

Court No. - 35

Case :- WRIT - A No. - 14841 of 2023 (***Leading Petition***)

Petitioner :- Sudheer Kumar

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

Counsel for Petitioner :- Utkarsh Kumar Singh,Aishwarya Kumar Singh,Rajesh Kumar Singh

Counsel for Respondent :- CSC,Ran Vijay Singh

::With::

Case :- WRIT - A No. - 14842 of 2023 (***Connected C-1***)

Petitioner :- Santosh Patel

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

Counsel for Petitioner :- Aishwarya Kumar Singh,Rajesh Kumar Singh,Utkarsh Kumar Singh

Counsel for Respondent :- CSC,Ran Vijay Singh

and

Case :- WRIT - A No. - 14843 of 2023 (***Connected C-2***)

Petitioner :- Sarvesh Kumar Yadav

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

Counsel for Petitioner :- Aishwarya Kumar Singh,Rajesh Kumar Singh,Utkarsh Kumar Singh

Counsel for Respondent :- CSC,Ran Vijay Singh

and

Case :- WRIT - A No. - 16062 of 2023 (***Connected C-3***)

Petitioner :- Utkarsh Singh

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

Counsel for Petitioner :- Rajesh Kumar Singh,Aishwarya Kumar Singh,Utkarsh Kumar Singh

Counsel for Respondent :- C.S.C.,Ran Vijay Singh

and

Case :- WRIT - A No. - 16067 of 2023 (***Connected C-4***)

Petitioner :- Rishi Raghuvanshi

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

Counsel for Petitioner :- Utkarsh Kumar Singh,Aishwarya Kumar Singh,Rajesh Kumar Singh

Counsel for Respondent :- C.S.C.,Ran Vijay Singh

and

Case :- WRIT - A No. - 16098 of 2023 (***Connected C-5***)

Petitioner :- Awshesh Kumar Jaiswal

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

Counsel for Petitioner :- Utkarsh Kumar Singh, Aishwarya Kumar Singh, Rajesh Kumar Singh

Counsel for Respondent :- C.S.C., Ran Vijay Singh

Hon'ble Vikas Budhwar, J.

In Re: Amendment Application No. Nil of 2023

Heard.

Application is allowed.

Learned counsel for the writ petitioner may incorporate necessary amendments in the writ petition.

In Re: Order on the Writ Petition

Heard Sri Rajesh Kumar Singh, learned counsel for the petitioners in all the six writ petitions, Sri H.K. Shukla, the learned Standing Counsel, who appears for the State-Respondents and Sri Ran Vijay Singh, who appears for the Respondent nos. 2 & 3, Veer Bahadur Singh Purvanchal University, Jaunpur, District- Jaunpur.

Since, common questions of facts and law are involved in all the six writ petitions, thus the same are being decided by a composite order.

The case of the writ petitioners is that there is a University established under the provisions of U.P. State Universities Act, 1973 by the name of Veer Bahadur Singh Purvanchal University, Jaunpur, District- Jaunpur.

As per the writ petitioner in the leading writ petition, the father of the writ petitioner was appointed as a Class-IV employee (Peon) on daily wages on 20.08.1990. Subsequently, by virtue of the Government Order dated 21.07.2011, an exercise was undertaken for regularization of the services of the persons, who were working on daily wage basis on or before 29.06.1991. A list was published on 30.03.2014/ 30.05.2014 in pursuance of the said Government Order for regularization of the 115 employees, who were working on daily wage basis on or before 29.06.1991 and thereafter on 30.05.2014, 115 supernumerary posts were created, i.e. 74 posts of Routine Clerk Grade, 40 posts of Peon and 1 post of Vehicle Driver with regard to the regularization of the services. The Executive Council of the University in question passed a resolution/ Agenda on 10.09.2014. It is the further case of the writ petitioner in the leading writ petition that his father Late

Ragheshwar Nath was regularized as a Class-IV employee (Peon) by virtue of the order dated 11.09.2014 and his name found place at Sl. No.17 and by virtue of the Executive Council meeting dated 31.05.2016, an agenda was also published, pursuant whereeto, the non-teaching staffs were provided ACP.

