

**Court No. - 35**

**Case :-** WRIT - A No. - 13955 of 2023

**Petitioner :-** C/M Mahgaon Inter College And Another

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

**Counsel for Petitioner :-** Bhawesh Pratap Singh

**Counsel for Respondent :-** C.S.C.

**Hon'ble Vikas Budhwar,J.**

Heard Sri Bhawesh Pratap Singh, learned counsel for the writ petitioner and Sri Shailendra Singh, learned Standing Counsel, who appears for Respondents 1, 2 and 3.

Since counter and rejoinder affidavits have been exchanged between the parties.

Thus with the consent of the learned counsel for the parties, the writ petition is being decided at the fresh stage.

The case of the writ petitioners is that it is a minority institution conferred with certain protections under Article 30 of the Constitution of India. According to the writ petitioners, one Shri Jalaluddin, Assistant Clerk was granted promotion on the post of head clerk, approval whereof was accorded on 18.10.2016, resulting to a substantive vacancy on the post of assistant clerk. One post of assistant clerk according to the writ petitioners is being manned by Shri Salman Ahmad under direct recruitment quota. It is being further sought to be contended that on behalf of the learned counsel for the writ petitioners that there are actually three sanctioned posts in clerical cadre, one head clerk and two assistant clerks. According to the writ petitioners, none of the incumbents who are working as a class-IV employee had showed their willingness to be promoted in the clerical cadre. Accordingly,

a resolution is stated to have been passed on 16.03.2017 for filling up the post by direct recruitment mode. Permission has been sought when it was not granted then reminders were also sent. Thereafter on 26.07.2017, an order is stated to have been passed by the District Inspector of Schools, Kaushambi, third respondent according permission for filling up the post through direct recruitment. Pursuant to the same, advertisement was published in daily newspaper Hindustan (Hindi edition), Hindustan times (English edition) on 19.08.2017. The writ petitioner No. 2 in the present writ petition applied for the post of assistant clerk being qualified possessing MA in History and Political Science and has also obtained CCC certificate in computer. The selection committee conducted the selections on 25.09.2017 in which the writ petitioner No. 2 was placed at Serial No. 1 followed by others. Papers were sent on 03.10.2017 before the third respondent, District Inspector of Schools, Kaushambi. However, the District Inspector of Schools by virtue of the order dated 07.10.2017 proceeded to cancel the selection proceedings on the ground that prior permission was not accorded.

The said orders was subject matter of challenge in Writ A No. 6815 of 2018 which came to be disposed of on 20.12.2022, while passing the following orders:

*"Heard learned counsel for petitioners and learned Standing Counsel for the State-respondents.*

*The present writ petition has been filed with the following prayer:*

*"(i) issue a writ, order or direction, in the nature of certiorari quashing the impugned order dated 7.10.2017 passed by the District Inspector of Schools, District Kaushambi (Annexure No.6 to the writ petition).*

*(ii) issue a writ, order or direction, in the nature of mandamus directing the District Inspector of Schools, District Kaushambi to forthwith transmit the papers to the Director (Secondary) Education, U.P. at Allahabad with further direction to the Director (Secondary) Education to pass appropriate order in regard to the selection and appointment on the post of Assistant clerk in Mahgaon Inter College, Mahgaon, Kaushambi within a period to be specified by this Court."*

*It is submitted by learned counsel for petitioner that petitioner is a Committee of Management of the minority institution, which is recognized under the Uttar Pradesh Intermediate Education Act, 1921. It is submitted that post of Class III Clerk was vacant and as such, petitioner sought permission of District Inspector of Schools to fill up the aforesaid post and permission was granted by the District Inspector of Schools by letter dated 26.7.2017. However subsequently by impugned order dated 7.10.2017, the aforesaid permission has been withdrawn on the ground that provision of Regulation 101, Chapter III of the Regulation framed under U.P. Intermediate Education Act, 1921 has not been complied with and the permission of Director of Education (Secondary) has not been sought.*

*Learned counsel for petitioner submits that petitioner had applied before the District Inspector of Schools for grant of permission and it was for District Inspector of Schools to have forward the papers of petitioner to the Director of Education (Secondary) as the petitioner, could not have directly applied before the Director of Education (Secondary). In case, District Inspector of Schools withdrew the permission accorded by letter dated 26.7.2017, he was required to forward the application of petitioner for grant of permission for recruitment on the Class III post in the institution to the Director of Education (Secondary) in terms of Regulation 101, Chapter III of U.P. Intermediate Education Act, 1921, but in the present case, no such exercise has been undertaken by the respondent.*

*Learned counsel for petitioner does not dispute the fact that District Inspector of Schools had no power to grant permission and as such, to that extent order dated 7.10.2017 is not objectionable. However, he submits that once District Inspector of Schools come to the conclusion that permission should be*

