

Court No. - 35

Case :- WRIT - A No. - 13601 of 2023

Petitioner :- C/M Public Inter College And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Dinesh Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

1. Rejoinder affidavit filed today is taken on record.
2. Heard Sri D.K. Singh, learned counsel for the writ petitioner and Sri Shailendra Singh, learned Standing Counsel who appears for respondents No. 1 to 3.
3. The case of the writ petitioner is that it is a Minority Institution which is accorded certain protection under Article 30 of the Constitution of India. It is also the case of the writ petitioner that one post of Assistant Teacher L.T. Grade "Social Science" fell vacant and permission was sought from the District Inspector of Schools, Sant Kabir Nagar since no permission was accorded so an advertisement was published in two widely circulated newspapers on 05.04.2017 and the petitioner No. 2 along with others applied pursuant where to on the basis of quality point marks the petitioner No. 2 was appointed as Assistant Teacher L.T. Grade, permission was also sought which was not accorded. A Writ Petition No. 6721 of 2020 was also preferred which came to be disposed of by virtue of the order dated 01.04.2022 to decide the claim of the writ petitioner which in turn has been rejected by virtue of an order dated 24.04.2022 passed by the District Inspector of Schools, Sant Kabir Nagar, third respondent.
4. Questioning the said order, the writ petitioner has filed the said writ petition.
5. A counter affidavit has been filed on behalf of the District Inspector of Schools, Sant Kabir Nagar dated 18.11.2023 to which a rejoinder affidavit has been filed.
6. Learned counsel for the writ petitioner submits that though the order is stated to have been made longish but only one paragraph "Samiksha/Discussion" has been made and thereafter, the claim of

the writ petitioner has been negated. He submits that principally, the ground which is being sought to be taken under the caption of "discussion" is that one Sri Iftikhar Ahmad who was working in the post in question his services came to dispensed with, he has preferred writ petition before this Court and against the said vacancy the petitioner No. 2 has been selected and appointed which is per se illegal. He submits that while inviting the attention of the Court towards page 30 of the paper book which is a representation according to which Sri Iftikhar Ahmad stands to be no more and the litigation so instituted by him was not decided in his favour. He further submits that merely because two degrees are available with the petitioner No. 2 would not be a ground ipso facto to deny the claim of the writ petitioner, he seeks to rely upon a decision in the case of K. Dharamraj Vs. Chief Education Officer JT 2022 (3) Supreme Court 181 so as to buttress the said submission.

7. Sri Shailendra Singh, learned Standing Counsel, on the other hand, submits that there are various grounds which negate the claim of the writ petitioner firstly, as noticed in the order in question that the vacancy was not lying vacant as it was against a terminated employee whose litigation was pending before this Court and secondly, the writ petitioner No. 2 has obtained two degrees simultaneously which was thoroughly impermissible. He, however, while inviting the attention of the Court towards paragraphs No. 8 and 9 has further sought to contend that petitioner No. 2 was not eligible and qualified. He, however, submits that the order in question does not appear to on correct perspective as more spade work ought to have been done. He submits that let the matter be remitted back in the light of the writ petitioner and the pleadings set forth and let a fresh decision be taken.

8. Having considered the submission of the rival parties as well as the stand taken by them, the writ petition stands decided in the following manner: (a) the order dated 24.04.2022 passed by the third respondent, District Inspector of Schools, Sant Kabir Nagar is set aside; (b) the matter stands remitted back to the District Inspector of Schools, Sant Kabir Nagar to pass a fresh order after putting to notice the writ petitioner bearing in mind the total sanctioned strength, number of vacancies, the issue with regard to the claim set up by the writ petitioners with regard to the appointment and the continuance of Sri Iftikhar Ahmad, the eligibility of the writ petitioner No. 2 and aspects of the matter that too strictly in accordance with law laid down in the case of Manoj

Kumar Jain, Writ A No. 13182 of 2019 decided on 09.05.2022.
The said exercise shall be completed within a period of three months from the date of production of certified copy of the order.

Order Date :- 4.12.2023

Rajesh