

Court No. - 35

Case :- WRIT - A No. - 15271 of 2023

Petitioner :- Vijay Pratap Singh

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

Counsel for Petitioner :- D.M.Tripathi,P.K. Upadhyay

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri R.K. Ojha, learned Senior Counsel assisted by Sri D.M. Tripathi, learned counsel for the writ petitioner and Sri S.K. Mishra, learned Standing Counsel, who appears for respondents 1 to 6.

In view of the order, which is being proposed to be passed today, notices are not being issued to the 7th respondent.

The case of the writ petitioner is that 7th respondent, Committee of Management, Girdhari Singh Jagpat Singh Singaur, Inter College Makanpur, District Prayagraj is an institution recognised under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of Act 24 of 1971 stands applicable.

As per the writ petitioner one Sri Kunwar Singh, who was regularly appointed teacher in institution proceeded on a long leave on account of his illness and thereafter the fifth respondent proceeded to sanction leave in favour of Sri Kunwar Pal Singh resulting to an occurrence of short term vacancy on the post of Assistant Teacher L.T. Grade.

According to the writ petitioner, Committee of Management intimated/notified the said vacancy to the fifth respondent, District Inspector of Schools, Prayagraj and thereafter proceedings according to the writ petitioner was drawn under the provisions of para 2 of the U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981.

It is the case of the writ petitioner that pursuant to the selections so undertaken he was appointed as an Assistant Teacher in L.T. Grade being armed with the relevant qualifications and thereafter he was selected by the Selection Committee on 9.3.1994 and an appointment order was issued on 10.3.1994 and he assumed charge

on 15.3.1994. Papers pertaining to approval was transmitted to the fifth respondent, District Inspector of Schools on 22.3.1994 however since no approval was accorded so the writ petitioner, as stated in para 17 preferred a writ petition which came to disposed of on 19.4.1994 requiring the fifth respondent, District Inspector of Schools to pass appropriate orders which in turn resulted to an order dated 5.5.1994 rejecting the claim of the writ petitioner for being accorded approval and payment of salary which was again subject matter of challenge in a writ petition thereafter the fifth respondent, District Inspector of Schools, Prayagraj proceeded to pass an order dated 24.5.1994 approving the payment of salary and appointment and the writ petitioner claims to have been paid salary on the basis thereof till October, 1994 and thereafter consequent to the retirement of Sri Kunwar Singh on 30.6.1994 on 29.11.2014 the salary of the writ petitioner was stopped which compelled the writ petitioner to prefer Writ Petition No.40822 of 1994 in which an interim protection was accorded on 20.12.1994 staying the effect and operation of the order dated 29.11.1994 and thereafter on 26.7.2018 the said writ petition according to the writ petitioner stood dismissed in the light of the judgment in the case of **Surendra Kumar Srivastava vs. State of U.P. and others, 2007 (1) ESC 118** against which the writ petitioner preferred **Special Appeal No.731 of 2018, Vijay Pratap Singh vs. District Inspector of Schools** in which interim protection was accorded on 19.9.2018 according salary to the writ petitioner while staying the effect and operation of the order of the learned Single Judge and finally the said Special Appeal stood decided on 30.8.2022 wherein following order was passed:-

1. Order dated July 26, 2018 passed by the learned Single Judge has been impugned by filing the present intra-court appeal. The order reads :

*"1. Learned counsel for petitioner could not dispute that dispute raised in present writ petition is squarely covered by Division Bench judgment of this Court in **Surendra Kumar Srivastava vs. State of U.P. and others, 2007(1) ESC 118**.*

2. In view thereof, no relief can be granted to petitioner. Dismissed accordingly. Interim order, if any, stands vacated."

*2. A perusal of the aforesaid order shows that the decision of Division Bench of this Court in **Surendra Kumar Srivastava vs. State of U.P. and others, 2007(1) ESC 118** was relied upon to dismiss the writ petition. The view expressed in the aforesaid Division Bench judgment was doubted by another Division Bench*

of this Court in **Jahaj Pal v. DIOS and another, 2013(5) ADJ 755 (DB)** and the matter was directed to be referred to a Larger Bench. The Larger Bench of this Court vide judgment in **Jahaj Pal v. District Inspector of Schools and another, 2019 (3) ADJ 424 (FB)** answered the questions raised and held that the Division Bench judgment of **Surendra Kumar Srivastava's case (supra)** is overruled to the extent as stated in Paragraph Nos. 191 to 199 of the judgment of the Larger Bench.

3. Considering the aforesaid developments which have taken place during pendency of the present appeal and finding that the facts of the case of the appellant have not been examined by the competent Authority or by this Court, as the writ petition was dismissed relying upon the Division Bench judgment of this Court in **Surendra Kumar Srivastava's case**, we deem it appropriate to set aside the order passed by the learned Single Judge, as a consequence order dated May 5, 1994 impugned in the writ petition is also set aside and remit the matter back to the competent Authority to examine the claim of the appellant and decide the same in accordance with law, Rules and Policy applicable for the purpose.

