

Court No. - 35

Case :- WRIT - A No. - 7488 of 2016

Petitioner :- Bishan Pal Singh

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Sanjay Kumar Srivastava, Ajay Kr. Srivastava

Counsel for Respondent :- C.S.C., Bajrang Bahadur Singh, Satya Prakash Singh, Vinod Kumar Singh

Connected with

Case :- WRIT - A No. - 16995 of 2023

Petitioner :- Bishan Pal Singh

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

Counsel for Petitioner :- Nand Lal Pandey, Suyash Pandey

Counsel for Respondent :- C.S.C., Rajnish Kumar Srivastava

Hon'ble Vikas Budhwar, J.

Heard Sri Nand Lal Pandey, learned counsel for the writ petitioner, in both the writ petitions as well as Sri Ratan Deep Mishra, learned Standing Counsel for the respondents no. 1 to 4 in the leading writ petition and the respondents no. 1, 2 & 4 in the connected writ petition, Sri Rajnish Kumar Srivastava, learned counsel for the respondent no.5 & 6 in the leading and respondent no.5 in the connected writ petition, as well as Sri Prabhakar Awasthi along with Sri Y.B. Pandey, learned counsel for the respondent 8 in the leading writ petition.

A statement has been made at the bar by the respective parties that they do not propose to file any further response and the affidavits which are available on record are self sufficient for the disposal of the writ petition. Thus with the consent of the parties the writ petitions are being disposed of by a common order.

The case of the writ petitioner is that one Sri Mahabir Singh, who was the Principal of the institution in question superannuated on

30.6.1994 resulting to arising out of substantive vacancy one, Sri Ram Bhool Singh, who was the Senior Lecturer (Physics) was accorded ad hoc promotion on 1.7.1994 as a Principal and the writ petitioner claims to have been selected and accorded appointment on 12.12.1994 and he joined the post as a Lecturer on 19.12.1994.

It is also the case of the writ petitioner that pursuant to a recruitment exercise was undertaken by the Commission he was made a regular Principal of the institution in question which was accorded approval on 2.5.1995.

A writ petition is stated to have been preferred by one Sri Jai Singh, along with others, **Writ-A No.21241 of 2010, Jai Singh and others vs. State of U.P. & others**, questioning the eligibility of the writ petitioner. The said writ petition came to be dismissed upholding the eligibility of the writ petitioner by virtue of the order dated **20.4.2010**, the same is quoted herein under:-

"Heard Sri S.P. Singh, learned counsel for the petitioners, Sri A.K. Yadav, learned counsel for respondent no.3 and learned Standing Counsel for the State-respondents.

Appointment of respondent no.5 as principal of Janta Intermediate College, Kheda, District Meerut is being challenged by the petitioners on the ground that he was not working as teacher in any recognised institution on the date of interview and therefore, he is ineligible to be selected for the post of principal.

Facts in short as stated by the learned counsel for the petitioner are that respondent no.5 was appointed as Lecturer on ad hoc basis against a vacancy caused due to grant of promotion to one Ram Bhool Singh as Ad hoc principal of Janta Intermediate College, Kheda, Meerut. Such appointment of respondent no.5 as Lecturer against short term vacancy was approved by the District inspector of Schools on 2nd May, 1995. It is stated that Ram Bhool Singh retired as principal on 30th June, 2009 and therefore, the vacancy on the post of Lecturer became substantive. In view of the Division Bench Judgment of this Court in the case of Surendra Kumar Singh vs. State of U.P. & others reported in 2007 (1) ESC 118 (DB), the appointment of respondent no.5 which was against a short term vacancy has come to automatically end. In the alternative it is contended that the teaching experience of respondent no.5 against a short term vacancy cannot be taken into consideration satisfying the teaching experience required under Appendix A of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 qua the post of principal of a recognised intermediate college.

I have considered the submissions made by the learned counsel for the parties

and have examined the records of the present writ petition.

The issue as to whether the appointment of respondent no.5 as ad hoc teacher has come to automatically end in view of the Division Bench Judgment of this Court in the case of Surendra Kumar Singh (Supra) is not of much relevance, inasmuch as the essential qualifications prescribed for being considered for appointment on the post of principal under Appendix A of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 as also under the U.P. Secondary Education Services Selection Board Act, 1982 and Rules and Regulations framed thereunder do not contemplate that a person, who has applied for direct recruitment must be continuing as teacher on the date of interview. What is required is that the candidate must be possessed of the requisite teaching experience along with academic qualifications. In view of the aforesaid, the first ground raised on behalf of the petitioner has necessarily to be rejected.

So far as the second ground raised on behalf of the petitioner is concerned, from the records of the present writ petition it is apparently clear that respondent no.5 has continued as teacher of an intermediate college since 1995 with the approval of the District Inspector of Schools. Such working of respondents no.5 as a teacher in a recognised intermediate college with the approval of the District Inspector of Schools in accordance with the provisions applicable has to be taken into consideration as teaching experience as required under Item-1, Appendix-A of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 i.e. teaching experience of four years of Classes IX to Class XII in an institution recognised by the Board.

In view of the aforesaid, this Court holds that respondent no.5 is possessed of all the prescribed minimum qualifications for being considered for appointment as Principal and the challenge made to his selection by the U.P. Secondary Education Services Selection Board is legally not sustainable.

The present writ petition lacks merit and is accordingly dismissed."

According to the writ petitioner the 8th respondent in the leading writ petition thereafter got filed a complaint through in the shape of a legal notice which was taken cognizance by the Associate District Inspector of Schools, Meerut taking cognizance of the said matter on 5.2.2016 which led to filing of the leading writ petition in which an interim order was accorded to the writ petitioner on 18.2.2016 which is quoted herein under:-

"Supplementary affidavit filed today on behalf of the petitioner is taken on record.

