

Court No. - 35

Case :- WRIT - A No. - 13646 of 2023

Petitioner :- Brij Bali Singh

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

Counsel for Petitioner :- Jai Krishna Tiwari, Durga Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. Heard Sri Durga Singh, learned counsel for the writ petitioner as well as Sri Shailendra Singh, learned Standing Counsel, who appears for the respondent nos. 1, 2 and 3.

2. In view of the order, which is being proposed to be passed, notices are not being issued to the fourth respondent.

3. The writ petitioner claims to have been appointed pursuant to the recommendation of U.P. Secondary Education Service Selection Board, Allahabad/Prayagraj on 05.11.2001 on the post of Assistant Teacher, Biology in Trained Graduate Pay Scale in the fourth respondent institution, Sri Ram Pratap Inter College, Sirsa, Prayagraj. He further claims that a post of Lecturer, Zoology fell vacant consequently to the resignation of one Sri Dhananjay Yadav and exercise was undertaken for promotion and the writ petitioner claims to have been issued a promotion order on 01.02.2010 and he joined the post in question on 06.02.2010. It is also the case of the writ petitioner that one Sri Suresh Kumar preferred Writ - A No. 7349 of 2010 (Suresh Kumar vs. State of U.P and Others), which came to be decided by virtue of an order dated 19.02.2010, while passing the following orders :-

"Heard Sri Ashok Khare, learned Senior Counsel, assisted by Sri Siddhartha Khare, learned counsel for the petitioner and learned Standing Counsel.

The grievance raised by the petitioner in the present writ petition is that he is entitled to be promoted on the post of Lecturer in Mathematics, as petitioner's name is at Serial No.16 in the seniority list, being a Scheduled Caste candidate. In spite of repeated representations submitted by the petitioner regarding recommending his name for the purposes of consideration, Committee of Management has not forwarded the name of the petitioner and name of one Sri Mahendra Singh, who is at Serial No.18 in general category as well as one Brij Bali Singh, who is at Serial No.20 of the seniority list in general category, have been recommended for the purposes of promotion on the post of Lecturer History as well as on the post of Lecturer Geology. Petitioner by way of filing an amendment application has brought on record the order of approval by Regional Level Committee who has approved the promotion of Sri Brij Bali Singh, who is junior to the petitioner, a copy of the same has been filed as Annexure-1 to the amendment application dated 17.02.2010.

Sri Khare, learned Senior Counsel appearing for the petitioner submits that the claim of the petitioner has yet not been considered by the competent authority due to the inaction of the Committee of Management, who has not recommended the name of the petitioner, though petitioner being a Scheduled Caste candidate is entitled to be promoted according to the seniority list which is in existence. This fact has also been ignored while considering the claim of the petitioner by the Regional Level Committee. As such, the petitioner may be permitted to approach the Regional Joint Director of Education to this effect by making a comprehensive and detailed representation regarding his promotion. Further submission has been made that if the order impugned annexed to the amendment application is permitted to stand the effect will be that in case the petitioner is found eligible for the post of Lecturer and order to that effect is passed, the petitioner will be junior to Brij Bali Singh though he was entitled to be promoted earlier to the person who is junior to the petitioner.

In the facts and circumstances of the present case, petitioner may approach the respondent No.2 by making a fresh representation annexing all the relevant documents within a period of three weeks, and if such representation is filed the same may be considered and decided strictly in accordance with law by a reasoned order after affording full opportunity to the petitioner regarding consideration of his promotion on the post of Lecturer. It is further directed that Regional Level Committee will also consider the fact that whether in view of the seniority list petitioner being a senior was entitled to be promoted first on the post of Lecturer to the persons who are junior to him in the seniority list. If the Regional Level Committee comes to that conclusion then a specific order to this effect be passed fixing the seniority of the petitioner. Till the decision taken by the Regional Joint Director of Education regarding consideration of promotion of petitioner, Brij Bali Singh, who is

admittedly junior to the petitioner, may not be taken into consideration. The order this Court may be complied with within period of two months from the date of production of certified copy of the order.

The writ petition is disposed of accordingly.

No order as to costs."

