

Court No. - 35

Case :- WRIT - A No. - 15979 of 2023

Petitioner :- C/M Siddiq Faiz-E-Am Inter College And 2 Others

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

Counsel for Petitioner :- Anurag Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Counter Affidavit filed on behalf of Respondent Nos. 1 to 5 is taken on record.

Heard Sri Anurag Shukla, learned counsel for the writ petitioner as well as Sri H.K. Shukla, the learned Standing Counsel, who appears for Respondents 1 to 5.

A statement has been made by Sri Anurag Shukla that he does not propose to file any rejoinder affidavit to the counter affidavit filed on behalf of Respondent nos. 1 to 5, thus with the consent of the parties the writ petition is being decided at the fresh stage.

The case of the writ petitioner is that it is a minority institution conferred with certain protection under Article 30 of the Constitution of India. As per the writ petitioner, the said institution is recognized under the provisions of U.P. Intermediate Education Act, 1921 and the Rules and Regulations framed thereunder. The petitioner-Institution is in grant-in-aid list of the State Government, thus the provisions of U.P. Act No.24 of 1921 stands applicable.

According to the writ petitioners, there are three sanctioned posts in Clerical Cadre; one being Head Clerk and two Assistant Clerks. It is also the case of the writ petitioner that in the said institution, one Sri Fuzail Ahmad is working as a Head Clerk under promotion category and Sri Wassey Anwar as Junior Clerk, under direct recruitment category. Since a post of Assistant Clerk fell vacant and there was no incumbent under promotion quota duly qualified for being accorded promotion on the post of Assistant Clerk, thus the petitioner-Institution after complying the necessary formalities as envisaged under the Government Order issued from time to time proceeded to advertise one post of Assistant Clerk in daily newspaper 'Rashtriya Sahara' on 21.03.2021 and 'Pioneer' on 22.03.2021. A selection committee was also constituted therein and after conducting the selections, the petitioner no.3 was selected

and appointed on the post of Assistant Clerk. Since the petitioner no.3 came to be appointed as an Assistant Clerk in the petitioner no.1 Institution, but approval whereof was not accorded, so the writ petitioners preferred Writ-A No.5982 of 2022, (Committee of Management Siddiq Faiz-e-Am-Inter College and 2 others Vs. State of U.P. and others), which came to be disposed off on 12.09.2022 directing the fourth respondent, District Inspector of Schools, Kanpur Nagar to consider the claim of the writ petitioner. However, now, the claim set up by the writ petitioner has been negated by the fourth respondent, District Inspector of Schools, Kanpur Nagar by virtue of the order dated 09.12.2022.

Questioning the said order, the writ petitioners have filed the present writ petition, which was entertained on 22.09.2023, pursuant where to, a counter affidavit has been filed on behalf of Respondent Nos. 1 to 5 by the District Inspector of Schools, Kanpur Nagar dated 18.11.2023. Since the learned counsel for the petitioner does not propose to file any rejoinder to the counter affidavit filed by the Respondent Nos. 1 to 5, thus this Court is proceeding with the matter.

Sri Anurag Shukla, learned counsel for the writ petitioner while assailing the order dated 09.12.2022 passed by the fourth respondent, District Inspector of Schools, Kanpur Nagar, has submitted that the order impugned is per se illegal and cannot be sustained for a single moment, particularly in view of the fact that as many as nine grounds have been sought to be taken to negate the claim of the writ petitioner, but the said grounds are thoroughly untenable in the eyes of law. He seeks to submit that the District Inspector of Schools, Kanpur Nagar was swayed away while ignoring the fact that the petitioner-Institution is a Minority Institution, thus there are certain protections available with the said Institution and the same cannot be equated with the non-minority Institution. Learned counsel for the writ petitioner seeks to rely upon a judgment of this Court in the case of Writ-A No.13182 of 2019, Manoj Kumar Jain Vs. State of U.P. decided on 09.05.2022, so as to further contend that all the objections sought to be taken are not available for negating the claim of the writ petitioner. He further submits that the first ground taken in the order impugned is relatable to the provisions contained under Chapter III of Regulation 2 of the U.P. Act No. 24 of 1921 with regard to the fact that 50% quota is to be adhered to while making selections under promotion or direct recruitment. He submits that the said provision would not come in the way of the writ petitioner, particularly when none of the Class-IV incumbents were eligible or qualified for

being accorded promotion and thus faced with the said situation, the Institution in question proceeded to advertise the post. So far as the second ground is concerned, with regard to non-publishing in widely circulated newspapers, there happens to be two advertisements published in 'Pioneer' and 'Rashtriya Sahara', which are widely circulated newspapers. The third ground, which is being sought to be taken for negating the claim was that the photocopy and the registered post of the application forms are not made available to the District Inspector of Schools. He submits that in the writ petitions, there are various documents showing the fact that the said documents were made available as for taking approval. He further submits that the fourth ground that there was no details of the candidates provided to the office of the District Inspector of Schools as to how many candidates applied is patently misconceived, inasmuch as all the documents substantiating the said facts were transmitted to District Inspector of Schools, Kanpur Nagar. In so far as fifth ground is concerned he submits that already in the advertisement itself, the typing speed was specifically provided and there have been no infraction of the provisions of law. Likewise, so far as the sixth ground is concerned, he submits that already a merit list was prepared in that regard. As regards the seventh, eighth and ninth grounds are concerned, he submits that the said grounds are not available to the respondents, as the selections were conducted on merit in that regard. He further submits that all the formalities have been completed therein. While relying upon the judgment in the case of **Manoj Kumar Jain** (*supra*) he submits that what is to be seen in a case while granting approval for recruitment in the minority institution is that merit should not be compromised, as it is the prerogative of the Committee of Management to select an incumbent subject to possession of qualification. He submits that all the said aspects had already been brought before the District Inspector of Schools, Kanpur Nagar, but the same has been skipped and overlooked. He thus prays that the order impugned be set aside and the matter be remitted back.

Sri H.K. Shukla, learned Standing Counsel, who appears on behalf of the Respondents submits that though in the order impugned, certain grounds have been taken in non-suiting claim of the writ petitioner, but the same has neither been discussed, nor addressed on correct perspective. He submits that the documents, which the writ petitioner seeks to rely upon, and which are annexed with the writ petition, which is claimed to have been submitted by the District Inspector of Schools, Kanpur Nagar have not been dealt with. According to him, the impugned order be set aside, matter be

remitted back to the District Inspector of Schools, Kanpur Nagar, fourth respondent to decide afresh while giving a re-look in the light of the judgment in the case of **Manoj Kumar Jain** (*supra*).

Having heard learned counsels for the rival parties as well as the stand taken by them, this Court finds that the order dated 09.12.2022 passed by the District Inspector of Schools, Kanpur Nagar, fourth respondent has skipped the core and fundamental issues, which are required for either approving or disapproving the selection in view of the mandate contained in the judgment in the case of Manoj Kumar Jain (*supra*) .

Accordingly the writ petition is decided in the following terms: (a) the order dated 09.12.2022 passed by the fourth respondent, District Inspector of Schools, Kanpur Nagar is set aside; (b) the matter stands remitted back to fourth respondent, District Inspector of Schools, Kanpur Nagar to decide afresh after giving opportunity of hearing to the writ petitioners; (c) In case the fourth respondent requires certain documents are to be furnished, then it shall specify the said documents and fix a date and then proceed to decide the lis within a period of three months from the date of production of certified copy of the order.

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

Order Date :- 21.11.2023
N.S.Rathour