

Court No. - 35

Case :- WRIT - A No. - 15988 of 2023

Petitioner :- Dayanand (Peon) And Another

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Prabhakar Awasthi, Surya Bhan Singh

Counsel for Respondent :- C.S.C., Rahul Srivastava

Hon'ble Vikas Budhwar, J.

1. Heard Shri Prabhakar Awasthi and Shri Suryabhan Singh, learned Counsel for the writ petitioners, who are two in number, Shri P. K. Shahi, learned Additional Chief Standing Counsel for Respondents 1, 2, 3 and Shri Rahul Srivastava, who appears for Respondent Nos. 4 and 5.

2. This Court, while entertaining the writ petition on 22.09.2023, had issued notices to Respondent Nos. 4, 5 and 6. However, there is an Office Report dated 18.10.2023 that the services upon Respondent No. 4 is confirmed and in so far as Respondent Nos. 5 and 6 are concerned, unserved notices are received. However, Shri Rahul Srivastava appears for Respondent Nos. 5 and 6. Since Affidavits have been exchanged between the parties and they seek disposal of the writ petition at the admission stage, thus, the writ petition is being accordingly decided.

3. The case of the writ petitioners, who are two in number herein is that there happens to be an institution by the name of Mahatma Gandhi Sainik Inter College, Pachhayagaon, District Etawah, which is recognized under the provisions of U.P. Intermediate Education Act 1921 and the U.P. Act No. 24 of 1971 stand applicable.

4. As per the writ petitioner, there were two Class-IV employees, namely Prabhu Dayal and Har Dayal, who were working and they came to be superannuated on 31.07.1998 and 31.01.1999 respectively. It is also the case of the writ petitioners that the officiating Principal of the institution in question, Shri Ravindra Singh Rathore, had proceeded to make appointments of 5th and 6th Respondents on 03.01.2000 and the papers were transmitted to

the District Inspector of Schools, Etawah, third respondent for approval. Since no approval whatsoever has been accorded, so a Writ Petition No. 7192 of 2000 was preferred, which came to be disposed of on 11.02.2000, requiring the District Inspector of Schools, Etawah, to pass orders. Pursuant whereunto, the District Inspector of Schools, Etawah, third respondent, disapproved the selection/ appointment of the Respondent Nos. 5 and 6, on 08.03.2000, a writ petition is stated to have been preferred by the 5th and the 6th respondents, being Writ A No. 18093 of 2000, in which no interim orders were passed. However, in the meantime, on 30th June 2000, one post of Class-IV employee also became vacant consequent to the promotion of one Sri Shiv Shankar Varma as a Clerk. The writ petitioners herein claim that they came to be selected on 24.04.2001 and the papers were transmitted to the District Inspector of Schools, Etawah, third respondent, on 30.04.2001 and thereafter, approval was accorded in favour of the writ petitioners on 26.06.2021, who are two in number and one Shri Santosh Kumar Shankwar. It is also the case of the writ petitioners that appointment orders were also issued in favour of the writ petitioners and Shri Santosh Kumar Shankwar on 27.06.2001. Since the writ petitioners and Shri Santosh Kumar Shankwar were not being paid salary, which they claim to have been legally entitled to, so they preferred Writ Petition No. 31411 of 2001 for a mandamus directing the concerned authority to pass orders. The said writ petition came to be disposed of on 31.08.2001 requiring the competent authority to pass orders and thereafter the Joint Director of Education, Kanpur Mandal, Kanpur proceeded to pass an order dated 26.03.2002 according approval to the writ petitioner. This led to filing of a Writ Petition No. 5956 of 2002 by the 5th and 6th Respondents challenging the order dated 26.06.2001 by the District Inspector of Schools. The Writ Petition No. 18093 of 2000 and the Writ Petition No. 5956 of 2002 preferred by the 5th and 6th Respondents came to be decided on 22.09.2019. Orders passed in Writ Petition No. 18093 of 2000 are being quoted herein under:

"1. Heard Sri K.M. Asthana, learned counsel for petitioners and learned Standing Counsel for Respondents-1, 2 and 5. None appeared on behalf of Respondents-3 and 4 though the case is called in revised.

