

Court No. - 36

Case :- WRIT - A No. - 15880 of 2023

Petitioner :- Vijendra Pal Singh

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

Counsel for Petitioner :- Kamal Kumar Keshewani

Counsel for Respondent :- C.S.C., Ram Prasad Dubey

Hon'ble Manjive Shukla, J.

1. Heard learned counsel appearing for petitioner and learned Standing Counsel appearing for Respondents No. 1 and 2 as well as Sri R.P. Dubey, learned counsel appearing for Respondents No. 3 and 4.

2. Petitioner through this writ petitioner has challenged the order dated 22.08.2023 passed by District Basic Education Officer, Badaun whereby petitioner's case for compassionate appointment on the post of Assistant Teacher has been rejected on the ground that petitioner on the date of death of his father was not having TET qualification. Petitioner through this writ petition has also prayed that if petitioner is not found eligible for appointment on the post of Assistant Teacher then his case may be considered for appointment against a Class-III / Class-IV post in compliance of judgment and order dated 25 July, 2012 passed in Writ-A No. 33828 of 2012 (Hari Shankar and others vs. State of U.P. and others).

3. Facts of the case, in brief, are that father of the petitioner while working on the post of Assistant Teacher in a Junior High School in District Badaun died in harness on 11.02.2011. The petitioner submitted an application for compassionate appointment and he was given appointment on the post of Assistant Teacher vide appointment order dated 13.08.2011. Later on petitioner's compassionate appointment on the post of Assistant Teacher was cancelled on the ground that petitioner does not possess TET qualification.

4. The petitioner and identically placed persons challenged their cancellation of compassionate appointment by filing various writ petitions which were clubbed together and leading writ petition became Writ-A No.33828 of 2012 (Hari Shankar and others vs. State of U.P. and others). This Court decided the bunch of writ petitions vide judgement and order dated 25.07.2012, whereby, writ petitions were dismissed but at the same time categorical direction was issued to the respondents to

consider the cases of the petitioners for compassionate appointment against Class-III / Class-IV posts. The aforesaid judgement and order dated 25.07.2012 passed by Writ-A No. 33828 of 2012 was put to challenge by bunch of Special Appeals, leading Special Appeal No. 773 of 2012 and the said bunch of Special Appeals was dismissed by Division Bench of this Court vide judgment and order dated 09.09.2021.

5. Since petitioner during pendency of litigation before this Court acquired TET qualification, therefore, he filed a Review Petition No. 239 of 2022 for review of judgement and order dated 09.09.2021, which was finally disposed of with a direction to District Basic Education Officer to consider and decide the petitioner's case. Pursuant to the aforesaid direction issued by this Court, petitioner's case for compassionate appointment on the post of Assistant Teacher has been considered and rejected by District Basic Education Officer, Budaun vide order dated 22.08.2023 on the ground that since the petitioner has acquired qualification of TET after the date of death of his father, therefore, he cannot be given benefit of the said qualification.

6. Learned counsel appearing for the petitioner has submitted that petitioner does not want to press this writ petition against the aforesaid order dated 22.08.2023 passed by District Basic Education Officer, Budaun, whereby petitioner's case for compassionate appointment on the post of Assistant Teacher has been rejected. Learned counsel appearing for petitioner further submits that petitioner at this point of time wants that his case may be considered and decided for compassionate appointment against a Class-III/ Class-IV post in terms of the direction issued by this Court vide judgement and order dated 25.07.2022 passed in Writ -A No. 33828 of 2012.

7. Learned counsel appearing for petitioner has argued that so far as case of the petitioner for compassionate appointment against Class-III / Class-IV post is concerned, controversy has already been decided by this Court vide judgement and order dated 18.07.2023 passed in Writ-A No. 8741 of 2023 (Subhash Chandra vs. State of U.P. and 3 others) wherein direction has been issued to consider the candidature of the petitioner for compassionate appointment against Class-III / Class-IV post.

8. Sri R.P. Dubey, learned counsel appearing for Respondents no. 3 and 4 has not disputed that the identical controversy has already been settled by this Court vide judgement and order dated 18.07.2023 passed in Writ-A No. 8741 of 2023 (Subhash Chandra vs. State of U.P. and 3 others).

9. I have considered the submissions advanced by learned counsel appearing for the parties.

10. Since, learned counsel appearing for the petitioner has submitted that petitioner does not want to press this writ petition to the extent of challenge to the order dated 22.08.2023 passed by District Basic Education Officer, Badaun, therefore, this Court is not proceeding to test the validity of the said order.

11. So far as issue relating to consideration of the case of the petitioner for compassionate appointment on Class-III / Class-IV post in terms of judgement and order dated 25.07.2012 passed in Writ- A No. 33828 of 2012 is concerned, this Court finds that identical issue has already been decided by this Court vide judgement and order dated 18.07.2023 passed in Writ-A No. 8741 of 2023 (Subhash Chandra vs. State of U.P. and 3 others). Relevant portion of the judgement and order dated 18.07.2023 passed in Writ-A No. 8741 of 2023 (Subhash Chandra vs. State of U.P. and 3 others) is extracted as under :.

36. I am also of the considered view that in-fact after passing of the judgement and order dated 25.07.2012 passed in Civil Misc. Writ Petition No. 33828 of 2012, there is no requirement for the petitioner to file fresh application for compassionate appointment as petitioner after the death of his father has already filed application for compassionate appointment, therefore, the District Basic Education Officer was under mandate of the Court to consider claim of the petitioner against existing Class-III/Class IV vacancy but instead of complying the said order, the Secretary, U.P. Basic Education Board, Prayagraj deliberately kept the matter pending and, therefore, the order dated 20.02.2023 thereby rejecting the claim of the petitioner for compassionate appointment on the ground that 11 years have elapsed, is not sustainable in the eyes of law and, thus is liable to be quashed by this Court.

37. In view of the aforesaid reasons, this Writ Petition is allowed and order dated 20.02.2023 passed by the Secretary, U.P. Basic Education Board, Prayagraj is quashed.

38. Matter is remanded to the Secretary, U.P. Basic Education Board, Prayagraj to consider the case of the petitioner for compassionate appointment on Class-III/Class-IV post in accordance with the observations made in this order and the directions issued by this Court vide judgement and order dated 25.07.2012 rendered in Civil Misc. Writ Petition No. 33828 of 2012 within two months from the date of service of certified copy of this order.

12. Since identical issue has already been decided by this Court in the aforesaid judgement, therefore, this writ petition is also **allowed** in terms of judgement and order dated 18.07.2023 passed in Writ-A No. 8741 of 2023 (Subhash Chandra vs. State of U.P. and 3 others) and direction is issued to Secretary U.P. Basic Education Board, Prayagraj to consider and decide the

petitioner's case in light of the observations made in the judgement and order dated 18.07.2023 passed in Writ-A No. 8741 of 2023 (Subhash Chandra vs. State of U.P. and 3 others) within a period of two months from the date of service of certified copy of this order.

Order Date :- 20.11.2023

Manoj