

Court No. - 35

Case :- WRIT - A No. - 16083 of 2023

Petitioner :- Praveen Kumar Mishra

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Vishnu Shanker Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri Vishnu Shanker Gupta, learned counsel for the petitioner and Sri Shailendra Singh, learned Standing Counsel, who appears for respondents 1 to 4.

In view of the order, which is being proposed to be passed today, notices are not being issued to the five to eight respondents.

The case of the writ petitioner is that the fifth respondent, Jawahar Lal Nehru Inter College, Kalyanpur, District Kanpur Nagar is an institution recognised under the provisions of U.P. Intermediate Education Act, 1921, U.P. Act No. 5 of 1982 and 24 of 1971 stands applicable.

It is the case of the writ petitioner that the writ petitioner was appointed as an Assistant Teacher through direct recruitment on 6.7.1991 in the fifth respondent institution in question and as whereas the eighth respondent is concerned he came to be posted as Assistant Teacher in the institution in question by mode of transfer on 1.8.2009. It is the further case of the writ petitioner that though on 27.3.2023 a document has been issued with the heading *Saikshika Satra, 2022-23 Hetu Vidyalyaya Mein Karyarat Sahayak Adhyapakon Ki Varishthata Suchi Ke Sambandh Mein* therein the name of the writ petitioner has been placed and enbloc below the name of the eighth respondent.

While inviting the attention of the court towards paragraph 49 of the writ petition read with paragraph 52 to 55 it is being sought to be contended that the aforesaid document is a tentative seniority list. He submits that without finalizing the said tentative seniority list in accordance with the provisions contained under the Regulations of the U.P. Intermediate Education Act, 1921 now the eighth respondent has been made senior and he has been permitted to officiate as a Head Master of the institution in question by virtue

of the order dated 13.4.2023.

It is the submission of the learned counsel for the writ petitioner that he in these circumstances preferred objections which was taken cognizance by the District Inspector of Schools, Kanpur Nagar on 6.5.2023 and the writ petitioner on 16.5.2023 followed on 1.6.2023 had raised his objection.

The grievance of the writ petitioner is that once the eighth respondent has been transferred to the fifth respondent institution then he ought to have been placed below the writ petitioner and the writ petitioner is entitled to be accorded placement over the eighth respondent.

Sri Shailendra Singh, learned Standing Counsel submits that though on one hand the writ petitioner claims that there happened to be a tentative seniority list as stated in para 55 of the writ petition but there is no document on record so as to substantiate in the present proceedings at the present moment as to whether any reply/objection was submitted to the tentative seniority list. However he further submits that from the document available on record seemingly it appears that the matter is engaging attention before the authorities thus according to him the crucial aspect which needs to be determined is the inter se seniority dispute between the writ petitioner and the eighth respondent which is the basis for conferring the benefit of officiation. He thus submits that the core issue relating to the seniority dispute needs to be adjudicated as officiation is dependent upon the same. He submits that the writ petitioner may take recourse to the provisions of the Intermediate Education Act and according to him in case the seniority list has not been finalised then he has a remedy for making objections and in case the same stand finalised then there exist remedy however the officiation of the eighth respondent is dependent upon the finalisation of the seniority list.

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

Apparently there happens to be annexure-18/19 at page 145, 147 and 148 reference whereof has been given in para 49/56 that the same is a seniority list for the session 2022-23 and as per averments contained in para 55 the same is being termed by the writ petitioner to be a tentative seniority list. Though the writ petitioner has sought to argue that he has preferred objections against the same but they are not clearly borne out from the records.

However at this stage Sri Shailendra Singh submits that let an exercise be undertaken by the Joint Director of Education (Secondary), Kanpur Region, Kanpur who shall get into the said issue and the aspects of the matter in that regard.

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

Considering the submissions of the rival parties as well as stand taken by them, liberty is accorded to the writ petitioner to approach the third respondent, Joint Director of Education (Secondary), Kanpur Region, Kanpur, while filing an appropriate application accompanied with the representation and self-attested copy of the writ petition and of course certified copy of the order and on the receipt of the same the third respondent shall deal with the claim of the writ petitioner and put to notice the fifth to eighth respondents and thereafter proceed to decide the case bearing in mind the issue as to whether the tentative seniority list have been issued on 27.3.2023 annexure-18/19 on page 145, 147, 148 or not, in case objections have been preferred by the respective parties whether the same transformed into a final seniority list and also issue relatable to the seniority of the writ petitioner vis-a-vis the eighth respondent making it dependent upon outcome of the same with respect to the officiation of the eighth respondent. The said exercise is to be taken within a period of three months from the date of presentation of the certified copy of the order strictly in accordance with law.

Needless to point out that the writ petition has been decided without seeking any response from the respondents. Thus, passing of this order may not be construed to an expression that this Court has gone into the merits of the case.

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

Order Date :- 19.10.2023

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