

Court No. - 35

Case :- WRIT - A No. - 14167 of 2023

Petitioner :- Vinay Kumar Maurya

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Babu Lal Ram

Counsel for Respondent :- C.S.C., Manish Pandey, Radhey Krishna Pandey

Hon'ble Vikas Budhwar, J.

1. On the oral request of learned counsel for the writ petitioner, he is permitted to implead Director of Education (Secondary), U.P. Lucknow as 10th respondent.

2. Heard Sri Indra Raj Singh along with Sri Babu Lal Ram, learned counsel for the writ petitioner, Sri Shailendra Singh, the learned Standing Counsel, who appears for Respondent Nos. 1 to 6 & 10, Sri Radhey Krishna Pandey, who appears for the eighth respondent and Sri Manish Pandey, who appears for the ninth respondent. Though while entertaining the writ petition on 22.09.2023, notices were issued on Respondent Nos. 7 to 9, however, there is an office report dated 18.10.2023 that the notice upon 7th respondent is not served, as the 7th respondent was not traceable. However, in view of the order, which is being proposed to be passed, interest of 7th respondent is being protected.

3. Since affidavits have been exchanged between the parties and parties have consented that the writ petition be decided on the basis of the documents available on record, thus with their consent, the writ petition is being decided at the fresh stage.

4. The case of the writ petitioner is that there happens to be an institution, namely Bhagat Kunwar Ram, Uchcharat Madhyamik School, Gudadi Mansoor Khan, Agra, whereat the writ petitioner claimed to be appointed as a Trained Graduate Teacher (Physical Education), Class-1 on 16.11.2021. He further claims to have been accorded joining in the said Institution on 02.12.2021. As per the writ petitioner, the 8th respondent-Institution, Janhit Inter College, Molanapur, Jaunpur was occasioned with a situation, whereby one post of Trained Graduate Teacher (Physical Education) stood vacant. While relying upon a certificate dated 11.07.2022 under the signatures of the Manager of the 8th respondent-Institution, it has been sought to be demonstrated that one Sri Ram Yadav superannuated on 30.06.2010 creating a vacancy in this regard and a No Objection was also being sought to be issued with respect to

filling of the post by mode of transfer followed by another No Objection that there is no dispute with respect to the said vacancies in 8th respondent. It is the further case of the writ petitioner that on 27.11.2022, the 8th respondent, Committee of Management of Janhit Inter College, Molanapur, Jaunpur proceeded to issue No Objection Certificate in favour of the petitioner pursuant to the resolution of the Committee of Management dated 27.11.2022. The writ petitioner further relies upon the resolution of the 7th respondent, Committee of Management Bhagat Kunwar Ram, Uchcharat Madhyamik School, Gudadi Mansoor Khan, Agra, whereby No Objection was issued in favour of the writ petitioner for being transferred to the 8th respondent-Institution from 7th respondent-Institution on 01.04.2023. As per the writ petitioner, on 12.04.2023, the Joint Director of Education, Varanasi Region, Varanasi issued a communication to the District Inspector of Schools, Jaunpur forwarding the papers as per the format completing the formalities in that regard. In paragraph-10 of the writ petition, it is further asserted that the District Inspector of Schools, Agra, fifth respondent, also issued a communication dated 26.04.2023 to the 8th respondent-Institution in that regard. It is the further case of the writ petitioner as encapsulated in paragraph-12 of the writ petitioner that the father of the writ petitioner gathered knowledge that transfer proceedings were being initiated for transfer of one Sri Shiv Sahay Yadav, Assistant Teacher (Physical Education), 9th respondent, who was working in Khem Karan Inter College, Laharpur, Sitapur for being accorded transfer in 8th respondent Institution. Faced with the circumstances, a representation is stated to have been submitted on 18.05.2023, on which explanation was also sought.

5. It is the further case of the writ petitioner that on 30.06.2023, the 9th respondent has been transferred to the 8th respondent-Institution, against which the writ petitioner preferred the present writ petition questioning the order dated 30.06.2023 in so far as it seeks to transfer the 9th respondent to the 8th respondent-Institution, as well as the proposal dated 02.06.2023 and 03.06.2023 of the Committee of Management of the Institution in question.

