

Court No. - 35

Case :- WRIT - A No. - 13539 of 2023

Petitioner :- Charan Singh

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C., A.K.S. Parihar, Amresh Tripathi, P.K. Upadhyay, Vinod Kumar Singh

Hon'ble Vikas Budhwar, J.

Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Parashar Pandey, learned counsel for the writ petitioner, Sri H.K. Shukla, the learned Standing Counsel, who appears for Respondents 1, 2, 4 and 5, Sri A.K.S. Parihar for the third respondent, Sri Vinod Kumar Singh for Respondent No.6 and Sri P.K. Upadhyay for Respondent No.7.

Since counter and rejoinder affidavits have been exchanged between the parties and they do not propose to file any further affidavits, thus the writ petition with the consent of the parties is being decided at the fresh stage.

The case of the writ petitioner is that the third respondent, U.P. Secondary Education Service Selection Board got published an Advertisement no.1 of 2021 for various posts including the post of Assistant Teacher LT Grade. The writ petitioner claims to have applied in pursuance of the said advertisement and thereafter on 15.11.2021, consequent to his selection, the District Inspector of Schools, Deoria, the fifth respondent proceeded to accord placement to the writ petitioner in the sixth respondent Institution. It is also the case of the writ petitioner that he appeared before the sixth respondent, Committee of Management of the Institution in question on 25.11.2021. Thereafter, a photograph session was also organized in order to identify the candidates, who had appeared and had been accorded placement in the Institution in question on 25.11.2021 and while inviting attention towards Annexure-CA2 at page- 16 of the counter affidavit filed on behalf of the sixth respondent on 08.10.2023, the writ petitioner claims that his presence finds place in the photograph session itself. According to the writ petitioner, he insisted for issuance of the appointment order, however, appointment order was not issued to the writ petitioner, probably for the reason that some illegal gratification was demanded and in this regard learned counsel for the writ petitioner seeks to rely upon the averments contained in paragraph-11 of the writ petition. It is also the case of the writ petitioner that

by virtue of the order dated 17.10.2022 now in place of the writ petitioner placement has been accorded to the seventh respondent in the Institution in question by the District Inspector of Schools, Deoria, fifth respondent.

Questioning the said actions, the writ petitioner preferred writ petition before this Court for a direction commanding the respondents to accord joining to the writ petitioner pursuant to issuance of the appointment order in the Institution in question. Thereafter, an amendment application was also filed, which came to be allowed questioning the order dated 17.10.2022 passed by the District Inspector of Schools, Deoria, fifth respondent. The writ petition was entertained by this Court on 17.08.2023 while issuing notices to the respondent and seeking respondent and seeking response. The order whereof is quoted hereinunder:-

"The contention of Sri Ashok Khare, learned Senior Counsel for the writ petitioner is that the writ petitioner is a selected candidate. He was accorded placement in the sixth respondent institution, but due to family compulsions, he could not join coupled with the fact that the respondent no.6, institution did not allowed joining. He further submits that now by virtue of an appointment order dated 22.04.2022, which is approximately more than one year from the issuance of appointment order, now joining has been sought to be shown to be given to the writ petitioner, which is an undated letter, which was not served upon the writ petitioner and due to non joining of the writ petitioner, the seventh respondent, who happens to be a wait listed candidate is being accorded joining in place of the writ petitioner.

Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel appears for respondent nos.1, 2, 4 and 5.

Sri A.K.S Parihar, learned counsel appears for respondent no.3.

Issue notice to respondent nos. 6 and 7.

Steps to be taken by both ways by 23.08.2023.

Let a counter affidavit be filed by 12.09.2023.

Rejoinder affidavit, if any, may be filed by 15.09.2023.

Affidavit of service be filed before the next date fixed.

Put up this case on 18.09.2023, as fresh."

Pursuant to the issuance of the notice, parties have put in appearance and have filed counter affidavits.