The petitioner was selected by the Uttar Pradesh Secondary Education Services Selection Board as Principal of Janta Intermediate College, Kheda, District Meerut. His selection was challenged by one Jai Singh and another by means of Writ-A No. 21241 of 2010 (Jai Singh and another v. State of U.P. and others), inter alia, on the ground that he does not have the essential

qualification and his appointment was illegal. The writ petition was dismissed by this Court on 20th April, 2010 on merits by recording a finding that when the petitioner was appointed on ad hoc basis, there was an approval of the District Inspector of Schools. Therefore, his working as ad hoc teacher has been held to be valid.

It appears that after the dismissal of the said writ petition, further complaints had been made against the petitioner and the enquiry was held by the Associate District Inspector of Schools, who was appointed as Enquiry Officer by the District Inspector of Schools. In his report dated 15th December, 2011, the Enquiry Officer found the complaints against the petitioner to be baseless, and the report was accepted by the District Inspector of Schools. It appears that similar enquiry has been conducted against the petitioner in the year 2012 also and the complaints have been found baseless. The reports of the Associate District Inspector of Schools and the District Inspector of Schools dated 07th October, 2012 and 29th May, 2013 respectively are on the record as annexures-3 and 4 to the supplementary affidavit.

The grievance of the petitioner is that again on the basis of same facts the District Inspector of Schools has initiated enquiry by order dated 03rd February, 2016. It is stated that now the complaint has been made by one Sri Roop Chandra Sharma, Advocate, at the behest of one Puneet Sharma and on the said complaint a fresh enquiry committee has been constituted. The petitioner has made allegations of malafide against the local M.L.C., the seventh respondent, in paragraphs-9, 10 and 17 of the writ petition.

I have heard learned counsel for the petitioner and learned Standing Counsel. From the facts of the case, the enquiry reports, which have been brought on record, and the order of this Court in Writ-A No. 21241 of 2010, I am prima facie satisfied that the petitioner is being harassed on the basis of motivated complaints. Once the writ petition against his selection has been dismissed by this Court on merit on 20th April, 2010, the District Inspector of Schools should not have directed for further enquiry against his appointment on similar allegations.

The matter needs consideration.

Learned Standing Counsel appears for the first to fourth respondents.

Issue notice to the fifth to eighth respondents returnable at an early date.

Steps be taken within ten days.

The notices will indicate that the fifth to eighth respondents may file their counter affidavit on or before the next date.

As prayed by the learned Standing Counsel, two months' time is granted to file counter affidavit. Rejoinder affidavit, if any, may be filed within a week thereafter.

List the case after expiry of the said period.

Until further orders of this Court, the effect and operation of the impugned order dated 05th February, 2016, annexure-5 to the writ petition, shall remain stayed."

During the pendency of the leading writ petition the papers were processed for regularisation of the writ petitioner on the post of Lecturer which eventually came to be rejected on 26.7.2023 by the Regional Level Committee through its Chairman, Joint Director of Education 1st Region Meerut, Meerut on the premise that an order has been passed on 5.2.2016 by the Associate District Inspector of Schools, Meerut and questioning the same the writ petition is pending before this Court. This led to the filing of the connected writ petition.

Learned counsel for the writ petitioner submits that the order denuding the consideration of the claim of the writ petitioner for regularisation on the premise that already on the basis of the complaint of the 8th respondent in the leading writ petition cognizance has been taken on 5.2.2016 by the Educational Authorities was thoroughly impermissible particularly in view of the fact that the said complaints are nothing but a vindictive action sought to be taken against the writ petitioner in the wake of the fact that such type of objection was already raised earlier which came to be turned down in Writ-A No.21241 of 2010. He further submits that while considering the claim of the writ petitioner for regularisation it is always open for regularisation Committee to

take into account each and every aspects including the entitlement, eligibility and the suitability thus merely on the basis of a complaint of a stranger that too in a shape of legal notice the claim of the writ petitioner could not have been forestalled. He also submits that the order in the leading writ petition taking cognizance of the complaint and the order passed in the connected writ petition dated 26.7.2023 be set aside and the matter be remitted back to the second respondent in the connected writ petition, Regional Level Committee through its Chairman, Joint Director of Education, 1st Region Meerut, Meerut to pass a fresh order.

Sri Ratan Deep Mishra, learned Standing Counsel who appears for the State Official respondents, Sri Rajnish Kumar Srivastava, learned counsel Committee of Management as well as counsel appearing for the complainant submits that if the Regional Level Committee is to address the claim of the writ petitioner regarding its regularisation obviously it will entail a conscious decision as to whether the writ petitioner needs to be regularised or not all aspects of the matter is to be gone in that regard. According to them the order be set aside, the matter be remitted back to pass a fresh order.

Considering the submissions of rival parties as well as the stand taken by them, the writ petitions stand disposed of in the following manner:- (a) the notice/communication dated 15.2.2016 of the Associate District Inspector of Schools, Meerut in the leading writ petition as well as the order dated 26.7.2023 passed in connected writ petition by the second respondent, Regional Level Committee through its Chairman, Joint Director of Education, 1st Region Meerut, Meerut impugned in the connected writ petition are set

aside; (b) matter stands remitted to the second respondent to pass a fresh order strictly in accordance with law bearing in mind the eligibility, qualification and the entitlement of the writ petitioner for regularisation within a period of two months from the date of production of the certified copy of the order.

The said exercise is to be undertaken after putting to notice the writ petitioner and the Committee of Management of the institution in question.

With the aforesaid observations, both the writ petitions are partly allowed.

Order Date :- 6.12.2023

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