

Court No. - 35

Case :- WRIT - A No. - 14124 of 2023

Petitioner :- Dharmendra Kumar Tripathi

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- P.K. Upadhyay, Kalpna
Upadhyay, Vikram Yadav

Counsel for Respondent :- C.S.C.

with

Case :- WRIT - A No. - 5949 of 2021

Petitioner :- Dharmendra Kumar Tripathi

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ram Awadh Mishra, Siddhartha
Mishra

Counsel for Respondent :- C.S.C., Pravin Kumar Mishra

Hon'ble Vikas Budhwar, J.

Heard Shri P.K Upadhyay, learned counsel for the writ petitioner in the leading writ petition and Shri R.A.Mishra, learned counsel for the writ petitioner in the connected writ petition, Shri Awadesh Kumar Mishra, learned Standing Counsel has appeared for the *respondent* No. 1 to 6 in the leading writ petition and respondent No. 1, 2, 5 and 6 in the connected writ petition and Shri Pravin Kumar Mishra, learned counsel for the respondent No. 4 in the connected writ petition.

Since common question of facts and law are involved in Writ - A No. - 14124 of 2023 Dharmendra Kumar Tripathi Vs. State Of U.P. And 6 Others (in short 'leading writ petition') and Writ - A No. - 14124 of 2023, Dharmendra Kumar Tripathi Vs. State Of U.P. And 6 Others, (in short 'connected writ petition'), thus, with the consent of the parties the writ petition is being consolidated and decided by a composite order.

Learned counsel for the parties have made a statement at bar that they do not propose to file any further affidavits and the writ petition be decided on the basis of the affidavits available on record. Thus with the consent of the parties, the writ petition is being decided at the fresh stage.

The case of the writ petitioner in both the writ petitions is that Rajkumari Balika Inter College, Knaiyar, Varanasi is an institution which is grant-in-aid list till High School level and is recognised under the provisions of U.P. Intermediate Education Act and the provisions of U.P. Act No. 24 of 1971 stands applicable.

As per the writ petitioner his mother namely Braj Kumari Devi was granted appointment as an assistant teacher as C.T. Grade on temporary basis according to the leave vacancy availed by Smt. Laxmi Dubey from 01.07.1987 to 30.06.1988. An appointment order is stated to have been issued in the favour of the mother of the writ petitioner on 15.12.1988 and the same was approved by the Regional Girls Inspector of Schools, Fifth Region, Varanasi on 10.04.1990 with the condition that the same would be till the joining of the regularly selected candidates. It is also come on record that a case was set up by the committee of management of the institution in question that the mother of the writ petitioner had tendered her resignation and when the same can be the knowledge of the mother of the writ petitioner, she preferred Writ A No. 45571 of 1992 which came to be disposed of on 11.11.1992 requiring the concerned authority to decide the claim of the mother of the writ petitioner which came to be decided by virtue of the order dated 03.03.1993 passed by the competing authority finding that the appointment of the mother of the writ petitioner was in accordance with the rules and she have not tendered any

resignation so submitted was a forged document. Since an approval of the appointment of the mother of the writ petitioner was already accorded, however, she was not paid salary so she preferred Writ A No. 23588 of 1993 with multiple reliefs, one being for a direction to take attendance of the writ petitioner and allow to the writ petitioner to work in the post in question and in the said writ petition, an interim order was granted on 07.07.1993, which is quoted hereinunder:

"One month for C.A. for respondent no. 3 & 4.

Three weeks for R.A.

Issue notice returnable within six weeks. List thereafter.

The petitioner shall be allowed to work on the post and shall be paid salary regularly."

During the pendency of the aforesaid writ petition as per the mother of the writ petitioner services were regularised w.e.f. 24.09.2009 and she continued to function as a teacher and ultimately expired on 02.03.2021. In between, an order is stated to have been passed on 01.09.2020, wherein the arrears of salary of the deceased was withheld on the premise that the Writ A No. 23588 of 1993 was dismissed for want of prosecution on 22.12.2010, this led to filing of the connected Writ A No. 5949 of 2021. The said writ petition was entertained by this Court on 06.08.2021, the following orders were passed:

"This petition is directed against an order dated 01.09.2020 which records that continuance of petitioner's mother was pursuant to interim order passed in Writ Petition No.23588 of 1993 and since this petition has been dismissed, therefore, the teacher is not entitled to receive salary from the state.

Learned counsel for the petitioner has placed before the Court previous Writ Petition No.23588 of 1993 in which prayer apparently was for a

direction to the Principal to allow the employee to teach and record her attendance and also for a direction upon respondents to submit salary bill of the employee. Services of petitioner's mother appeared to have been regularized subsequently on 24.09.2009. Contention is that after regularization order was passed the writ petition lost its efficacy, and therefore, dismissal of the petition would not be a ground to deny payment of salary.

Matter requires consideration.

Notice on behalf of respondent nos.1, 2, 5 & 6 has been accepted by learned Standing Counsel.

