

Court No. - 35

Case :- WRIT - A No. - 13637 of 2023

Petitioner :- Pawan Kumar

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

Counsel for Petitioner :- Arvind Srivastava Iii

Counsel for Respondent :- C.S.C., Onkar Nath
Vishwakarma, Praveen Kumar

Hon'ble Vikas Budhwar, J.

1. Heard Sri Arvind Srivastava-III, learned counsel for the writ petitioner, Sri Saurabh, learned Standing Counsel who appears for respondents No. 1 to 3 and Sri Praveen Kumar, learned counsel who appears for respondent No. 5.

2. Since the appointing authority of the class IV employees is the Principal who is represented through his counsel, thus, in the peculiar facts and circumstances of the case and in view of the order which is being proposed to be passed today, notice is not being issued to the fourth respondent.

The case of the writ petitioner is that his father namely, Kashmeer Singh was serving as Assistant Teacher in Chaudhary Jawahar Singh Inter College, Sutiyan, Etawah, however, he died-in-harness, the writ petitioner claims compassionate appointment which was processed and the Committee so constituted under the Regulations proceeded to pass an order dated 01.06.2002 granting appointment and financial approval to the appointment of the writ petitioner as a class IV employee in Chaudhary Jawahar Singh Inter College, Sutiyan, Etawah. According to the writ petitioner, when he proceeded to the said institution for being accorded joining he was prevented from joining the post in question so he preferred an application/letter dated 08.10.2003 before the third respondent, District Inspector of Schools, Etawah requesting therein that he may be accorded joining in any other institution. Accordingly, on 03.11.2003 the District Inspector of Schools Etawah, third respondent proceeded to pass an order whereby the writ petitioner was directed to be accorded placement in the fourth respondent institution, Janta Vidyalaya Inter College, Bakewar, Etawah. As per the writ petitioner, he joined the post in question on 18.08.2004. However, according to the writ petitioner, on 12.12.2004 the third respondent, District Inspector of Schools,

Etawah has proceeded to pass an order whereby relying upon a communication dated 27.07.2004 the writ petitioner has been directed to join in an institution by the name of being Jawahar Singh Inter College, Chakar Nagar, Etawah.

3. Questioning the order dated 12.12.2022 passed by the third respondent, District Inspector of Schools, Etawah the writ petitioner has preferred the present writ petition.

4. This Court entertained the writ petition on 25.08.2023 while passing the following orders.-

"The argument of learned counsel for the petitioner is that the order dated 12.12.2022 passed by the District Inspector of Schools, Etawah is in excess of the authority particularly in view of the fact that under Chapter-III Regulation 110 of U.P. Intermediate Education Act, 1921 the power vests with the Regional Joint Director of Education. He further submits that the writ petitioner consequent to the death of his father was accorded compassionate appointment in the year 2002 in the institution whereat the father of the writ petitioner was employed Chaudhary Jawahar Singh Inter College, Sutiya, Etawah. He next submits that since he was not accorded joining in the said post thus an order was passed on 3.11.2003 whereby the writ petitioner was allowed to join in the fourth respondent institution however by virtue of the order in question subject matter of challenge the writ petitioner is being sought to be transferred to a different institution namely Jawahar Singh Inter College, Chakar Nagar, Etawah. He further submits that besides the fact that the order in question is without authority the writ petitioner could not have been transferred particularly after such a long lapse of period on the pretext that the engagement of the writ petitioner was on supernumerary post.

Sri Gaya Prasad Singh, learned Standing Counsel who appears for the respondents no. 1, 2 and 3 prays time to seek instructions in the matter.

Put up this case on 6th September, 2023 as fresh."

5. A counter affidavit has been filed by the learned Standing Counsel on behalf of respondents No. 1 to 3 sworn by Associate District Inspector of Schools, Etawah to which a rejoinder affidavit has been filed, a counter has been filed on behalf of fifth respondent, Principal Janta Vidyalaya Inter College, Bakewar, Etawah to which a rejoinder affidavit has also been filed. Since the appointing authority of the class IV employees is the Principal, thus, according to Sri Pradeep Kumar, learned counsel, the counter affidavit of the Committee of Management is not required.

6. Sri Arvind Srivastava-III, learned counsel for the writ petitioner while assailing the order dated 12.12.2022 passed by the District Inspector of Schools, Etawah has submitted that the said order cannot be sustained for a single moment particularly in view of the

fact that though earlier the writ petitioner was appointed on compassionate ground as a class IV employee in Chaudhary Jawahar Singh Inter College, Sutiyan, Etawah by virtue of the recommendations of the Committee of Management constituted under the Regulations on 01.06.2002 and order was issued on 03.11.2003 and in the wake of the fact that the said institution did not accord joining to the writ petitioner, thus, the writ petitioner was allowed to join in the fourth respondent-institution, while ceasing the one post from the institution, Chaudhary Jawahar Singh Inter College, Sutiyan, Etawah and thereafter permitting the writ petitioner to join in the fourth respondent-institution while allocating the post for him and once the writ petitioner without there being fault of his was allowed to join in the fourth respondent institution then he could not have been transferred to the institution being Jawahar Singh Inter College, Chakar Nagar, Etawah particularly when the provisions contained under Regulation 110 of Chapter III of the U.P. Intermediate Education Act, 1921 would come into play. He submits that once the writ petitioner had not asked for any transfer from the fourth respondent institution to any other institution then the said exercise is totally unwarranted and illegal he further submits that now it is apparent that though the writ petitioner is being sought to be transferred to the institution, Jawahar Singh Inter College, Chakar Nagar, Etawah on the pretext that now a subsequent post is vacant wherein the writ petitioner can be accommodated but the real purpose behind the same is apparent from paragraph No. 6 of the counter affidavit filed by the Associate District Inspector of Schools, Etawah whereby a ground has been taken that the writ petitioner's conduct was not proper in the institution in question and he was liable to be transferred. he further submits that in the counter affidavit filed by the fifth respondent also it has come on record that there happens to be some audit objection also which entailed passing of the said order. He further submits that the order in question cannot also be sustained and now he would be placed junior to the others in the institution where at he has been posted in view of the provisions contained under the regulations.

