

Court No. - 35

Case :- WRIT - A No. - 14194 of 2023

Petitioner :- Brijesh Kumar Singh

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Grijesh Tiwari

Counsel for Respondent :- C.S.C.,Rahul Jain

And

Case :- WRIT - A No. - 1249 of 2021

Petitioner :- Raj Kumar Singh

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Rahul Jain

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Shri Grijesh Tiwari, learned counsel for the writ petitioner in the leading writ petition erred respondent no.4 in the connected writ petition, Shri Shailendra Singh, learned Standing counsel who appears for respondent nos.1 and 2 in the leading and the connected writ petition and Shri Rahul Jain, for respondent no.3 in the leading writ petition and the writ petitioner in the connected writ petition.

In view of the order proposed to be passed notices are not being issued to the respondents to the Committee of Management and the Principal of the Institution in question.

Heard learned counsel for the parties in both the writ petitions. In the connected writ petition, though the Committee of Management and the Principal of the Institution in question were issued notices on 07.05.2021, steps were taken but there is a service report dated 29.11.2023 that neither acknowledgement nor unserved notice is received in the office as yet. Till the dictation of the order nobody has put in appearance on behalf of the Committee of Management and the Principal of the Institution. However, in view of the order which is being proposed to be passed interest of the Principle of the Committee of Management is being safeguarded. The writ petitioner, in the leading writ petition, Brijesh Kumar Singh and the third respondent Raj Kumar Singh happens to be the real brothers as their father, Ram Dhawan Singh (since deceased) who was appointed as Assistant Teacher in LT Grade in Madan Mohan

Malviya Inter College, Bhagwanpur Gorakhpur died in harness on 01.02.2006 leaving behind the writ petitioner and the third respondent in the writ petition and the widow/ mother and two daughters. It is also the case of the writ petitioner that the mother of the writ petitioner namely Gyanmati Devi who was working in the fourth respondent institution, Shri Shaym Krishna Inter College, Thawaipar Gorakhpur as a class IV employee died in harness on 01.07.2020. The writ petitioner, Brijesh Kumar Singh and the third respondent in the said writ petition Raj Kumar Singh state their claim. However, owing to *inter se* dispute between them regarding conflict of interest for the purposes of according compassionate appointment an order is stated to have been passed by District Inspector of Schools, Gorakhpur on 23.05.2023 holding that since there is serious dispute regarding the inter se claim of the parties, thus, it is not possible to accede the request of the either of the parties.

Questioning the said order the leading writ petition has been preferred by the writ petitioner, Brijesh Kumar Singh. A counter affidavit has been filed by the third respondent, Raj Kumar Singh.

Insofar as the connected writ petition is concerned it has been preferred by Shri Raj Kumar Singh seeking a mandamus to consider the claim of the writ petitioner therein for compassionate appointment. As noticed above learned counsel for the parties has made a statement at Bar no further affidavits are being proposed to be filed, thus, the writ petition is being decided as a fresh.

Shri Rahul Jain, learned counsel for the writ petitioner Raj Kumar Singh, at the very outset in his usual fairness, has made a statement that the order dated 23.05.2023 passed by the District Inspector of Schools, Gorakhpur has been passed without putting Shri Raj Kumar Singh to notice and his versions has not even been considered. He submits that even in fact there are various materials against Shri Brijesh Kumar Singh disentitling him for any benefits.

Shri Grijesh Tiwari, learned counsel for the Shri Brijesh Kumar Singh on the other hand dispute the said fact however he submits that in case it is the stand of Shri Raj Kumar Singh that the order has been passed in violation of principles of natural justice then the order be set aside, matter be remitted back, however, granting liberty to the parties to adduce documents and their claims in that regard.

Shri Shailendra Singh, learned Standing counsel who appears for the state officials-respondents submits that in case it is the stand of

the alleged beneficiaries then he has nothing to say and accordingly the order be set aside and matter be remitted back.

Considering the submissions of the rival parties the writ petition is partly allowed, the order dated 23.05.2023 passed by District Inspector of Schools impugned in the leading writ petition is set aside. Matters stands remitted back to pass a fresh order within a period of three months after putting to notice to Brijesh Kumar Singh, Raj Kumar Singh, Committee of Management as well as the principal of the institution in question. All legal and factual submissions are left open to be raised by respective parties which shall be considered in accordance with law.

Insofar as the connected writ petition is concerned the same is for a mandamus and since now matter has been remitted back pursuant to the order passed in the leading writ petition, thus, the said writ petition also stands disposed of.

Order Date :- 30.11.2023

A Gautam