by the committee of management of the said institution on 29.03.1992 to the fourth respondent, District Inspector of Schools, Jaunpur for making recruitment on the post of Assistant Teacher L.T. grade.

8. Post publication of advertisement in two newspapers on 05.06.1992, the date of the interview was fixed and on the basis of

the quality point marks, the writ petitioner claims to have been declared successful and pursuant to the appointment issued by committee of management of the institution on 29.06.1992, the writ petitioner was allowed joining in the institution in question on 01.07.1992 and the papers were transmitted to the District Inspector of Schools, Jaunpur for according approval on 07.07.1992. Since the approval of the appointment of the writ petitioner was not granted and he was not paid salary so the writ petitioner preferred Writ A No. 30946 of 1992 which came to be decided on 16.05.1996. Thereafter according to the writ petitioner, an order is stated to have been passed by the District Inspector of Schools, Jaunpur on 15.05.1998 whereby the appointment of the writ petitioner was approved till the regularly selected candidate comes and joins and payment of salary was allowed through State exchequer. Thereafter, also the writ petitioner was not paid salary so the matter was taken cognizance by the Deputy Director of Education Madhyamik-III on behalf of the Director of Education (Madhyamik), Uttar Pradesh and an order was passed on 9/11.11.1998 for making admissible to the payment of salary of the writ petitioner. On 08.01.1999, a consequential order was also passed for according payment of salary to the writ petitioner and he was paid salary. Since according to the writ petitioner, no regularly selected candidate came and joined the post in question so the writ petitioner continued to work in the post in question and thereafter in the wake of the statutory provisions for regularisation contained in U.P. Act No. 05 of 1982, the writ petitioner raised his claim for regularisation. The writ petitioner in this regard preferred Writ A No. 7912 of 2020 seeking regularisation which came to be disposed of on 03.11.2020 requiring the competent authority to take decision for regularisation which in turn came to be rejected

by the committee constituted under the statute headed by the Joint Director of Education, Varanasi Region Varanasi on 21.06.2021.

9. Questioning the said order, the writ petitioner has been filed the leading writ petition which was entertained and thereafter counter was sought.

10. A counter affidavit has been filed by the District Inspector of Schools, Jaunpur dated 30.03.2022 to which rejoinder affidavit has been filed.

11. Insofar as the connected writ petition is concerned here an order dated 01.06.2023 passed by the District Inspector of Schools, Jaunpur is subject matter of challenge wherein the writ petitioner has been denied payment of salary from 01.07.1992 to 30.02.1998. The said writ petition was also entertained by this Court on 03.10.2023 requiring the learned Standing Counsel to obtain instructions and on 02.11.2023 again time was accorded for filing counter affidavit but no counter affidavit has been filed.

12. Shri Santosh Kumar Mishra, learned Standing Counsel submits that despite various letters being sent to the authorities to file counter affidavit they have not responded, however, he submits that in view of the order which is being proposed to be passed, he does not press the said request any further.

13. Shri Shashi Kant Shukla, learned counsel for the writ petitioner while assailing the order dated 21.06.2021 passed by the committee headed by the Joint Director of Education, Varanasi, Region Varanasi has sought to argue that it is not a case that the writ petitioner was accorded appointment against a non-existent post as his selection was pursuant to a vacancy which has arisen on

30.06.1991 on account of the retirement of one Shri Raghu Nath Dubey was working as Assistant Teacher L.T. Grade and post publication of the advertisement and subjection to selection committee he was accorded appointment on 29.06.1992 and was accorded joining on 01.07.1992 and the papers whereof were transmitted to the District Inspector of Schools, Jaunpur on 01.07.1992, he submits that pursuant to the order of the Writ Court in Writ A No. 30946 of 1992, a communication was issued by the District Inspector of Schools, Jaunpur on 15.05.1998 whereby the appointment of the writ petitioner was held to be valid on 11.11.1998, the Deputy Director of Education (Madhyamik) III, Jaunpur also passed an order for payment of salary. The writ petitioner continued on the post of Assistant Teacher L.T. Grade and no regular selected candidate join in that regard. However, his claim for regularisation was not being considered so he preferred Writ A No. 7912 of 2020 pursuant where to now the claim of the writ petitioner has been rejected on 21.06.2021 by the committee headed by the Joint Director of Education Varanasi, Region Varanasi. Submission of the learned counsel for the writ petitioner is that merely because there was non-payment of salary despite approval being accorded to his appointment from the period 01.07.1992 to 30.09.1998 would not be a ground to negate his claim for regularisation as once approval order is still intact then his services for the purpose of regularisation cannot be ignored. As regards the order dated 01.06.2023 passed by the District Inspector of Schools, Jaunpur impugned in the connected writ petition is concerned the learned counsel for the writ petitioner from 01.07.1992 to 30.09.1998 is concerned, he submits that once the writ petitioner has been working in the post in question then he is entitled to salary. He submits that the said order is liable to be

set aside.