2. Petitioners were selected for appointment to Class-IV vacancies which

occurred due to retirements of Sri Prabhu Dayal and Sri Hari Bilas, permanent Class-IV employees on 31.07.1998 and 31.01.1999, respectively from Mahatma Gandhi Sainik Inter College, Pachayan Gaon, District Etawah (hereinafter referred to as "College"). Papers were forwarded to District Inspector of Schools, Etawah (hereinafter referred to as "DIOS") on 13.01.2000. Having not received any reply from DIOS, appointment letters were issued on 18.01.2000.

3. Since no payment of salary was made, petitioners approached this Court in Writ Petition No. 7192 of 2000 which was disposed of on 11.02.2000 directing DIOS to pass appropriate order, whereupon impugned order dated 08.03.2000 has been passed holding that before advertisement no sanction was obtained from DIOS, reservation policy has not been followed and compassionate appointment has not been considered.

4. It is contended that under Regulation 101 Chapter III of the Regulations framed under U.P. Intermediate Education Act, 1921 (hereinafter referred to as "Act, 1921") there is no requirement of any sanction or approval from DIOS before advertisement but before appointment document were sent and when DIOS failed to communicate any decision within prescribed time thereafter appointment was made. It is further submitted that DIOS subsequently could not have declined approval stating that there is no provision of deemed approval under Regulation 101.

5. Issue, whether any approval before advertisement is necessary or not has been set at rest by a Division Bench in Jagdish Singh Vs. State of U.P. and others, 2006(3) ESC 2055 and it is held that once there is a deemed approval, DIOS could not have denied salary.

6. In view thereof, writ petition is allowed. Impugned order dated 08.03.2000 is hereby set aside."

5. The order passed in Writ Petition No. 5956 of 2002 is also quoted hereinunder:-

"1. Heard Sri K.M. Asthana, learned counsel for petitioners and learned Standing Counsel for Respondents-1, 2 and 7. None appeared on behalf of Respondents-3 to 6 though the case is called in revised.

2. In view of judgment of date passed in connected Writ Petition No. 18093 of 2000 (Santosh Kumar and another Vs. District Inspector of Schools and others), since order of DIOS disapproving appointment of petitioners on Class-IV post has been set aside, result is that order dated 26.06.2001, impugned in this writ petition, appointing Respondents-3 and 4 also cannot be sustained.

3. In view thereof, writ petition is allowed. Impugned order dated 26.06.2001 is hereby set aside."

6. It is also the case of the writ petitioner that the Committee of

Management of the Institution in question preferred a **Special Appeal Defective No. 1148 of 2019, C/M Gandhi Sainik Inter College and another vs. District Inspector of Schools**, order whereof has been annexed as Annexure-7 at page 40, which reads as under:-

"Learned counsel for the respondents prays for and is allowed one month's time to file counter to the delay condonation application.

List thereafter."

7. In sequel to the same, the writ petitioners have also preferred Special Appeal Defective No. 1149 of 2019, orders whereof is Annexure- 8 at page 42, which reads as under:

"Learned counsel for the respondents prays for and is allowed one month's time to file counter to the delay condonation application.

List thereafter."

8. According to the writ petitioners, in compliance of the order dated 22.02.2019, passed in the above two captioned writ petitions preferred by Respondents 5 and 6, an order is stated to have been passed on 22.10.2019 by the District Inspector of Schools, Etawah, whereby the approval of the appointment of the 5th and 6th Respondents has been negated. This also led to filing of the Contempt Petition Civil No. 7357 of 2019, *Santosh Kumar and others v. Raju Rana v. District Inspector of Schools*, in which orders were passed on 12.07.2023 and 28.07.2023, requiring the personal appearance of the educational authorities. Thereafter, according to the writ petitioner on 28.06.2023, the District Inspector of Schools, Etawah, has proceeded to pass the impugned order whereby the writ petitioners have been restrained from functioning and the salary has been stopped. Consequential order has also been passed by the principal of the institution in question on 30.08.2023.

9. Questioning the order dated 26.08.2023 passed by the District Inspector of Schools, Etawah as well as the order dated 30.08.2023 of the Principal of the Institution, the writ petitioners have filed the present writ petition.

10. This court entertained the present petition on 22.09.2023 while issuing notice and requiring the respondents to file a counter affidavit. A counter affidavit has been filed on behalf of the

District Inspector of Schools, Etawah dated 30.11.2023 followed by a counter affidavit filed by Respondent Nos. 5 and 6. To the said counter affidavits, rejoinder affidavits have been filed which are available on record.

