

Court No. - 35

Case :- WRIT - A No. - 14280 of 2023

Petitioner :- Ajeet Kumar And 22 Others

Respondent :- Uttar Pradesh University Of Medical Science
Saifai And 7 Others

Counsel for Petitioner :- Mithilesh Kumar Tiwari, Bharat Singh

Counsel for Respondent :- C.S.C., Rohit Dwivedi, Rohit
Pandey, Seemant Singh

Hon'ble Vikas Budhwar, J.

Heard Sri Mithilesh Kumar Tiwari, learned counsel for the writ petitioners who are 23 in number, Sri P.K. Shahi, learned Additional Chief Standing Counsel for the respondent no.4, Sri Rohit Pandey, learned counsel for the respondents no. 1 to 3 and Sri Seemant Singh, learned counsel for the respondents no. 6 to 8.

The case of the writ petitioners is that they were appointed on the post of Laboratory Attendant-cum-Attendant in U.P. Rural Institute of Medical Science and Research Saifai, Etawah by virtue of the appointment orders dated 29.3.2008 and 4.8.2008. It is the further case of the writ petitioners that the writ petitioners no. 1 to 11 and 13 to 20 have joined the duties on 1.4.2008 and the petitioner nos, 12, 22 and 23 have assumed the charge on 5.8.2008, followed by petitioner no. 21 on 8.4.2008 and petitioner no.22 and 23 on 5.5.2008.

It is the further case of the writ petitioners that on 12.01.2019 a seniority list of Laboratory Attendant-cum-Attendant was published wherein the name of the writ petitioners found place from serial no. 1 to 23. As per the writ petitioners pursuant to the constitution of the Selection of the Promotion Committee, they were accorded promotion on the post of Lab Technician by virtue of the order dated 15.2.2022 basis seniority list dated 12.1.2019 and in pursuance of the recommendation of the Departmental Promotion Committee dated 27.5.2021 approved by the Vice Chancellor of the second respondent, University dated 22.2.2022. The writ petitioners claim to have joined the duties on 15.2.2022.

In para 8 of the writ petition it is further asserted that their pay fixation has been done by virtue of the order dated 12.9.2022 w.e.f. 1.7.2022. However according to the writ petitioners now the

second respondent, Vice Chancellor, University of Science Saifai, Etawah has proceeded to pass an order dated 10.8.2023 reverting the writ petitioners from the post of Lab Technician to the post of Laboratory Attendant-cum-Attendant.

Questioning the said order the writ petition has been preferred before this Court which have been entertained on 28.8.2023, notices were issued and the office report depicts on 30.9.2023, steps have been taken pursuant whereto the item is stated to have been delivered to the respondents no. 6 to 8. However there is office report that the service of the fifth respondent is not complete and the item is not being delivered.

A counter affidavit has been filed on the respondent University no. 1 to 3 sworn by the Senior Administrative Officer, U.P. University of Medical Science Saifai, Etawah dated 25.10.2023 and also by Sri Semant Singh, who appears for the respondents no. 6 to 8. Though there is no representation on behalf of the fifth respondent but this Court finds that in the rejoinder affidavit filed by the writ petitioner to the counter affidavit of respondents no. 1, 2 & 3, a statement has been made in para 7 that fifth respondent namely Smt. Seema Yadav is absconding from the duty as Lab Assistant since 20.5.2020 for a period of three years. Be that as it may be the writ petition is being decided while saving the interest of the fifth respondent also.

Sri Tiwari, learned counter for the writ petitioners while assailing the order dated 10.8.2023 of the second respondent, Vice-Chancellor University of Medical Science Saifai, Etawah has sought to argue that the orders suffer from fundamental error particularly in view of the fact that the same is in-violation of principles of natural justice as the writ petitioners were not put to notice even prior to passing of the said order and had the writ petitioners being put to notice and their versions were sought, they could have demonstrated that the said order was not liable to be passed in that regard. He seeks to rely upon the para 11 of the writ petition.

