

Court No. - 35

Case :- WRIT - A No. - 16097 of 2023

Petitioner :- Smt Priyanka Singh

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

Counsel for Petitioner :- J.P. Singh,Himanshu Singh

Counsel for Respondent :- C.S.C.

Connected with

Case :- WRIT - A No. - 16529 of 2023

Petitioner :- Muslima Khatoon

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Alok Singh,Phool Chandra Singh,Sumitra Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

1. Since, common question of laws and facts are involved in both the writ petitions and the parties do not propose to file any further affidavits, thus with the consent of the parties, the writ petitions are being decided by a common order.

2. Heard Sri J.P. Singh, learned counsel for the writ petitioner in the leading writ petition as well as Sri Phool Chandra Singh, who appears for the writ petitioner in the connected writ petition, Sri Shailendra Singh and Sri Santosh Kumar Mishra, learned Standing Counsels, who appears for the respondent nos.1 to 4 in the leading writ petition and respondent nos.1 to 6 in the connected writ petition.

3. In view of the order, which is being proposed to be passed, notices are not being issued to the fifth respondent, Committee of Management, Rafi Ahmad Qidwai Balika Inter College, Anjanshaheed, Azamgarh in the leading writ petition and the

seventh respondent, Committee of Management, Begum Khair Girls Inter College, Basti, District - Basti in the connected writ petition.

4. The case of the writ petitioner in the leading writ petition (Smt Priyanka Singh vs. State Of U.P. And 4 Others) is that the fifth respondent institution is a minority institution conferred with certain protections under Article - 30 of the Constitution of India and it is a recognized and an aided institution, the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No. 24 of 1971, stands applicable.

5. One Smt. Rumana Shaheed, the then In-charge Principal was to superannuate on 31.03.2021, thus, the Committee of Management of the institution in question proceeded to pass a resolution on 07.03.2021 for making officiating Principal the next senior-most teacher being the petitioner herein. Smt. Rumana Shaheed demitted her office as a Principal on 31.03.2021 and thus the writ petitioner was made to officiate as a Principal with effect from 01.04.2021 and her signatures stood attested on 30.07.2021 by the District Inspector of Schools, Azamgarh and she claims to be continuously working in the post in question, however her claim for payment of salary and the benefits as an Officiating Principal has been denied by the District Inspector of Schools, Azamgarh on 25.04.2023 on the ground that the institution in question is a minority institution, thus in absence of any provision for grant of salary and other benefits as an officiating Principal, it can't be made admissible to her.

6. Questioning the order dated 25.04.2023 of the District Inspector of Schools, Azamgarh, the leading writ petition has been preferred, which came to be entertained on 19.10.2023, wherein

the following orders were passed :-

"The contention of Shri J.P. Singh, learned counsel for the writ petitioner submits that the order dated 25.04.2023 passed by the District Inspector of Schools, Azamgarh seeking to deny monetary benefits on the post of officiating/incharge principal in the minority institution is per se illegal. As once the signature of the writ petitioner stood attached and he was permitted to perform the duties then relying upon the provision of Regulation 2 of Chapter II of U.P. Intermediate Education Act, 1921 was totally unwarranted. He seeks to rely upon the Division Bench judgment in the case of Soloman Morar Jha Vs. District Inspector of Schools, Deoria and others (1982 UPLBEC 113) as well as the judgment in Writ A No. 20784 of 2022 (Zaid Noorullah Vs. State of U.P. and 3 others) decided on 13.12.2022.

Learned Standing Counsel, Shri Shailendra Singh, seeks time to obtain instructions.

On his request, put up this case as a fresh on 31.10.2023."

7. A supplementary affidavit has been filed by the writ petitioner on 30.10.2023, followed by a counter affidavit by the Associate District Inspector of Schools, Azamgarh, dated 09.11.2023.

8. Sri J.P. Singh, learned counsel for the writ petitioner submits that he does not propose to file any rejoinder affidavit to the counter affidavit filed by the official State respondents.

9. Similarly, so far as the connected writ petition is concerned, the same has been preferred by Smt. Muslima Khatoon, who was granted appointment on 24.06.2014 as Lecturer, History in the seventh respondent institution, Committee of Management, Begum Khair Girls Inter College Basti, District - Basti on 24.06.2014 and she was accorded joining as a Lecturer, History on 02/22/07/2014. A vacancy on the post of Principal in the said institution stood vacant consequent to retirement of Smt. Neelofar Usmani on 30.06.2021 and the writ petitioner was accorded joining as an officiating Principal on 01.07.2021, pursuant to the resolution dated 29.06.2021 and order dated 30.06.2021 and her signatures were attested by the District Inspector of Schools, Basti on

07.07.2021, however the payment of salary and other benefits as a, officiating Principal has been denied on the pretext that the institution in question is a minority institution, thus the provisions of Section - 18 of the U.P. Act No.5 of 1982 are not applicable.