7. Countering the said submission, Sri Saurabh, learned Standing Counsel who appears for respondents No. 1 to 3 submits that the writ petitioner is not entitled to any relief particularly in view of the fact that the father of the writ petitioner was working as Assistant Teacher in Chaudhary Jawahar Singh Inter College, Sutiyan, Etawah and he was appointed on compassionate ground as a class IV employee in the said institution, however, since he was not accorded joining, thus, the writ petitioners on a temporary

basis was transferred to the fourth respondent institution on the post which was ceased. He further submits that there happens to be a recital of an order dated 27.07.2004 in the impugned order dated 12.12.2022 of the District Inspector of Schools, Etawah wherein it has been specifically recorded that the post was ceased in the institution where the writ petitioner was to be accorded joining and he was being sent to another post which was temporarily created so as to adjust him. He submits that in view of the proviso to Regulation 106 of Chapter III of the U.P. Intermediate Education Act, 1921 since a regular substantive post is lying vacant in the institution namely, Jawahar Singh Inter College, Chakar Nagar, Etawah where the writ petitioner is being allowed to join there. He submits that the question of lapsing of 18 years has got nothing to do as according to him the said exercise undertaken in the year 2004 was under special circumstances so as to confer benefit of compassionate appointment to the dependent of the deceased so as to tied away with the destitution. He submits, as a matter of fact, no prejudice whatsoever has been caused, he further submits that the said arrangement is only on the basis of the provisions contained in the regulation and according to the instructions received by him it may not be treated to be punitive in nature.

8. Sri Praveen Kumar, learned counsel who appears for the fifth respondent adopts the submission of the learned Standing Counsel, however, he submits that owing to certain audit objections that the payment of salary was being made to the writ petitioner despite there being ceasing of the post in question no post in this institution the writ petitioner is not entitled to the relief rightly he has been transferred to the institution Jawahar Singh Inter College, Chakar Nagar, Etawah.

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

10. Facts in question are not in dispute that the only bone of contention is as to whether the writ petitioner is to be transferred from the fourth respondent institution to the Jawahar Singh Inter College, Chakar Nagar, Etawah. Though the writ petitioner seeks to rely upon Regulation 101 of Chapter III of the U.P. Intermediate Education Act, 1921, so far as the initiation of transfer has been taken by the learned counsel for the writ petitioner, according to learned Standing Counsel as well as Sri Praveen Kumar.

11. The case of the writ petitioner is falls within the proviso to Regulation 106 of Chapter III of the U.P. Intermediate Education Act, 1921. Notably, the writ petitioner was not accorded joining in

the institution being Chaudhary Jawahar Singh Inter College, Sutiyaani, Etawa so he in exceptional and special circumstances was accorded joining in the fourth respondent institution. It is apparent from the communication dated 27.07.2004 of the District Inspector of Schools, Etawah that the post in the institution being Chaudhary Jawahar Singh Inter College, Sutiyaani, Etawa was freezed/ceased and the writ petitioner was accorded placement. However, now since in view of the provisions contained under proviso to Regulation 106 of the U.P. Intermediate Education Act, 1921 a substantive post lying vacant in the institution being Jawahar Singh Inter College, Chakar Nagar, Etawah so the writ petitioner has been accorded placement and as per the averments contained in paragraph 12 the writ petitioner has joined on 16.12.2002. The entire exercise has been taken due to exceptional circumstances. Thus, placement of the writ petitioner in the said institution cannot be faulted with. Now, a question arises with regard to the benefit of seniority taking into consideration his earlier services. It is also the contention of the writ petitioner that from there are other post also lying vacant wherein he can be adjusted. He submits that his second relief is for redressal of his grievances is espoused in the representation dated 12.01.2023 which is Annexure 4 at page 22 of the paper book reference whereof has been given in para 13 of the writ petition. He submits that let respondent No. 2 decide the said issues.

12. To such a submission, neither the learned Standing Counsel nor Sri Praveen Kumar has any objection.

13. Hence the interference to the order dated 12.12.2022 of the third respondent, District Inspector of Schools, Etawah is declined so far as the other issues relating to grant of seniority and other aspects are concerned and adjustment against any other vacancy which according to the writ petitioner is lying vacant, it is open for the writ petitioner to approach the District Inspector of Schools, Etawah who shall address the claim of the writ petitioner after hearing the affected parties in that regard.

14. With the aforesaid observation, the writ petition stands disposed of.

15. Needless to point out that passing of this order may not be construed to be an expression that this Court has gone into the merits of the matter.

Order Date :- 9.11.2023

Rajesh