4. Against the said writ petition, the writ petitioner claims to have preferred a modification application, which came to be decided on 19.04.2010. He further claims to have preferred Special Appeal No.792 of 2010 and Special Appeal No. 1021 of 2010. Both were consolidated together and they came to be decided on 20.05.2019. Order whereof is being quoted hereunder :-

"1. Both these appeals are inter-connected and therefore, have been heard together and are being decided by this common judgment, as requested by learned counsel for both parties.

2. Heard Sri Arvind Srivastava, learned counsel for the appellant, Sri Pratik Chandra, Advocate holding brief of Sri Siddharth Khare, learned counsel for petitioner-respondent, Suresh Kumar and learned Standing counsel for respondent nos.1 to 4.

3. Petitioner-respondent, Suresh Kumar preferred Writ Petition No.7349 of 2010 and filed the same in registry on 8.2.2010. It came up before Single Judge on 19.2.2010 and on that very day, after hearing learned counsel for petitioner-respondent, Suresh Kumar and learned Standing counsel, Single Judge decided writ petition and the order reads as under:-

"Heard Sri Ashok Khare, learned Senior Counsel, assisted by Sri Siddhartha Khare, learned counsel for the petitioner and learned Standing Counsel.

The grievance raised by the petitioner in the present writ petition is that he is entitled to be promoted on the post of Lecturer in Mathematics, as petitioner's name is at Serial No.16 in the seniority list, being a Scheduled Caste candidate. In spite of repeated representations submitted by the petitioner regarding recommending his name for the purposes of consideration, Committee of Management has not forwarded the name of the petitioner and name of one Sri Mahendra Singh, who is at Serial No.18 in O.B.C. category as well as one Brij Bali Singh, who is at Serial No.20 of the seniority list in general category, have been recommended for the purposes of promotion on the post of Lecturer Hindi as well as on the post of Lecturer Biology. Petitioner by way of filing an amendment application has brought on record the order of approval by Regional Level Committee who has approved the promotion of Sri Brij Bali Singh, who is junior to the petitioner, a copy of the same has been filed as Annexure-1 to

the amendment application dated 17.02.2010. Sri Khare, learned Senior Counsel appearing for the petitioner submits that the claim of the petitioner has yet not been considered by the competent authority due to the inaction of the Committee of Management, who has not recommended the name of the petitioner, though petitioner being a Scheduled Caste candidate is entitled to be promoted according to the seniority list which is in existence. This fact has also been ignored while considering the claim of the petitioner by the Regional Level Committee. As such, the petitioner may be permitted to approach the Regional Joint Director of Education to this effect by making a comprehensive and detailed representation regarding his promotion. Further submission has been made that if the order impugned annexed to the amendment application is permitted to stand the effect will be that in case the petitioner is found eligible for the post of Lecturer and order to that effect is passed, the petitioner will be junior to Brij Bali Singh though he was entitled to be promoted earlier to the person who is junior to the petitioner.

In the facts and circumstances of the present case, petitioner may approach the respondent No.2 by making a fresh representation annexing all the relevant documents within a period of three weeks, and if such representation is filed the same may be considered and decided strictly in accordance with law by a reasoned order after affording full opportunity to the petitioner regarding consideration of his promotion on the post of Lecturer. It is further directed that Regional Level Committee will also consider the fact that whether in view of the seniority list petitioner being a senior was entitled to be promoted first on the post of Lecturer to the persons who are junior to him in the seniority list. If the Regional Level Committee comes to that conclusion then a specific order to this effect be passed fixing the seniority of the petitioner. Till the decision taken by the Regional Joint Director of Education regarding consideration of promotion of petitioner, Brij Bali Singh, who is admittedly junior to the petitioner, may not be taken into consideration. The order of this Court may be complied with within period of two months from the date of production of certified copy of the order. The writ petition is disposed of accordingly."

4. From record of writ petition, it is evident that no notices were issued to respondent nos.5 and 6, who are private respondents including appellant, who was arrayed as respondent no.7 in writ petition.

5. Judgment of Hon'ble Single Judge clearly shows that it contains directions adverse to the interest of appellant. This order was challenged in Special Appeal No.1021 of 2010 (filed as Special Appeal (Defective) No.343 of 2010).