As per the writ petitioner, the father of the writ petitioner died in harness on 26.09.2016. The writ petitioner claimed compassionate appointment while filing an application which culminated into a decision dated 05.10.2018 passed by the Registrar, Veer Bahadur Singh Purvanchal University, Jaunpur, District- Jaunpur according engagement of the writ petitioner as a Class-IV employee on honorarium / temporary basis. The writ petitioner claims to have joined the post in question.

Initially, the writ petition was present while questioning the order dated 05.10.2018 in so far as it pertains to the appointment being accorded to the writ petitioner on contractual / honorarium basis in place of the permanent appointment and for a direction for consideration of the claim of the writ petitioner for according compassionate appointment on substantive basis in view of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974. However, an amendment application has been filed, which has been filed today whereby certain amendments were sought according to which prayer no.(vi) has been added for a mandamus commanding the respondents to consider the petitioner's contractual appointment to be treated as regular appointment in regular pay-scale with effect from the date of the initial appointment, i.e. 05.10.2018. A supplementary affidavit has also been filed, which is available on record.

In league to the leading writ petition, Sri Santosh Patel son of late Dharm Raj Patel has also preferred the Connected C-1 Petition, similarly on the said grounds with certain changes with regard to the appointment of his father on 07.10.1991 as Class-IV (Peon) and according of compassionate appointment after his death, which occurred on 12.06.2017. However, it is further the case of the writ petitioner that the services also stood regularized by virtue of an office order dated 11.09.2014, wherein his name found place at Sl. No. 19. Similar relief akin to the leading writ petition has been claimed, however, an amendment application has been preferred in the same manner, as already noticed in the leading writ petition.

In continuation of the same, the Connected C-2 Petition has been preferred by Sri Sarvesh Kumar Yadav son of late Hari Nath

Yadav, wherein also father of the writ petitioner claims to have been appointed on daily wage capacity on 01.06.1991 in Class-III Post (Routine Grade Clerk) and he claims to have been regularized on 11.09.2014 against supernumerary post and his name found place at Sl. No.63, who expired on 04.06.2017.

In the similar manner, relief has been couched as noticed in the leading and the connected C-1 Petition and by way of Amendment Application, amendments have been sought in the similar manner.

The Connected C-3 Petition has been preferred by one Utkarsh Singh son of late Jairam Singh, wherein according to the writ petitioner, his father joined in Daily Wage capacity on 23.06.1990 as Class-IV Post (Peon). However, in the present case, there is a distinguishable feature that even before the issuance of a list of regularization of the employees, working on Class-III and Class-IV post, the father of the writ petitioner namely late Jairam Singh expired on 27.07.2011. As per the writ petitioner, he applied for compassionate appointment on 16.09.2015, he was accorded compassionate appointment, but on temporary/ contractual basis.

In the said writ petition, relief has been sought for quashing of the order 16.09.2015 in so far as it appoints the petitioner on contractual basis/ honorarium basis in place of permanent appointment, with a further prayer to consider the claim for appointment on regular basis. A further prayer has been made to grant him benefits in that regard.

Then comes the writ petition preferred by Sri Rishi Rabhuvanshi son of late Sunil Kumar Singh, which is connected C-4 Petition, in which the father of the writ petitioner joined on Daily Wage basis on 22.05.1991 on Class-III post (Routine Grade Clerk). However, he died on 02.07.2011, even before the list pertaining to regularization of the services of the engagees could have been given a final shape. It is the further case of the writ petitioner that he was accorded compassionate appointment by virtue of the order dated 16.09.2015, however, the same was not on regular basis, but on contractual/ honorarium basis, thus the writ petitioner has filed the writ petition with the same relief, as it has been claimed in connected C-3 writ petition.

Finally, another writ petition has been preferred by Sri Awshesh Kumar Jaiswal son of late Prabhakar Jaiswal, which is in line with the facts as stated in the aforesaid writ petition with certain modification that the father of the writ petitioner in the connected C-5 petition, happens to be Prabhakar Jaiswal, who was engaged

on daily wage capacity on 19.03.1990 on a Class-III post (Routine Grade Clerk), however, he expired on 27.06.2012. The writ petitioner claimed compassionate appointment and he was accorded compassionate appointment on 16.09.2015 not on substantive basis but on contractual/ honorarium basis. The relief in the similar fashion has been sought.