6. This Court entertained the writ petition on 25.08.2023 and thereafter instructions were provided to the Court on 13.09.2023 and on 22.09.2023, an order has been passed by this Court.

7. Post-entertaining of the writ petition, a counter affidavit has been filed on behalf of Respondent Nos. 1, 2, 4 and 6 by the

District Inspector of Schools, District Jaunpur sworn on 11.10.2023 to which, rejoinder affidavit has been filed and respective counter affidavits have been filed by Respondent Nos. 8 and 9, to which response has been filed. Since the counsel for the parties have made a joint statement that they do not propose to file any further response, thus the writ petition is being decided at the fresh stage.

8. Learned counsel for the writ petitioner while assailing the transfer order dated 30.06.2023 passed by the Addl. Director of Education (Secondary), U.P., Prayagraj, second respondent, has sought to argue that the said transfer order cannot be sustained, even for a single moment, particularly in view of the fact that in the present case in hand as per the counter affidavit filed by 9th respondent, it has come on record as recapitulated in paragraph-5 that the 9th respondent had submitted an application as per the procedure for transfer on 15.04.2019 and an NOC was also issued pursuant to the resolution of the Committee of Management in the year 2019 and subsequently, the said application was forwarded in the year 2022, on 15.12.2022, thus the same could not have been acted upon, particularly in view of the fact that Chapter III, Regulation 55-51 of the U.P. Intermediate Education Act, 1921 underwent amendment on 14.06.2019 changing the modalities for transfer. He submits that the application, which was submitted on 15.04.2019 by the respondent no.9 was within time as per Regulation-55, which was existing on 16.05.2018 specifying the date 15th April to 10th May, but the same could not have been acted upon in the year 2023, particularly in view of the amendments made in the said Regulation on 14.06.2019, whereby Regulation 55 stood amended to the extent that the time of submission of the application was fixed from 1st February to 15th February. The submission is that in the present in hand, there happens to be two no objections, one in favour of the writ petitioner and the other in favour of the 9th respondent by the 8th respondent, Committee of Management and thus, the resolution which has been passed by the 8th respondent-institution dated 27.11.2012 in favour of the writ petitioner should have been given a preferential value, vis-a-vis, the application submitted by the 9th respondent in the year 2019, which has been sought to be processed. He further submits that there exists a Government Order issued by the State Government in exercise of power as conferred therein dated 19.06.2023, whereby it has been provided that no pick and choose policy be adhered to and the transfer be effectuated as per the Regulation.

9. Sri Manish Pandey, who appears for the 9th respondent on the other hand submits that the writ petition is not liable to be entertained, particularly for the reason that the 9th respondent had applied on 15.04.2019 as per the Regulations, which were prevalent pursuant to the Notification dated 15.05.2018, for transfer to 8th respondent institution within time stipulated therein, i.e., 15th April to 10th May, however, in the ensuing period, the pandemic relating to COVID-19 came into existence, which jeopardized the proceedings for transfer, which were to be concluded within the time stipulated therein and according to him, the matter even travelled before this Court in Writ-A No.9194 of 2021, Rakesh Kumar Vs. State of U.P. and others, wherein certain orders were passed. He submits that for the fault of the educational authorities and act of the God, the 9th respondent cannot be held to be at fault particularly, when all the formalities were completed within the time specified therein. It is the further submission of Sri Pandey, who appears for the 9th respondent that the writ petitioner cannot resist the transfer of the writ petitioner, particularly, when the 9th respondent has taken all the steps, which he was supposed to take and further the writ petitioner can resist the transfer, but that too is not an unfettered right, but it is subject to Regulation framed therein. Sri Manish Pandey further submits that the 9th respondent has already joined the post in question and he is getting the salary in that regard.