6. Appellant when came to know about judgment dated 19.2.2010, filed a recall application, copy whereof is on page 94 of Special Appeal No.792 of 2010 as Annexure-10 to the affidavit filed in support of Stay Application and prayer made therein, reads as under:-

"It is, therefore, Most Respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application and recall the order dated 19.2.2010 (Annexure No.01 to this Application) passed by Hon'ble Mr. Justice Shishir Kumar J. in the instant Civil Misc. Writ Petition No.7349 of 2010 (Suresh Kumar Vs. State of U.P. & others), else the applicant will suffer grave and irreparable loss and injury."

7. This application was disposed of by order dated 19.4.2010 by Single Judge and said order reads as under:-

"The final order dated 19.2.2010 passed by this Court is very clear in the fact that claim of petitioner has to be considered regarding promotion on the post of Lecturer but as respondents submit that Brij Bali Singh has been promoted on the post of Biology, his promotion has been stayed. It is provided that respondents while considering the claim of petitioner will also give an opportunity to respondents

The application for modification is disposed of accordingly."

8. Special Appeal No.792 of 2010 has been filed challenging order dated 19.4.2010.

9. In substance, basic contention of learned counsel for appellant is that appellant was already promoted. He was also a party in the writ petition. However, without issuing notice and giving opportunity to appellant, judgment has been given and writ petition has been decided by Single Judge and therefore, judgment is in utter violation of principle of natural justice. He further contended that he moved a recall application which was treated to be a modification application and therefore, even subsequent order is clearly illegal and contrary to what was pleaded by appellant in recall application.

10. Sri Pratik Chandra, learned counsel for petitioner-respondent, could not dispute, when questioned, that writ petition was decided on the very first day on 19.2.2010 without issuing any notice to private respondent nos.5 to 7. Admittedly, appellant was not given any opportunity, and therefore, judgment in question passed by Single Judge is clearly in violation of principle of natural justice.

11. Both appeals are allowed and orders dated 19.2.2010 and 19.4.2010 passed by Single Judge in Writ Petition No.7349 of 2010 and on the aforesaid recall application, are hereby set aside. Writ petition is restored to its original number and remanded to Single Judge to re-hear the matter, after giving opportunity to all concerned parties and pass fresh order in accordance with law."

5. The case of the writ petitioner is that during the pendency of the Writ Petition No. 7349 of 2010 preferred by the Sri Suresh Kumar, the writ petitioner is not being paid the Promotional Pay scale, L.T. Grade Scale Pay and increments despite the fact that the time has already lapsed making him entitled for the said payment. Learned counsel for the writ petitioner has invited the attention of the Court towards page no.17 of the paper book, which happens to be a communication of the institution in question dated 12.04.2023 to the District Inspector of Schools, Prayagraj for according consideration to the claim of the writ petitioner. According to the learned counsel for the writ petitioner, he has also represented his cause before the District Inspector of Schools, Prayagraj on 07.12.2021, a copy whereof has been annexed at page no.9 to the supplementary affidavit.

6. The solitary relief, which the writ petitioner is claiming is for consideration of his claim so espoused in the representation and for disposal of the representation preferred before the District Inspector of Schools, Prayagraj.

7. Sri Shailendra Singh, learned Standing Counsel submits that the issues which the writ petitioner seeks to raise needs determination at the first instance by the District Inspector of Schools, Prayagraj, U.P. and according to him he does not propose to file any response to the writ petition.

8. Considering the submission of the rival as well as the stand taken by them, the writ petition is being disposed of without seeking any response from the respondents granting liberty to the writ petitioner to prefer a comprehensive representation before the third respondent, District Inspector of Schools, Prayagraj, U.P., who shall on the receipt of the same along with the self attested

copy of the writ petition decide the claim of the writ petitioner strictly in accordance with law within a period of two months from the date of the production of the certified copy of the order after putting to notice the fourth respondent.

9. With the aforesaid observations, the writ petition stands ***disposed of.***

Order Date :- 17.11.2023

S Rawat