Further submission of the learned counsel for the writ petitioners is that the promotions which have been accorded to the writ petitioners are based upon the seniority list dated 12.1.2019 and once the seniority position of the writ petitioners was determined at that stage and the promotions were accorded then at least any exercise to the detriment of the writ petitioners could have been done after revising the seniority list and after putting to the writ petitioners to notice. He further submits that it is not a case

wherein the writ petitioners promotion was procured by fraud as it is the Departmental Promotion Committee which stood constituted by the University and the approval was granted by the Vice Chancellor of the University. He thus submits that the order in question be set aside.

Sri Rohit Pandey, who appears for the respondents no. 1 to 3 on the other hand submits that though the writ petitioners are right in contending that he was not heard before passing of the said order but the facts and the circumstances did not warrant putting the writ petitioners to notice particularly in view of the fact that an error has been committed by the University which is being sought to be rectified as according to him though the claim of the writ petitioners who were working in the Para Medical Department of the Universities as Lab Assistant was considered for promotion while including their names in the seniority list but due to inadvertent error the cases of the Paramedical Department comprising of Lab Assistant was not considered as they were not placed in the seniority list and once the said irregularity came to be noticed then the remedial action has been taken. According to him the order does not warrant any interference.

Sri Seemant Singh, who appears for the respondents no. 6 to 8 adopts the submissions of Sri Rohit Pandey and according to him it is the University which had created a fiasco and now the remedial action is being taken thus the writ petitioners cannot claim indefeasible right to continue on the post in question.

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

Undisputedly, the writ petitioners were promoted way back on 15.2.2022 on the post of Lab Technician from the feeding cadre being Laboratory Attendant-cum-Attendant and they assumed the charge on 15.2.2022 on the promoted post and their salary was also fixed and the said exercise was undertaken pursuant to the recommendation of duly constituted selection committee dated 27.5.2021 and the approval of the Vice Chancellor of the University dated 12.2.2022.

It is not the case of the respondent that the writ petitioners had practiced, fraud or concealed material facts thus at least propriety demanded the writ petitioners ought to have been put to notice in that regard.

Sri Tiwari, learned counsel for the petitioners seeks to rely upon

the judgment in the case of **Bhagwan Shukla vs. Union of India 1994 SCC (L&S) 1320** so as to contend that once any order entails adverse consequences then opportunity of hearing is must.

On a pointed query being raised Sri Rohit Pandey, who appears for the University as to whether any opportunity of hearing was accorded to the writ petitioners or not, he could not dispute the fact that the writ petitioners were not heard before the passing of the order.

Once there is nothing on record to substantiate the fact that the writ petitioners appointment was based upon fraud, misrepresentation on concealment thus, this Court is of the firm opinion that the order in question is vitiated.

Accordingly, order dated 10.8.2023 passed by the Vice Chancellor of University of Medical Science Saifai, Etawah is set aside.

Since the order dated 10.8.2023 passed by the Vice Chancellor of University of Medical Science Saifai, Etawah has been set aside on technical ground being in violation of principles of natural justice thus now the Vice Chancellor of University of Medical Science Saifai, Etawah shall take appropriate action while putting to notice the writ petitioner and the other affected parties including respondents no. 5 to 8 and pass a reasoned and speaking order within a period of two weeks from the date of presentation of the certified copy of the order by either of the parties.

At this stage Sri Rohit Pandey submits that in order to eliminate the chances of any confusion let the status quo be maintained as of today till the passing of the fresh order by the Vice Chancellor of University of Medical Science Saifai, Etawah.

Sri Mithilesh Kumar Tiwari, learned counsel for the petitioners has no objection and he gracefully accepts the same. Accordingly it is provided that status quo as on date shall be maintained with respect to the writ petitioners.

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

Order Date :- 28.10.2023

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