

Court No. - 35

Case :- WRIT - A No. - 14120 of 2023

Petitioner :- Smt. Sugwanti Devi

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

Counsel for Petitioner :- Rajnish Kumar Srivastava, Siddharth Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

Heard Sri Rajnish Kumar Srivastava, learned counsel for the petitioner as well as Sri Shailendra Singh, learned Standing Counsel, who appears for Respondent Nos. 1 and 2.

This Court while entertaining the writ petition, on 03.10.2023, issued notices to the third respondent. There is an office report dated 26.10.2023 that service upon the third respondent stands confirmed.

The case of the writ petitioner is that in the third respondent Institution, Janta Intermediate College, Barsathi, Jaunpur, a post of Lecturer (Geography) fell vacant on account of officiating promotion of one Sri Sabhajeet Dubey. The husband of the writ petitioner claims to have been subjected to the selections conducted and he was accorded appointment on 28.06.1992 on ad hoc basis as Lecturer (Geography) and was accorded joining on 22.07.1992.

Since approval was not accorded for payment of salary to the husband of the writ petitioner, so the husband of the writ petitioner, Daya Shankar (since deceased) preferred Writ Petition No.9760 of 1994 seeking the following reliefs:-

“(a) issue a writ, order or direction in the nature of mandamus commanding the respondents to permit the petitioner to continue as a Geography Lecturer and pay his salary till the regular Selection is made by the Commission.

(b) issue any other and further writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(c) award the costs of the petition to the petitioner.”

In the said writ petition, an interim order was passed in favour of the husband of the writ petitioner on 08.03.1994, which reads as under:-

“Petitioner is directing to serve notice on respondent no.2 by registered post and take steps within three days. Notices meant to be served upon the said respondent shall indicate that writ petition shall be listed for admission in the third week of April, 1994.

Standing Counsel is granted one month's time to file counter affidavit.

List this petition for admission in the third week of April, 1994.

Meanwhile respondents are directed to pay salary to the petitioner as lecturer in Geography with effect from 22.7.92 in accordance with law or show cause. Petitioner is directed to serve a certified copy of this order on respondents.”

Pursuant to the interim order passed in the above noted writ petition, the District Inspector of Schools, Jaunpur, proceeded to pass an order dated 13.10.1998 according approval to the appointment of the husband of the writ petitioner from the date of passing of the order dated 13.08.1998. The husband of the writ petitioner claims to have been working in the post in question continuously. The above noted writ petition came to be disposed of on 13.02.2012 wherein the following order was passed:

“Heard learned counsel for the petitioner and learned Standing Counsel for the State respondents.

Initially writ petition was filed seeking a writ of mandamus to command the respondents to permit the petitioner to continue on the post of Geography lecturer on which his appointment was made on a short term basis till a regularly selected candidate is recommended by the Commission. In pursuance of the interim order passed by this Court, the petitioner has been continuously working on the post and is being paid salary. It is also not in dispute that no recommendation has been made by the Commission for appointment of any candidate on the said post. The petitioner further claims that he is entitled to be regularized in view of Section 33F of U.P. Act no. 5 of 1982.

Considering the facts and circumstances, writ petition stands disposed of with the direction to the Committee of Management to forward all necessary papers, pertaining to the petitioner for consideration of regularization, to the respondent no. 1 District Inspector of Schools, Jaunpur within a period of three weeks from the date of receipt of a certified copy of this order. The District Inspector of Schools in turn shall forward the same to the regularization committee headed by the Joint Director of Education of the Region constituted under Section 33B of the Act for the purpose. The said committee shall consider and process the case of the petitioner and pass a reasoned and speaking order within a period of four weeks from the date of receipt of the papers from the District Inspector of Schools, Jaunpur.

Subject to aforesaid directions, writ petition stands finally disposed of.”

In the meantime, according to the writ petitioner, her husband

expired on 28.08.2013. As the pension was not being paid to the writ petitioner, so the writ petitioner further claims to have preferred Writ-A No.11137 of 2022, *Sugwanti Devi Vs. State of U.P.*, which came to be disposed of directing the second respondent, Deputy Director of Education (Secondary), Varanasi Region, Varanasi to consider the claim of the writ petitioner.

Now the claim of the writ petitioner for payment of pension has been negated by virtue of the order dated 11.01.2023. Questioning the said order, the writ petitioner has filed the present writ petition. This Court entertained the present writ petition on 03.10.2023 while passing the following order:-

“The contention of the learned counsel for the writ petitioner is that her husband late Daya Shankar was appointed as a Lecturer (Geography) on 16.07.1992, and he joined the Institution on 22.07.1992, but when his salary was not being paid, he preferred Writ Petition No.9760 of 1994, in which an interim order was passed on 08.03.1994 that the writ petitioner be paid salary w.e.f. 22.07.1992 and according to the writ petitioner, the payment of salary was made available under the orders of the District Inspector of Schools, Jaunpur w.e.f. 13.10.1998, i.e. the date on which the order was passed. In the meantime, husband of the writ petitioner expired on 28.08.2013 and the writ petition so preferred by her husband came to be disposed off on 13.02.2012 required the competent authority to consider the case of the writ petitioner's husband for regularization. However, since pension and other benefits have not been paid, the writ petitioner being the widow preferred Writ-A No.11137 of 202, Smt. Sugwanti Devi Vs. State of U.P. and others, which came to be disposed off on 02.08.2022 directing the respondents to consider the claim of the petitioner for regularization and payment of pension, however, now the same has been rejected on the ground that though the writ petitioner had joined the institution in question but he was made admissible to the payment of salary on 13.10.1998, thus he cannot be considered for regularization.