14. Countering the said submission, Shri Santosh Kumar Mishra, learned Standing Counsel for the State-respondents submits that the appointment of the writ petitioner suffers from various irregularities, particularly, when the advertisement was not published in a widely circulated newspapers followed by the fact that though the approval was accorded on 15.05.1998 but the same cannot in any manner whatsoever entitle the writ petitioner to the payment of salary prior to the order dated 15.05.1998 thus once the writ petitioner has not been paid salary for the period from 01.07.1992 to 30.09.1998 then his claim cannot be considered for regularisation. He seeks to rely upon the averments contained in paragraph Nos. 5, 6, 7, 19 and 20 of the counter affidavit while contending that the case of the writ petitioner does not fall within the purview of Section 33-C (1) (a) (i) of U.P. Act No. 05 of 1992.

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

16. The fact of the case are not in dispute. It is not in dispute that the writ petitioner was accorded appointment on 29.06.1992 and he assumed the charge as an Assistant Teacher L.T. Grade on 01.07.1992 consequent to the occurrence of the vacancy on 30.06.1991. It is also not in dispute that on 15.05.1998, District Inspector of Schools, Jaunpur had accorded to the appointment of the writ petitioner. The order dated 15.05.1998 of the District Inspector of Schools, prima facie, in the opinion of the Court approves the appointment of the writ petitioner and it does not restrict any date from which the salary is to be paid. Now a question arises whether mere non-payment of salary to the writ petitioner for a period from 01.07.1992 till 30.09.1998 would be a

ground to deny his regularisation. The Co-ordinate Bench of this Court in the case of Pramod Kumar Vs. State of U.P. Writ A No. 8234 of 2020 decided on 17.04.2021 had the occasion to deal with the contingency wherein the concerned teacher was not paid salary for no fault of his though his appointment was approved and was held to be covered under the regularisation rules while including services undergone during the period when he was not paid salary. Insofar as the order dated 01.06.2023 passed by the District Inspector of Schools, Jaunpur denying salary to the writ petitioner which has been impugned in the connected writ petition is concerned the Court is of the opinion that the said order has not been passed in the correct perspective. A finding is to be recorded as to whether the writ petitioner had worked for the said period or not though nothing is forthcoming from the impugned order. However, the writ petitioner claims to have been working since 01.07.1992 post issuance of the appointment order dated 29.06.1992 apart from the same this Court notices that in the counter affidavit filed by the State respondents in the leading writ petition certain allegations have been made regarding the selections conducted while questioning the same. The said ground is not finding its presence in the order dated 21.06.2021 of the committee headed by the Joint Director of Education, Varanasi Region Varanasi. In view of the law laid down by the Hon'ble Apex Court in the case of **Mohindar Singh Gill Vs. Union of India reported in AIR 1978 SC 851**, the affidavits cannot improve the order impugned which is subject matter of challenge. Thus, in the opinion of the Court the order impugned cannot be sustained.

17. At this juncture, Shri Santosh Kumar Mishra, learned Standing Counsel who appears for the State official respondents that both

the orders be set aside and matter be remitted to the competent authorities to pass fresh order as to issues need to be re-visited in the background of the facts as noticed above.

18. Consequently, the writ petition is being decided in the following manner:

a). The order dated 21.06.2023 passed by the committee headed by the Joint Director of Education, Varanasi Region Varanasi in the leading writ petition as well as the order dated 01.06.2023 passed by the District Inspector of Schools, Jaunpur in the connected writ petition are set aside.

b). The matter stands remitted back to the competent authority to pass a fresh order strictly in accordance with law in the light of the observations made hereinabove after putting to notice the writ petitioner and the committee of management within a period of three months from the presentation of the certified copy of the order.

19. Accordingly, the writ petition stands partly **allowed**.

Order Date :- 6.12.2023

A. Prajapati