4. The appeal is disposed of, accordingly."

As per the writ petitioner he continued to the paid salary however according to the writ petitioner on 6.4.2023 the petitioner was served a notice under the signature of the Joint Director of Education Earth (Board Office) U.P. at Prayagraj informing the writ petitioner that there happens to be a complaint lodged by one Harish S/o Sri Mohan Lal resident of Kalyanpur on 22.12.2022 pursuant where to the writ petitioner tendered his reply a copy whereof has been appended at page 61 of the paper book dated 18.4.2023 and now according to the learned counsel for the writ petitioner on 16.5.2023, the fifth respondent, District Inspector of Schools has proceeded to stop the salary of the writ petitioner till the complaint itself is decided.

Learned counsel for the writ petitioner has assailed the said order dated 16.5.2023 passed by the fifth respondent, District Inspector of Schools, Prayagraj on various grounds namely the order passed by the Special Appellate Bench on 30.8.2023 in Special Appeal No.731 of 2018, Vijay Pratap Singh vs. District Inspector of Schools has attained finality and it has not been subject matter of challenge before any court of law as in this regard he seeks to rely upon para 37 of the writ petition. He further submits while inviting attention to para 32 that the claim of the writ petitioner in

pursuance of the order of the Special Appellate Court has also not been decided. Lastly he submits that on the basis of the complaint of a stranger the payment of the salary could not have been withheld as once the writ petitioner was put to notice on 6.4.2023 the writ petitioner tendered his reply on 18.4.2023 then atleast propriety demanded that the objections so raised by the writ petitioner ought to have been considered on merits while recording reasons in coming to the conclusions. He further submits that the writ petitioner is a cancer patient and thus he is suffering a lot.

Sri Santosh Kumar Mishra, learned Standing Counsel on the other hand submits that the issues with the writ petitioner is raising needs determination of the fact as to whether the order of the Special Appellate Court has attained finality or not and whether the writ petitioner is still in service and further the fact that there is any other legal impediment which comes in the way of the grant of benefits, he however could not dispute the fact that the writ petitioner has tendered his reply on 18.4.2023 against the notice dated 6.4.2023.

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

It is apparent from the pleadings set forth in the present writ petition that the writ petition was preferred by the writ petitioner being Writ-A No.40822 of 1994 challenging the order dated 29.11.2014 stopping the salary of the writ petitioner in which an interim order was accorded on 20.12.1994 which came to be dismissed on 26.7.2018 and thereafter an intra appeal was preferred on which on 19.9.2018 an interim order was accorded and Special Appeal No.736 of 2018 came to be decided on 30.8.2022. The writ petitioner claims that he is getting salary through out as earlier he was accorded interim protection but the candidature of the writ petitioner for regularisation has not been considered.

Since according to Sri Ojha, learned Senior Counsel for the writ petitioner the order of the Special Appellate Bench passed on 30.8.2022 in Special Appeal No.736 of 2018 has not been complied till date and no orders have been passed in black and white for consideration of the claim of the writ petitioner for regularisation and the order of the Special Appellate Bench dated 30.8.2022 has attained finality, thus in the opinion of the court prima facie on the basis of the complaint of a third person who is stated to be Sri Vijai Pratap Singh Patel, Assistant Teacher the salary of the writ petitioner could not have been withheld.

Records further reveal that it is the stand of the writ petitioner that he had submitted his reply to the notice dated 6.4.2023 issued by the Joint Director of Education Earth (Board Office) U.P. at Prayagraj, third respondent on 18.4.2023 however from the order/notice communication impugned 16.5.2023 the contention raised by the writ petitioner seemingly does not appear to have been considered in true perspective as there happens to be no reasons in coming to the conclusion as to why salary of the writ petitioner is to be stopped.

At this juncture, Sri S.K. Mishra, learned Standing Counsel who appears for the respondent no. 1 to 6 submits that let the second respondent take an appropriate decision in the matter regarding payment of salary in that regard after considering the objection of the writ petitioner and in case the claim of the writ petitioner for regularisation has not been considered then the same would be considered within the time bound period if already not considered. According to Sri S.K. Mishra, the writ petitioner may approach the third respondent, Joint Director of Education Earth (Board Office) U.P. at Prayagraj while filing a comprehensive representation along with the self attested copy of the writ petition who shall take appropriate action regarding payment of salary and also on issue with respect to the fact that as to whether there have been any consideration for regularisation of the services of the writ petitioner or not.

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

Considering the submissions of the rival parties as well as stand taken by them, the writ petition is being disposed off without seeking any response from the respondents granting liberty to the writ petitioner to prefer a comprehensive representation along with the self-attested copy of the writ petition and the certified copy of the order before the third respondent, Joint Director of Education Earth (Board Office) U.P. at Prayagraj, third respondent and on the receipt of the same the third respondent shall put to notice the seventh respondent and thereafter take an appropriate decision in coordination with the fifth respondent, District Inspector of Schools, Prayagraj with regard to the payment of the salary looking into the stand of the writ petitioner that he is a cancer patient and in dire need of monetary benefits within a period of two weeks from the date of presentation of the certified copy of the order. So far as the issue with regard to the claim for regularisation of the writ petitioner under Section 33G of the U.P. Act No. 5 of 1982 is concerned the third respondent shall look into

the matter and thereafter take a follow up action in that regard with competent authority within a period of two months from the date of production of the certified copy of the order subject to any legal impediment and off course the eventuality that the claim of the writ petitioner for regularisation has already been considered.

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

Order Date :- 12.10.2023

piyush