

Court No. - 35

Case :- WRIT - A No. - 14727 of 2023

Petitioner :- Anand Mani Chaturvedi

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

Counsel for Petitioner :- Jamil Ahamad Azmi, Mariyam Azmi

Counsel for Respondent :- C.S.C.

And

Case :- WRIT - A No. - 9033 of 2023

Petitioner :- Anand Mani Chaturvedi

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Jamil Ahamad Azmi, Mariyam Azmi

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. Heard Sri Jamil Ahamad Azmi, learned counsel for the petitioner in the leading writ petition and connected writ petition and Sri Shailendra Singh, learned Standing Council who appears for respondents in leading and connected writ petition.

2. In view of the order which is being proposed to be passed notices are not being issued to the respondent no. 6.

3. Since common question of laws and facts are involved in both the writ petitions thus, they have been connected together and are being decided by a common order.

4. Learned counsel for the parties has made a statement at bar that the respondent institution in both the writ petitions, Shri Sangved Sanskrit Mahavidyalaya, Hanumangadhi, Azamgarh is being manned through an authorised controller and of course learned Standing Counsel accepts notice on behalf of the said institution. He has further submitted that in view of the order proposed to be passed he does not propose to file any further affidavit in that regard.

5. The case of the writ petitioner is in both the writ petitions is that his father Late Surya Mani Chaturvedi who was working as an assistant teacher in the respondent institution, died in harness on

21.1.2019. As per the writ petitioner a government order has been issued on 18.9.2017 for the purposes of according compassionate appointment under the provisions of the Uttar Pradesh Dependent of Government Servants Dying in Harness Rules, 1974.

6. The writ petitioner armed with the qualifications of degree of Acharya (equivalent to M.A.) in Sanskrit, B.Ed. And CCC certificate applied for compassionate appointment.

7. Since the claim of the writ petitioner was not being considered so he preferred Writ-A No. 1783 of 2019 Anand Mani Chaturvedi Vs. State of UP, which came to be disposed of on 15.11.2019 requiring the respondent authority to consider the claim of the writ petitioner. The writ petitioner further claims to have preferred writ petition along with her mother being Writ-A No. 9246 of 2019 Smt. Saroj Chaturvedi Vs. State of UP for grant of compassionate appointment and pursuant to the contempt proceedings an order is being stated to have been passed by respondent no. 4, District Inspector of Schools, Azamgarh according appointment to the writ petitioner on the post of Peon on 24.8.2021. The writ petitioner claims to have joined the post in question.

8. According to the writ petitioner the qualifications which he possesses was commensurate to be accorded appointment on the post of Assistant Teacher and in this regard the claim of the writ petitioner was espoused by the Committee of Management of the institution in question and on 5.8.2022, the respondent no. 4, District Inspector of Schools, Azamgarh accorded appointment to the writ petitioner on the post of Assistant Teacher in the institution in question. Since the writ petitioner's salary was stopped with effect from March, 2023 abruptly without any basis the writ petitioner preferred the connected Writ Petition No. 9033 of 2023 seeking relief for a direction for payment of salary. The said writ petition was entertained on 23.5.2023 calling upon the respondents to seek instructions in the matter pursuant whereto a personal affidavit had been filed by A.D. Basic Incharge District Inspector of Schools, District, Azamgarh on 30.05.2023 where according to the same the respondent no. 4, District Inspector of Schools proceeded to pass an order dated 28.4.2023 recalling the order dated 05.08.2022 while enforcing the order dated 24.08.2021 according permission for payment of salary on the post of Peon.

9. Questioning the order dated 28.04.2023 passed by the respondent no. 4, District Inspector of Schools recalling the order dated 05.08.2023 the writ petitioner has preferred a leading writ petition. The leading writ petition came up for consideration before

this court on 12.10.2023 yesterday, where in the matter has been fixed today along with the connected writ petitions.

10. Learned counsel for the writ petitioner while assailing the order dated 28.04.2023 passed by respondent no. 4, District Inspector of Schools, Azamgarh has sought to submit that the order is in violation of principles of natural justice as in this regard he seeks to rely upon para 50 of the writ petition. He further submits that there is no power available with the District Inspector of Schools, Azamgarh to recall an order particularly even there is no power of review available with him. His submission is that the impugned order is an ante date order which has been passed just in order to wriggle out for the position was without personal affidavit was sought in connected writ petition. According to him though, the order dated 28.04.2023 entitles the writ petitioner for payment of salary on the post of Peon but the same is also not paid to it.

11. He Further submits that the impugned order be said aside and the matter be remitted back.

12. Sri Shailendra Singh, learned Standing Council further submits that though the order contains valid reasons regarding seeking of prior approval from the university before proceeding to make appointment which was not done. According to him the order does not reflect that the same has been passed after putting to the writ petitioner on notice while recalling the order dated 05.08.2022. He submits that post decisional hearing be accorded to the writ petitioner by the respondent no. 4, District Inspector of Schools, Azamgarh and the issue with regard to the claim of the writ petitioner shall be decided with most expedition. He further submits that he does not propose to file any response to the writ petition in view of the order proposed to be passed.

13. Sri Jamil Ahamad Azmi submits that he has no objection in approaching the District Inspector of Schools, Azamgarh for post decisional hearing. He also submits that a time bound direction be issued.

14. Considering the submission of the rival parties as well as stand taken by them the writ petition is being disposed of without seeking response granting writ petitioner to approach the District Inspector of Schools, Azamgarh by 26.10.2023 and on the receipt of the same the District Inspector of Schools, Azamgarh shall fix a date in the week commencing November, 2023 and thereafter, after hearing the parties pass an order by 16.11.2023. The question and the entitlement of the salary of the writ petitioner shall be

decided with most expedition in that regard by the respondent no. 4.

15. With the aforesaid observation both the red petitions stand disposed of.

16. Needless to point out that passing of this order may not construed to an expression that this court has adjudicated on the merits of the case as the writ petition has been decided on the basis of concession made by the parties.

Order Date :- 13.10.2023

S.A.