Issue notice to respondent nos.3 & 4. Steps be taken within two weeks by registered/speed post.

All the respondents may file counter affidavit within six weeks. Rejoinder affidavit may also be filed within two weeks, thereafter.

List in the month of November, 2021."

Notices were issued pursuant where to steps were taken and thereafter a counter affidavit has been filed on behalf of the respondent Nos. 1 to 5 and 6 sworn by District Inspector of Schools, II- Varanasi dated 11.02.2022 to which a rejoinder affidavit has been filed.

The writ petitioner who claims to be the son of the of the deceased had approached this Court while filing Writ A No. 3936 of 2023 (Dharmendra Kumar Tripathi Vs. State of U.P. and others) seeking claim for compassionate appointment which came to be decided on 22.03.2023 requiring the competent authority to take a decision which even in fact has been taken on 22.07.2023 by the District Inspector of Schools, second respondent negating the claim, on the premise that the writ petition stood dismissed which was preferred in the year 1993 and thus the writ petitioner is not entitled for

compassionate appointment.

Questioning the said order, the leading writ petition has been filed which was tagged with the connected writ petition on 03.11.2023.

Since the learned counsel for the respondents including the learned Standing Counsel do not propose to file any response and they seek disposal of the writ petition on the basis of the documents available on record, thus this Court is proceeding to decide the matter.

Learned counsel for the writ petitioner in both the writ petitions submits that while passing the order impugned in both the writ petitions, the District Inspector of Schools, second respondent as swayed away with the factor that the writ petition preferred by the mother of the writ petitioner seeking continuance as an assistant teacher being Writ A No. 23688 of 1993 was dismissed for want of prosecution on 22.12.2010, thus the writ petitioner is neither entitled for arrears of salary or for compassionate appointment. According to him, the dismissal of the writ petition for non-prosecution on 22.12.2010 would not be a relevant factor to denude the claim of the writ petitioner, particularly, when the service of the mother of the writ petitioner stood regularised on 24.09.2009 and she continued till year 2021, they further submit that it is not the case wherein the appointment of the mother of the writ petitioner was procured by misrepresentation fraud or concealment of fact as there happened to be an approval order dated 10.04.1990 by the competent authority in that regard. He thus submits that the order in question has not been passed in the correct perspective and the writ petitioner is entitled not only to the arrears of salary but also claim for compassionate appointment.

Shri Awadesh Kumar Mishra, learned Standing Counsel who appears for the official respondents though submits that the writ petitioner was accorded approval of mother of the writ petitioner on her appointment on 10.04.1990 and thereafter when the salary was not being paid, she was accorded an interim order on 07.07.1993 and she continued in service and thereafter her services stood regularised in the year 2009 but the crucial question would be that the writ petitioner continue on the strength of an interim order, he, thus submits that the continuance of the mother of the writ petitioner on interim basis would not cloth the writ petitioner with any benefits.

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

The facts of the case are not in dispute however the bone of the contention between the parties as what would be the import and impact of the interim order dated 31.07.1993 and the final order dated 22.12.2020 in Writ A No. 23588 of 1993 viz-a-viz the approval of the appointment of the mother of the writ petitioner as well as the approval and the regularization of the services on 24.09.2009. Though the stand of the respondents that once the writ petitioner's mother continued on the basis of an interim order and thereafter the writ petitioner got dismissed then it would be presumed that there was no interim order operative or even writ petition preferred. The Court is of the view that District Inspector of Schools II, Varanasi was required to go into the issue about the fact that the approval order dated 10.04.1990 was intact and the writ petition preferred by the mother of the writ petitioner, Writ A No. 23588 of 1993 was for the payment of salary and for signing the attendance register despite that the fact that the approval order dated 10.04.1990 was in-existence. On top of it, the services of the mother of the

writ petitioner stood regularised on 24.09.1990 and she continued till her death in the institution in question. Since such vital issues have not been considered by the District Inspector of Schools II, Varanasi thus in the opinion of the Court the order needs to be set aside, matter be remitted back to the authorities to pass a fresh order.

At this stage, Shri Awadesh Kumar Mishra, learned Standing Counsel who appears for the State official respondents submits that the said issue needs determination and the matter needs a re-look, consequently the order be set aside and the matter be remitted for re-visiting the matter.

Considering the submission of the rival parties as well as the stand taken by them, the order dated 01.09.2020 passed by the District Inspector of Schools II, Varanasi declining to grant payment of salary of the deceased and post retiral benefits as well as the order dated 22.07.2023 passed by the District Inspector of Schools II, Varanasi be set aside and the matter stands remitted back to the second respondent, District Inspector of Schools II, Varanasi to decide afresh strictly in accordance with law within a period of three months from the production of the certified copy of the order after hearing the writ petitioners as well as the committee of management through its manager and principal of Rajkmari Balika Inter College, Kaniyar, Varanasi.

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

Order Date :- 23.11.2023

A. Prajapati