11. Sri Prabhakar Awasthi and Sri Suryabhan Singh, learned counsels for the writ petitioners submit that before passing the impugned order dated 28-06-2023 by the District Inspector of Schools Etawah, third respondent, no opportunity of hearing was accorded to the writ petitioners and they are working on the post in question since the year 2002, thus the said order is liable to be set aside. He further submits that at least propriety demanded that before passing of the order in question, opportunity of hearing ought to have been accorded, so as to enable the writ petitioner to put forward their stand. He further submits that even otherwise, he is not questioning the selections and appointment of the 5th and 6th respondents, however, according to him, there are various posts lying vacant, details whereof have been given in paragraph-34 of the writ petition, so as to contend that the petitioners can be adjusted against the same. Additionally, it has been sought to be argued that once an order has been passed on 22-10-2019 by the District Inspector of Schools Etawah negating the claim of the 5th and 6th respondents, then the said order ought to have been challenged by the 5th and 6th respondents before the appropriate forum in that regard.

12. Sri Awasthi further submits that entire exercise undertaken by the District Inspector of Schools Etawah, third respondent is under fear of contempt and thus there has been no independent application of mind in that regard.

13. Sri Rahul Srivastava, who appears for the 5th and 6th Respondents, on the other hand, submits that once the order passed on 22.02.20219 in Writ A No. 10893 of 2000 and order dated 22.02.2019 passed in Writ A No.5956 of 2002 are intact and the approval accorded to the writ petitioners' appointment on 26.06.2001 was set aside, then the said writ petitioners have no legal right to continue on he post in question. He further submits that challenging the said orders already the writ petitioners and the Committee of Management has preferred the Special Appeal, which is pending before this Court, wherein there is no interim

order in operation in their favour, thus the order impugned in the writ petition is perfectly valid and in accordance with law.

14. Additionally, it is submitted that mere non-challenge to the order dated 22.10.2019 of the District Inspector of Schools, Etawah negating the claim of the fifth and the sixth respondents would not be fatal as in the order dated 22.02.2019 passed in the Writ Petition preferred by the fifth and sixth respondents, there was no direction of the District Inspector of Schools, Etawah to consider the claim of the claim of the fifth and sixth respondents. He submits that the Contempt Court has set right the illegalities committed by the District Inspector of Schools and passed an order dated 26.08.2023 which is perfectly justified.

15. Shri P.K. Shahi, learned Additional Chief Standing Counsel, has supported the argument of Sri Rahul Srivastava. He submits that he has nothing to add. He further submits that the principles of natural justice cannot be applied in the present facts of the case, particularly when the claim of the writ petitioners has already been negated in the aforesaid writ petition, and until and unless the judgment is set aside or stayed, the writ petitioners cannot get a relief.

16. I have heard and considered for the parties.

17. The facts of the case are not in dispute. It is also not in dispute that the 5th and 6th Respondents' writ petition came to be allowed, wherein the order disapproving the selections of the 5th and 6th Respondents dated 08.03.2000 was set aside and sequally also the approval of the District Inspector of Schools in favour of the writ petitioners on 26.06.2001 was also set aside. Though argument of Shri Prabhakar Awasthi, learned counsel for the writ petitioners that the subsequent order dated 26.03.2002 approving the selection and making salary to the writ petitioners was not challenged, thus, it has attained finality appears to be attractive at the first blush, but once a judicial order has been passed, which is still existing, wherein the order dated 26.06.2001 approving the selections of the writ petitioners have been set to naught then the writ petitioners are not entitled to any relief., particularly when the writ petitioners have already approached the Special appellate Bench challenging the order of the writ court. So far as the non-challenge to the order dated 22.10.2019 of the District Inspector of Schools, Etawah by

the fifth and the sixth respondents is concerned, mere non-challenge would not in any manner whatsoever, make the case of the fifth and sixth respondent fatal, as there was no observation or direction of the Writ-Court requiring the District Inspector of Schools, Etawah to pass fresh orders.

18. Accordingly the writ petition is **consigned to record** leaving it open to the writ petitioners to pursue the pending Special Appeal.

Order Date :- 5.12.2023

N.S.Rathour