Sri Ashok Khare, learned Senior Counsel submits that the entire

exercise so sought to be undertaken while passing of the order dated 17.10.2022 by the District Inspector of Schools, Deoria, fifth respondent is in violation of the principles of natural justice. As the writ petitioner at no point of time was called upon to submit his version and merely on the basis of the version of the Committee of Management his claim has been negated. He submits that once a right has crystalized in favour of the writ petitioner, then at least propriety demanded that he ought to have been put to notice so as to enable him to put forward his stand as once the writ petitioner according to the case of Committee of Management was present on 25.11.2021 during the course of photo-session then there was no reason or occasion for the writ petitioner not to have joined.

Sri Vinod Kumar Singh, who appears for the sixth respondent, Committee of Management submits that the writ petitioner has deliberately not joined the Institution in question despite the fact that on twice occasions, i.e. on 23.11.2021 and 22.04.2022, he was issued appointment order, which was served upon the writ petitioner by hand and also by registered post. He further submits that the petitioner probably for the reason being that he is employed as Technical Assistant in Sub-ordinate Agricultural Service since the year 2016 did not want to join the Institution in question and after change of mind he has come before this Court for joining. He submits that nothing has been brought on record to substantiate the fact that the writ petitioner has exercised his legal right at the appropriate time while instituting appropriate proceedings. He lastly submits that already the seventh respondent has joined the post in question and he is working and getting his salary.

Sri Pankaj Kumar Upadhyay, who appears for the seventh respondent has adopted the argument of learned counsel for the sixth respondent. He submits that he has nothing to add and according to him, the writ petitioner is not entitled to get any relief.

Sri H.K. Shukla, learned Standing Counsel, has also supported the order impugned and he submits that the order in question cannot be said to be illegal or suffering from any legal infirmity.

I have heard learned counsel for the parties and perused the records.

It is not in dispute that the writ petitioner was accorded placement on 15.11.2021 by virtue of the order of the fifth respondent, District Inspector of Schools, Deoria in the sixth respondent

Institution. The bone of contention between the parties is as to whether the appointment orders dated 23.11.2021 and 22.04.2022 were served upon the petitioner or not. Though on one hand, the writ petitioner claims that he was present on 25.11.2021 in the photo-session and according to him, as per the photographs appended with the counter affidavit of the Committee of Management, his presence stands confirmed, thus there was no reason for him not to join institution in that regard. The Court finds that though allegation has been made by the Committee of Management that the appointment order was served upon the writ petitioner by hand and by registered post, but the Court finds from the Counter Affidavit filed by the respondents that the registered receipt is not there.

Since factual dispute stands arisen ,which cannot be adjudicated in exercise of the jurisdiction under Article 226 of the Constitution of India, thus the matter needs to be decided at the level of the educational authorities.

At this juncture, Sri H.K. Shukla, learned Standing Counsel submits that let the parties approach the second respondent, Director of Education (Secondary), U.P., Lucknow, who shall address to the claim of the writ petitioner.

Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed off granting liberty to the writ petitioner to approach the second respondent, along with a comprehensive representation accompanied with self-attested copy of the writ petition, who shall, on the receipt of the same, put to notice the sixth and seventh respondents and thereafter proceed to consider the claim of the writ petitioner within a period of two months from the date of production of certified copy of the order.

The orders which have been subject matter of challenge before this Court shall abide by the final orders passed by the authorities and the continuance of the seventh respondent shall not be disturbed till the passing of fresh orders.

At this stage, Sri Khare, learned Senior Counsel submits that the second respondent may be directed to consider the issue regarding adjustment of the writ petitioner in any other Institution. Since, neither there is any relief nor any pleading in this regard, thus this Court is not in a position to accede to the request of the writ petitioner. It goes without saying that it is always open for the writ petitioner to approach the competent authority raising his

grievance.

With the aforesaid observations the writ petition stands **disposed off**.

Order Date :- 13.12.2023 /N.S.Rathour