10. The submission of Sri Pandey had been adopted by Sri Radha Krishna Pandey, who appears for the 8th respondent. He submits that he has nothing to add, but he only states that the action of the respondents cannot be faulted with and the No Objection Certificate issued in favour of the writ petitioner has been cancelled and the same was issued due to inadvertent error as already an NOC has been issued in favour of the 9th respondent in that regard.

11. Sri Shailendra Singh, learned Standing Counsel submits that the writ petitioner is not entitled to relief for the simple reason that due to unforeseen circumstances, coupled with the Pandemic relating to COVID-19, the application of the 9th respondent could not be processed and rightly it has been processed in the year 2023, as it is not a case wherein there was fault of the 9th respondent or the educational authorities, as the issues came to be delayed on account of certain acts, which were beyond the control of the State Government.

12. I have heard learned counsel for the rival parties perused the record carefully.

13. Undisputedly, the post of the Principal in the 8th respondent-Institution fell vacant on 30.06.2010 consequent to the retirement of one Sri Ram Yadav. The writ petitioner claims to be possessing a no objection certificate backed by a resolution of the Committee of Management of Janhit Inter College, Maulanapur, Jaunpur, 8th respondent and of Bhagat Kumar Ram, Uchchatar Madhyamik School, Gudadi Mansoor Khan, Agra. On the other hand, the 9th respondent also claims to have applied for transfer after seeking no objection certificate on 15.04.2019. It has come on record that on 30.06.2023 pursuant to the order of the Addl. Director of Education (Madhyamik) Uttar Pradesh, second respondent, now, the 9th respondent has been transferred to the 8th respondent Institution. It is not disputed by the parties that the 9th respondent has joined the post of the Principal in the 8th respondent-Institution.

14. The bone of contention between the parties is whether the application so preferred by the 9th respondent for being transferred to 8th respondent Institution on 15.04.2019 could have been pressed into service in the year 2023 or not and if the same was permissible in view of the amendments made in the Regulation 55-61 of the Chapter-III of the U.P. Intermediate Education Act, 1921 amending the erstwhile notification dated 16.05.2018 on 14.06.2019. Though, it is the stand of the respondent that due to Pandemic relating to COVID-19, the said exercise could not be undertaken at the earlier point of time, but the pending applications were taken into consideration for transferring the eligible teachers/ Head of the Institution, which were made the basis of the order dated 30.06.2023. Though recitals have been made about the said facts in the counter affidavit filed by the 9th respondent, but the counter affidavit filed by the Respondent Nos. 1 to 6, official State respondents do not deal with the said issues and they are completely silent.

15. At this juncture, Sri Shailendra Singh, learned Standing Counsel who appears for the Respondent Nos. 1 to 6 Official State Respondents has made a statement at Bar that the writ petitioner may raise his grievance before the Director of Education (Secondary) U.P., 10th respondent while making a comprehensive representation/ application and the 10th respondent, Director of Education (Secondary) U.P. shall address to the said issue.

16. To such a submission, Sri Indra Raj Singh along with Sri Babu Lal Ram, who appears for the writ petitioner as well as Sri Manish Pandey who appears for the ninth respondent as well as Sri Radha Krishna Pandey, who appears for the respondent no.8 has no

objection.

17. Since the parties before this Court have jointly agreed that the matter needs to be decided by the 10th Respondent, Director of Education (Secondary) U.P., thus this Court is not going into the issues raised by the parties at this stage leaving it open and granting liberty to the writ petitioner to approach the Director of Education (Secondary) U.P., 10th respondent, while filing a comprehensive representation along with the self attested copy of the writ petition, and who shall on receipt of the same, shall decide the claim of the writ petitioner strictly in accordance with law after putting to notice Respondent nos. 7, 8 and 9 and pass a reasoned and speaking order within a period of six weeks from the date of production of certified copy of the order.

18. Since 9th respondent has already joined as a Principal in the 8th respondent-Institution and is getting salary, thus his continuance shall be subject to the further orders to be passed by the 10th respondent.

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

Order Date :- 19.10.2023
N.S.Rathour