10. Challenging the order dated 16.06.2023, passed by the District Inspector of Schools, Basti fifth respondent, the connected writ petitioner has been preferred, which was entertained by this Court on 04.10.2023, wherein the following orders were passed :-

"Since, a writ of certiorari is being sought for quashing of the order dated 16.06.2023, passed by the District Inspector of Schools, Basti denying salary to the writ petitioner, as an officiating Principal. Sri Shailendra Singh, learned Standing Counsel shall obtain the instructions.

Put up this case on 06.10.2023, as fresh at 10:00 a.m."

11. A counter affidavit has been filed by the District Inspector of Schools, Basti, dated 19.10.2023, to which a rejoinder affidavit has been filed dated 30.10.2023.

12. The learned counsel for the writ petitioner in both the writ petitions have sought to argue that the orders impugned in both the writ petitions cannot be sustained for even a single moment, particularly in view of the fact that the interpretation, which is being sought to be suggested while passing the order impugned in both the writ petitions that once the institution in question is a minority institution, thus the provisions of Section - 18 of the U.P. Act No. 5 of 1982 would not apply for the payment of monetary benefits as an officiating Principal is patently misconceived, particularly in view of the fact that a Division Bench of this Court way-back in the year, 1984 has decided the said issue in the case of **Solomon Morar Jha vs. District Inspector of Schools, Deoria and Others**, reported in **1985 UPLBEC 113**, wherein it was held that Regulation - 2 (1) and its proviso of the Chapter III of the Intermediate Education, 1921 does not prohibit payment of salary

even if the institution is a minority institution with regard to the officiating Principal.

13. The learned counsel for the writ petitioners also seek to rely upon the decision in the case of **Dhaneshwar Singh Chauhan vs. The District Inspector of Schools, Budaun and Others**, reported in **1980 U.P.L.B.E.C. 286** as well as the case of **Narbdeshwar Mishra vs. The District Inspector of Schools, Deoria and Others**, reported in **1982 U.P.L.B.E.C. 171**.

14. Reliance has also been placed upon a decision in **Civil Misc. Writ Petition No. 46667 of 2012, Dr. Mohammad Haseeb Khan vs. State of U.P. and Others**, decided on 13.09.2012 as well as the Full Bench decision of the High Court of Uttarakhand at Nainital in **Writ Petition No. 55 of 2011 (S/B) Kanti Prasad Dadpuri & 3 Others vs. State of Uttarakhand & Others**, decided on 20.06.2012, wherein the aforesaid judgments were followed and the said provisions were put to scrutiny and it was held that monetary benefits are admissible and payable to the officiating Principal. Additionally, it is being sought to be argued that the eligibility and the suitability of the writ petitioners are not questioned, however the only ground taken is that the provisions of Section - 18 of the U.P. Act No.5 of 1982 is not applicable and further the order in question is as vague as it might be and thus according to them the order in question be set aside and the matter be remitted back to pass fresh orders.

15. Sri Shailendra Singh as well as Sri Santosh Kumar Mishra, learned Standing Counsels for the State-respondents submitted that they do dispute the proposition of law as laid down in the aforesaid judgements, however according to them, since the order in question is cryptic and does not consider the vital aspects of the

matter, which are crucial, thus the order is set aside, matter be remitted back to pass fresh orders.

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

17. The aforesaid judgments so relied upon by the learned counsel for the writ petitioners in both the writ petitions on being pointedly asked from the learned Standing Counsels as to whether the same stands over-ruled or stayed, the learned Standing Counsels submits that as per their instructions, the same are still operating and occupying the field. Be that as it may be, since the order in question is cryptic and does not deal with the core and the fundamental issues and also over-looks the aforesaid judgments as relied upon by the learned counsel for the writ petitioners, thus in the opinion of the Court, the orders impugned in both the writ petitions cannot be sustained.

18. Accordingly, the orders dated 25.04.2023, passed by the District Inspector of Schools, Azamgarh impugned in the leading writ petition and the order dated 16.06.2023, passed by the District Inspector of Schools, Basti are set aside. The matter stands remitted back to the District Inspector of Schools, Azamgarh and District Inspector of Schools, Basti to accord fresh consideration to the claim of the writ petitioners after putting to notice the Committee of Management and while seeking their versions and pass appropriate orders within a period of six weeks from the date of the production of the certified copy of the order.

19. With the aforesaid observations, both the writ petitions stands ***partly allowed.***

Order Date :- 16.11.2023

S Rawat