Sri Rajesh Kumar Singh, learned counsel for the writ petitioners submits that the relief sought while quashing the order dated 05.10.2018 in the leading writ petition, connected C-1 writ petition and connected C-2 writ petition and the order dated 28.01.2019 in C-2 petition, in so far as it seeks to challenge the order dated 28.01.2019 is not being pressed. He further submits that the only relief with regard to the facts that the consideration be made by the University with regard to the fact that the contractual appointment was accorded to the writ petitioner since the date of his re-engagement be treated to be in regular pay-scale and he be granted benefits in that regard. He seeks to rely upon the judgment in **Writ-A No.299 of 2023, Km. Deeksha Mishra Vs. State of U.P. and 2 others** decided on 25.04.2023 followed in **Writ-A No.11261 of 2023, Smt. Parvati Devi and 6 others Vs. State of U.P. and others** decided on 23.08.2023.

According to the learned counsel for the writ petitioner, there happens to be a Full Bench judgment in the case of **Senior General Manager Vs. Central Administrative, Ordnance Factory, Kalpi Road, Kanpur Vs. Central Administrative Tribunal and another**, reported in **2016 (2) ESC 1052 (All)(FB)**, wherein this Court has opined that the compassionate appointment is by all eventualities is on a substantive post and the same cannot be honorarium or temporary post. He thus seeks to submit that a conscious decision is to be taken by the respondents, particularly, in view of the fact that once the writ petitioners were accorded the benefit of compassionate appointment making them to be entitled for the same, then the distinction could not have been carved out so as to accord compassionate appointment on honorarium/ contractual basis.

Sri Ran Vijay Singh, learned counsel, who appears for the University submits that the writ petitioners may be right in contending that the principles so envisaged in the aforesaid judgment in the case of **Senior Manager Ordnance Factory (supra)**, **Smt. Parvati Devi (supra)** and the case of **Km. Deeksha Mishra (supra)** would apply, but a conscious decision is to be arrived upon by the competent authority of a University, considering each and every aspect of the matter, as the present case

is of two categories; one category in which the services of the deceased were regularized and in the other category before the process of regularization the deceased died, though the writ petitioners were accorded compassionate appointment.

The submission of Sri Ran Vijay has been adopted by Sri H.K. Shukla, who appears for the State-respondents. He further submits that he has nothing more to submit.

Sri Ran Vijay Singh as well as Sri H.K. Shukla, who appear for the respondents submit at Bar that they do not propose to file any response to the writ petition in view of the order which is proposed to be passed. He further submits that the writ petitioner may represent his cause before the Registrar, Veer Bahadur Singh Purvanchal University, Jaunpur, who shall address to the claim of the writ petitioner and pass appropriate orders within the time stipulated by this Court.

To such a submission, learned counsel for the writ petitioners has no objection to the same and gracefully accepts the same.

Considering the submission of the rival parties as well as the stand taken by them, all the writ petitions are being disposed off granting liberty to the writ petitioner to approach the third respondent, along with a comprehensive representation accompanied with self-attested copy of the writ petition and, who shall, on the receipt of the same, proceed to decide the entitlement of the writ petitioner for compassionate appointment bearing in mind the decisions in *Senior Manager Ordnance Factory (supra)*, *Smt. Parvati Devi (supra)* and the case of *Km. Deeksha Mishra (supra)* within a period of three months from the date of production of certified copy of the order.

Needless to point out that it shall be open for the writ petitioner to take all legal and factual issues in that regard, which the respondents-University shall consider within the time stipulated above.

Passing of this passing of this order may not be construed to an expression that this Court has adjudicated the matter on merits.

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

Instructions filed today by Sri Ran Vijay Singh under the signatures of Registrar, Veer Bahadur Singh Purvanchal

University, Jaunpur, is taken on record and marked as Appendix 'A'.

Order Date :- 12.10.2023
N.S.Rathour