*granted by the Director of Education (Secondary) then he should have forwarded the papers to the Director of Education (Secondary) in terms of Regulation 101, Chapter III of U.P. Intermediate Education Act, 1921.*

*Learned Standing Counsel does not dispute the fact that application of petitioner for recruitment is required to be sent to the Director of Education (Secondary) in view of the fact that petitioner is minority institution. He submits that papers with regard to permission for recruitment on Class III post in the institution of petitioner shall be forwarded by the District Inspector of Schools to Director of Education (Secondary) in terms of Regulation 101, Chapter III of U.P. Intermediate Education Act, 1921.*

*Considering the facts and circumstances of the case, this writ petition is disposed of with a direction to District Inspector of Schools to forward the papers with regard to recruitment on Class III post in the petitioner's institution as submitted by petitioner to the District Inspector of Schools in terms of Regulation 101, Chapter III of Regulation framed under the U.P. Intermediate Education Act, 1921.*

*The aforesaid exercise, shall be completed within a period of one month from the date of production of a certified copy of this order. In case, the aforesaid papers are forwarded by the District Inspector of Schools to the Director of Education (Secondary), the Director of Education (Secondary) shall accord consideration, in accordance with law, within a period of three months thereafter."*

Thereafter now the impugned order has been passed on 27.06.2023 by the second respondent, Director of Education (Secondary) Directorate U.P., Lucknow negating the claim of the writ petitioners.

Questioning the said order, the writ petitioners have filed the present writ petition.

A counter affidavit has been filed on behalf of respondent Nos. 1, 2 and 3 by District Inspector of Schools, Kaushambi dated

10.10.2023 to which a rejoinder affidavit has been filed.

Shri Bhawesh Pratap Singh, learned counsel for the writ petitioners while assailing the said order has submitted that the order dated 27.06.2023 of the second respondent cannot be sustained even for a single movement, particularly, in view of fact that though there happens to be three sanctioned posts in clerical cadre, two of assistant clerks and one head clerk and the post of head clerk is being manned by a promote as whereas assistant clerk is being manned by direct recruitment but in absence of any person either eligible or willing to be promoted on the post of assistant clerk, the writ petitioners, committee of management approached the District Inspector of Schools for according permission which was granted on 26.07.2017, however, the same was illegally cancelled post selections on 07.10.2017. He submits that post remand, now the second respondent has again committed the same error whereby taking reliance upon the provisions contained under Chapter III Regulation II of the U.P. Intermediate Education Act, the selections have been disapproved. While inviting attention towards paragraph 7 of the writ petition submits that once there is no eligible or even otherwise a willing candidate to be promoted as assistant clerk from the Class-IV posts then the said vacancy cannot be drained out in the manner in which it is being sought to be done by the respondents. As according to him, the facts and circumstances warranted granting of approval in this regard.

Shri Shailendra Singh, learned Standing Counsel has supported the order and according to him, the provisions of Chapter III Regulation II of the U.P. Intermediate Education Act, 1921 would not come to the rescue of the writ petitioners as the quota is being

sought to be trenched which is the legislative intent. He, however submits that though in para 7 of the writ petition has been replied in paragraph No. 18 of the writ petition, wherein the following has been mentioned "That the contents of 7 and 8 of the writ petition, needs no comments being matter of record". He, however, submits that be as it may be, since the said aspect of the matter, needs reconsideration by the second respondent, particularly, in view of the facts and circumstances of the case, coupled with the issue regarding the status of the petitioner's institution being the minority institution, thus, according to him, the orders be set aside, matters be remitted back to the second respondent to pass an order in that regard.

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

Though there happens to be a provision contained under Chapter III, Regulation II of the U.P. Intermediate Education Act, 1921 providing 50% of the post is to be filled up by promotion and 50% by direct recruitment, however, in the facts and circumstances of the case, particularly, when there is no effective reply is forthcoming in the counter affidavit regarding the ascertainment as to whether there is any Class-IV employee already qualified or willing to be allowed to be promoted, thus, and also looking into the judgment in the case of Manoj Kumar Jain Vs. State of U.P. and 4 others in Writ A No. 13182 of 2019 decided on 09.05.2022, the order dated 27.06.2023 passed by the Director of Education (Secondary) Directorate, Lucknow U.P. is set aside. The matter stands remitted back to the second respondent to pass fresh order after verifying the said aspect of the matter as well as the ancillary and incidental issue after putting to notice the writ petitioners. The

said exercise is to be undertaken within a period of three months a  
from the date of presentation of the certified copy of the order.

With the aforesaid observation, the writ petition is **disposed off**.

**Order Date :- 21.11.2023**

A. Prajapati