

Court No. - 35

Case :- WRIT - A No. - 15011 of 2023

Petitioner :- Sandip Vishwakarma

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

Counsel for Petitioner :- Ram Manohar Kashyap, Ajay Kumar Pandey

Counsel for Respondent :- C.S.C, Kamlesh Shrama

Hon'ble Vikas Budhwar, J.

1. Heard Sri Jaideep Tripathi (AOR A/S 0301/2023) holding brief of Sri Ajay Kumar Pandey, learned counsel for the writ petitioner and Sri Gaya Prasad Singh, learned Standing Counsel who appears for respondents No. 1 to 2 and Sri Kamlesh Sharma, learned counsel who appears for respondent No. 3.

2. According to the learned counsel for the writ petitioner his father namely, Ramakant Vishwakarma died-in-harness leaving behind the legal heirs which according to the writ petitioner was the mother Kalawati Vishwakarma and four sons namely, Anil Kumar Vishwakarma, third respondent, Sunil Kumar Vishwakarma, Santosh Kumar Vishwakarma and Sandip Kumar Vishwakarma (writ petitioner). The writ petitioner on the death of his father claims to be approximately 16 years of age as the date of birth was 05.06.1992. Further allegation has been levelled that the writ petitioner was projected to be of 18 years and an affidavit was tendered personifying that the writ petitioner had given its no objection for appointment of the third respondent. The writ petitioner is now before this Court questioning the appointment of the third respondent and for conducting inquiry.

3. This Court on 06.09.2023 entertain the writ petition requiring the learned Standing Counsel to obtain instructions.

4. Today when the matter has been taken up Sri Kamlesh Sharma, learned counsel who appears for the third respondent submits that the writ petitioner and the third respondent are real brothers and according to him just it is nothing but a friction which has attributed to filing of the present writ petition as the writ petitioner herein claimed the family pension till the age of 25 years and not being satisfied with the same now he is against the third respondent and he has been granted appointment pursuant to the

no objection certificate issued by the mother who was a natural guardian of the writ petitioner. He seeks to rely upon a set of documents dated 25.11.2016 so as to buttress his stand.

5. Prayer in the present petitioner is for a direction to the respondent No. 2 to initiate and complete an inquiry against the respondent No. 3 for submitting false and fabricated document for the purpose of getting appointment under dying-in-harness rule after the death of the father of the petitioner.

6. Sri Gaya Prasad Singh, learned Standing Counsel, on the other hand, submits that the issue which the writ petitioner is seeking to raise needs determination at the first instance by the second respondent, District Inspector of Schools, Ghazipur. According to him the writ petitioner may represent his cause before the second respondent, District Inspector of Schools, Ghazipur who shall address the claim of the writ petitioner and he does not propose to file any response to the writ petition. Sri Kamlesh Sharma learned counsel for the respondent No. 3 that he be also accorded opportunity to place forward his stand.

7. To such a submission, learned counsel for the writ petitioner has no objection and he gracefully accepts the same.

8. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed of without seeking any response from the respondents granting liberty to the writ petitioner to approach the second respondent, District Inspector of Schools, Ghazipur by means of a comprehensive representation along with the self attested copy of the writ petition and the second respondent on the receipt of the same shall shall put to notice the writ petitioner, third respondent and the affected parties decide the claim of the writ petitioner strictly in accordance with law within a period of two months from the date of production of certified copy of the order.

9. Needless to point out that this Court at this stage has not disturbed the continuance of the third respondent, however, the same shall be subject to the final orders passed by this Court.

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

Order Date :- 6.11.2023

Rajesh