

Court No. - 35

Case :- WRIT - A No. - 15069 of 2023

Petitioner :- Smt. Sharda Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Kushmondeya Shahi, Tanuj Shahi

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

Heard Sri Tanuj Shahi, learned counsel for the writ petitioner, Sri Saurabh, learned Standing Counsel, who appears for the respondent nos.1, 2 and 3.

In view of the order, which is being proposed to be passed, notices are not being issued to the fourth respondent.

The case of the writ petitioner is that the fourth respondent, Sri Gandhi Smarak Inter College, Kaudiya, Azamgarh is an institution, which is recognized under the provisions of U.P. Intermediate Education Act, 1921, the provisions of U.P. Act No. 1971, stands applicable.

As per the writ petitioner, on 30.06.1996, one Sri Jagdish Prasad Mishra, was superannuated on the post of Principal. In pursuance thereof, Sri Triloki Nath Mishra was assigned the charge of Officiating Principal and he started functioning since 01.07.1996 on account of the resultant vacancy, the Management of the institution in question published an advertisement in widely circulated two newspapers and pursuant to the interview, the writ petitioner claims to have been selected on the basis of the quality point marks and he was accorded appointment order on 24.12.1996. Since, the writ petitioner was not made admissible for

the payment of salary and other benefits and approval, so the writ petitioner claims to have preferred Writ Petition No. 9251 of 1998 (Smt. Sharda Singh vs. State of U.P.), which came to be disposed of on 11.03.1998, directing the third respondent, District Inspector of Schools, Azamgarh to decide the issue.

As per the writ petitioner, now an order has been passed on 22.03.2002 by the District Inspector of Schools, Azamgarh, whereby though it has opined that the writ petitioner's appointment was made prior to 25.01.1991 but the salary has been accorded with effect from 22.03.2002.

It is the further case of the writ petitioner that when the matter was referred before the District Inspector of Schools, Azamgarh for consideration of the claim of the writ petitioner for regularization in terms of the provisions of U.P. Act No.5 of 1982, the same has been returned back and the consideration on merit has been turned down by virtue of the order dated 24.04.2023 by the District Inspector of Schools, Azamgarh, third respondent on the ground that since the writ petitioner has been made admissible for the payment of salary with effect from 22.03.2002, thus the writ petitioner is not entitled to the said benefits for regularization.

Questioning the said order, learned counsel for the writ petitioner has filed the present writ petition.

According to the writ petitioner, the order in question, which is subject matter of challenge cannot be sustained for a single moment, as once it is not in dispute that the writ petitioner stood appointed prior to 25.01.1999, though the salary was made applicable from the date of the passing of the order by the District Inspector of Schools on 22.03.2002, thus mere non payment of salary will not be a ground to consider the claim of the writ

petitioner for the purposes of regularization.

Learned counsel for the writ petitioner relies upon the judgment in the case of **Pramod Kumar Singh vs. State of U.P. in Writ A No. 8234 of 2020**, decided on **17.04.2021**, wherein the said issue has been taken note of. It is the further submission of the learned counsel for the writ petitioner that the order be set aside and the matter be remitted back for fresh decision on merits.

Sri Saurabh, learned Standing Counsel, who appears for the respondent nos.1 to 3 on the other hand submits that might be the order dated 22.03.2002, passed by the third respondent, District Inspector of Schools, Azamgarh seeks to approve the appointment of the writ petitioner with regard to payment of salary from 22.03.2002 but the issues with regard to the engagement of the writ petitioner prior to 25.01.1999 needs determination afresh by the second respondent, Joint Director of Education/Chairman, Regional Committee, Azamgarh Region, Azamgarh in the light of the aforesaid facts as well as the judgment in the case of **Pramod Kumar Singh** (*supra*).

According to Sri Saurabh, learned Standing Counsel, the matter be remitted back for passing fresh orders.

Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being decided in the following terms :-

- a) The order dated 24.04.2023, passed by the third respondent, District Inspector of Schools, Azamgarh is set aside;
- b) The matter stands remitted back to the second respondent, Joint Director of Education/Chairman, Regional Committee, Azamgarh Region, Azamgarh to decide the matter afresh;

c) Post remand, the writ petitioner shall appear before the second respondent or any competent authority, so empowered to decide the issue in question in the second week of November, 2023. On that date, notices be issued to the fourth respondent

d) A date shall be fixed, on which date, the versions shall be exchanged;

e) The date of hearing be fixed in the third week of November, 2023. Orders be passed in the second week of December, 2023.

The second respondent or the authority competent, who decides the claim of the writ petitioner shall bear in mind the issue with regard to the regularisation of the writ petitioner in the light of the judgment in the case of **Pramod Kumar Singh** (*supra*) as well as other ancillary and the incidental matters.

Needless to point out that this Court has not adjudicated upon the merits of the matter, leaving it open to the second respondent or the authority competent to decide the matter strictly in accordance with law.

With the aforesaid observations, the writ petition stands ***disposed off***.

Order Date :- 12.10.2023

S Rawat