Sri Dharendra Singh, learned Standing Counsel submits that the writ petitioner is not entitled to the said benefit as by virtue of the interim order, writ petitioner was made admissible for salary but the writ petition was finally decided, then there is no order for payment of salary, but only a direction was there for regularization. He further submits that since the services of the writ petitioner were not regularized, thus she is not entitled for payment of pension.

Learned Standing Counsel appears for Respondent nos. 1 and 2.

Issue notice to the third respondent.

Steps to be taken by 05.10.2023 by both ways.

Respondents shall file their counter affidavit by 19.10.2023. Rejoinder, if any, may be filed by 26.10.2023.

Affidavit of service be filed before the next date fixed.

Put up this case as fresh on 27.10.2023.

When the matter is next listed, records of Writ Petition No.9760 of 1994 be also tagged with this petition.”

As already noticed, the office report dated 26.10.2023 shows that the delivery is confirmed upon the third respondent and since till the drafting of this order, nobody has appeared on behalf of the third respondent, thus this Court is proceeding in absence of participation of the third respondent.

Sri Shailendra Singh, learned Standing Counsel submits that in view of the order which is being proposed to be passed today, he does not propose to file any response.

Sri Srivastava, learned counsel for the writ petitioner while assailing the order impugned has sought to submit that though the husband of the writ petitioner was accorded joining on the post of Lecturer (Geography) on 28.06.1992 and he assumed the charge on 22.07.1992, but he was not paid salary, thus he approached this Court while filing Writ Petition No.9760 of 1994 in which a specific direction was issued to make payment of salary to the writ petitioner from the date of joining, i.e. 22.07.1992, but during the existence of the said order, the District Inspector of Schools, Jaunpur on 13.10.1998 accorded payment of salary and approval from the date of the issuance of the order dated 13.10.1998, which itself was illegal and contemptuous and ultimately, the said writ petitioner came to be disposed of by this Court while passing a detailed order on 13.02.2012 requiring the respondents to consider the claim of the writ petitioner for regularization in terms of Section 33-F of the U.P. Act No.5 of 1982. He submits that in the meantime, the husband of the writ petitioner also expired on 28.08.2013 and he continuously worked in the post in question, however, when the writ petitioner staked her claim for pension, she is being sought to be denied on the pretext that since the approval of the appointment of the husband of the writ petitioner was accorded on 13.10.1998, he did not complete qualifying service for pension in that regard.

According to the learned counsel for the writ petitioner, the aforesaid reasoning so accorded by the second respondent is wholly unsustainable and makes the order vulnerable, particularly when there happened to be the order in favour of the writ petitioner to be accorded salary from 22.07.1992 and once there

was a direction for consideration of the claim of the writ petitioner for regularization, then the payment of pension could not have been denied, particularly, once the order impugned has been passed in the year 2023 on 11.01.2023 in that regard.

Sri Shailendra Singh, learned Standing Counsel, who appears for Respondent Nos. 1 and 2 submits that might be the husband of the writ petitioner had been working on the basis of the interim order, but once the said order is culminating the direction for regularization, then the interim order merged with the final order and according to him, the case of the husband of the writ petitioner was not covered within the provisions of Section 33-F for regularization. He, however, submits that in the present case, the husband of the writ petitioner was granted an interim order and he continued till his death in that regard. He further submits that issues, which the writ petitioner seeks to raise needs a re-look and according to him, the said facts need to be considered in that regard and accordingly, the order impugned be set aside.

Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being decided in the following term: (a) the order dated 11.01.2023 passed by the Deputy Director of Education (Secondary), Varanasi Region, Varanasi, second respondent is set aside; (b) the matter stands remitted back to the second respondent to decide the same afresh within a period of three months from the date of production of certified copy of the order bearing in mind the import and impact of the interim order passed in Writ Petition No. 9760 of 1994, *Daya Shankar Vs. District Inspector of Schools* dated 08.03.1994, the final order dated 13.02.2012 in Writ Petition No.9760 of 1994, and the approval order dated 13.10.1998 approving the appointment of the writ petitioner, after putting to notice the third respondent.

With the aforesaid observations the writ petition stands **partly allowed**.

Order Date :- 16.11.2023

N.S.Rathour