

Court No. - 35

Case :- WRIT - A No. - 16313 of 2023

Petitioner :- Smt. Vimlesh

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

Counsel for Petitioner :- Vashishtha Tiwari

Counsel for Respondent :- CSC

Hon'ble Vikas Budhwar,J.

Heard Sri Vashishtha Tiwari, learned counsel for the writ petitioner as well as Shailendra Singh, learned Standing Counsel, who appears for the respondent nos.1, 2 and 3.

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

The writ petitioner herein had filed Writ - A No. 11763 of 2023 (Smt. Vimlesh vs. State Of U.P. And 3 Others) with a prayer for quashing of the order dated 22.05.2023, passed by the second respondent, District Inspector of Schools, Firozabad, whereby the claim of the writ petitioner for grant of compassionate appointment has been rejected. The said writ petition was entertained and decided by this Court on 31.07.2023, while passing the following orders :-

"Heard Sri Vashishtha Tiwari, learned counsel for the petitioner, Sri Shailendra Singh, the learned Standing Counsel, who appears for Respondents 1 to 3.

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

The case of the writ petitioner is that the fourth respondent institution, namely, Smt. Rewati Devi Girls Vidyalaya Inter College is a recognized institution under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of Payment of Salary Act 1971 are applicable. As per the writ petitioner, the husband of the writ petitioner, namely, Mahesh Chandra (since deceased), who was working as a permanent

Class-IV employee (sweeper) died in harness on 04.08.2022. The writ petitioner preferred a writ petition for compassionate appointment. In paragraph-10 of the writ petition, it has been further asserted that there are total 9 Class IV sanctioned posts and out of those, three posts are being manned and six posts are lying vacant. As per the writ petitioner, though the writ petitioner was entitled to be granted compassionate appointment, however, now by virtue of the order dated 22.05.2023, the second respondent, District Inspector of Schools, Firozabad has negated the claim of the writ petitioner on the premise that the writ petitioner is not qualified, as he does not possess any qualification and in view of the Government Order dated 04.09.2000, she cannot be considered eligible for grant of compassionate appointment.

Prayer in the present petition is for quashing the order dated 22.5.2023 passed by the second respondent, District Inspector of Schools, Firozabad and to accord fresh consideration to the claim of the writ petitioner for grant of compassionate appointment.

Learned counsel for the writ petitioner submits that the order impugned, which is subject matter of challenge in the present petition is in violation of principles of natural justice, as the same has been passed without putting the writ petitioner to notice, as in this regard, he relied on paragraph-14 of the writ petition. Learned counsel for the writ petitioner further submits that the Government Order dated 04.09.2000, as per the title is not applicable in the case of the institutions, which are governed the institution under the U.P. Intermediate Education Act, 1921 and is basically governed under U.P. Basic Shiksha Parishad. He further submits that in view of the provisions contained under the Chaturth Varg Karmachari Sewa Niyamawali, 1985, reference whereof at page-39 Rule 10(2), is there is no qualification prescribed for the post of Sweeper, which even in fact is a Class-IV post, but in view of the competing claim to whom the appointment is to be granted under compassionate ground, the preference is to be given to those, who have qualification.

Sri Shailendra Singh, learned Standing Counsel on the other hand submits that though under the relevant regulations, there is no specific educational qualification prescribed for the post of sweeper, Class-IV post, but in view of the Government Order dated 4.9.2000, which is already governing the subjects with relation to Basic Shiksha, the same have been adopted. He further submits that the provisions of the 1985 Rules are not applicable. However, he does not dispute the fact that the order in question is in violation of the principles of natural justice and according to him, the matter needs to be given a re-look. He further submits that he does not propose to file any response to the writ petition and the order in question be set aside and the matter be remitted back to decide afresh.

Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed off without seeking any response from the respondents. As per the parties in question the order impugned has been passed in

violation of principles of natural justice, as the writ petitioner has not been put to notice. Even otherwise, the proper course would have been that the writ petitioner ought to have been given an opportunity to submit its explanation in that regard. Accordingly, this Court without going into merits of the matter on technical aspects regarding violation of principles of natural justice, is setting aside the order passed by the second respondent. The matter stands remitted back to be decided as fresh strictly in accordance with law on the fundamental core issues: (a) the applicability of the Government Order dated 04.09.2000; (b) applicability of the 1985 Rules; (c) entitlement of the writ petitioner in that regard.

Since the writ petition has been decided without putting the fourth respondent to notice, thus before conducting any such exercise, fourth respondent as well as the petitioner be put to notice seeking their stand and thereafter the order shall be passed strictly in accordance with law, within a period of two months.

With the aforesaid observations, the writ petition is disposed off.

Needless to point out that the writ petitioner 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 adjudicated the matter on merits and the second respondent shall pass an order with independent application of mind without being influenced or obsessed with any of the observations made hereinabove."

Post remand, now an order has been passed on 29.08.2023 by a Committee comprising of the Principal, Smt. Rewati Devi Girls Vidyalaya Inter College, Firozabad, Finance and Accounts Officer, Office of District Inspector of Schools, Firozabad and District Inspector of Schools, Firozabad, whereby the claim of the writ petitioner has been rejected.

According to the learned counsel for the writ petitioner, the order in question has been passed without adverting to the core and the fundamental issues, which required adjudication in the present case, which had been noticed in the order dated 31.07.2023, passed in Writ - A No. 11763 of 2023 (Smt. Vimlesh vs. State Of U.P. And 3 Others), relating to the applicability of the Government Order dated 04.09.2000, which according to the writ petitioner was applicable to Basic Shiksha and further the fact that only Chapter -

III, Regulation - 103 to 107 of the U.P. Intermediate Education Act deals with the selection procedure.

Sri Shailendra Singh, learned Standing Counsel, who appears for the respondents submits that the order in question is non speaking as it seeks to omit the crucial aspects of the matter as to how the Government Order dated 04.09.2000, which relates to Basic Shiksha stood adopted in the institutions, which are governed under the U.P. Intermediate Education Act, 1921. According to him, some more spade work ought to have been done at the end of the respondents. He thus submits that a fresh exercise be undertaken by the respondent nos.2, 3 and 4, while considering the claim of the writ petitioner and according to him, the order in question be made subject to the final orders to be passed by them. He further submits that he does not propose to file any response to the writ petition.

Considering the submission of the rival parties and the nature of the order, which is being proposed to be passed, this Court as discussed is not issuing notice to the fourth respondent, however requiring the writ petitioner to represent its cause before the second respondent, District Inspector of Schools, Firozabad, who shall transmit the entire matter to the Committee so constituted therein, obviously the second respondent is a Member and who shall consider the claim of the writ petitioner afresh strictly in accordance with law after passing a reasoned and a speaking order dealing with the issues which had already been en-capsuled in the order dated 31.07.2023 within a period of three months from the date of the production of the certified copy of the order after putting to notice the institution in question. The order dated 29.08.2023, passed by the respondent nos.2, 3 and 4 shall be subject to the final orders to be passed therein.

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

Order Date :- 13.10.2023

S Rawat