

**Court No. - 35**

**Case :-** WRIT - A No. - 16166 of 2023

**Petitioner :-** C/M Mahamati Prannath Mahavidyalay

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Chandan Sharma

**Counsel for Respondent :-** C.S.C.

**Hon'ble Vikas Budhwar,J.**

1. Heard Sri Chandan Sharma, learned counsel for the writ petitioner as well as Sri Shailendra Singh, learned Standing Counsel who appears for the third respondent. Sri Shailendra Singh, learned Standing Counsel who appears for the respondents submits that he has received instructions dated 02.11.2023 under the signature of the Joint Director of Higher Education on behalf of Director of Higher Education, Prayagraj which is self-sufficient and he does not propose to file any response in view of the order which is being proposed to be passed.

2. Writ petitioner claims to be an institution recognized and governed under the U.P. State Universities Act, 1973. As per the writ petitioner, the post of Routine Clerk/Junior Assistant fell vacant on account of promotion of one Sri Arvind Kumar Yadav on the post of Office Superintendent-2 with effect from 11.04.2015. A request letter was also submitted on 25.08.2015 by the petitioner-institution to the third respondent, Regional Higher Education Officer seeking permission to fill up the said vacancy. Since permission was not accorded, thus, consequently the representation letters sent. The writ petitioner claims to have preferred Writ Petition No. 10886 of 2022 which came to be disposed of directing the Regional Higher Education Officer, Jhansi to decide the claim of the writ petitioner. The writ petitioner claims to have represented his cause before the Director of Higher Education, Prayagraj on 19.12.2022, 19.01.2023 and 04.07.2023. Now by virtue of an order dated 17.10.2022 the third respondent, Regional Education Officer, Jhansi has sought to negate the claim of the writ petitioner principally, on two grounds firstly, there happens to be of a ban imposed on 15.03.2012 for making selections on the class III post coupled with the fact that there happens to be another Government Order dated 11.07.2013 and secondly, the proposal with regard to filling up the vacancies through Board is pending before the State Government.

4. Questioning the said order, the writ petitioner has filed the present writ petition.

4. This Court entertained the writ petition on 31.10.2023 while passing the following orders.-

*"The contention of the learned counsel for the writ petitioner is that the order dated 17.10.2022 passed by the third respondent, Regional Higher Education Officer, Jhansi proceeds on misconception of facts and law, particularly, in view of the fact that it seeks to rely upon the Government Orders dated 15.03.2012 and 11.07.2013, so as to negate the claim for according permission for making recruitment on the post of Junior Clerks. He submits that the said Government Orders were subject matter of interpretation before this Court in Writ-A No.26271 of 2018, C/M of Mahatma Gandhi Shati Smarak Degree College, Ghazipur and another Vs. State of U.P. and others, wherein this Court deprecated the stand of the respondents in its judgment dated 09.01.2019 and according to the writ petitioner, the said judgment attained finality upto the Apex Court. He further submits that though the second ground taken in the order impugned is with relation to the fact that now, the recruitment is to be done through the U.P. Public Service Commission, but according to the recital contained in the order impugned, the same is only a proposal and it has not crystalized. Further it has also been argued that though guidance / directions were sought from Director Higher Education, but the Regional Higher Education Officer without waiting for any direction has proceeded to decide the case.*

*Sri P.K. Shahi, learned Addl. Chief Standing Counsel seeks time to obtain instructions.*

*On his request, put up this case as fresh on 02.11.2023 at 02:00 P.M."*

5. Sri Chandan Sharma, learned counsel for the writ petitioner while assailing the order dated 17.10.2022 has sought to argue that the first ground that there happens to be a ban dated 15.03.2012 for making selections cannot be a ground to negate the claim as the said issue has already been thrashed out in Writ A No. 26271 of 2018 decided on 09.01.2019 affirmed in Special Appeal No. 198 of 2020 decided on 05.02.2021 and affirmed by the Hon'ble Apex Court in Special Leave to Appeal No. 8194 of 2021 dated 09.07.2021, he submits that the said ground is not available to the respondents as the said bar will not come in the way of the writ petitioner, so far as the second ground taken in the order impugned that the selections is to be made through Board the same is only a proposal which has not crystallized. He submits that both the grounds are thoroughly unsustainable. Learned counsel for the writ petitioner additionally submits that it is the Director of Higher Education, Prayagraj/Allahabad who has to take a decision in view of the provisions contained under Section 60-A(iii) of the U.P. State Universities Act, 1973.

6. Sri Shailendra Singh, learned Standing Counsel on the basis of instructions received by him on 02.11.2023 under the signature of Joint Director of Higher Education on behalf of Director of Higher Education dated 02.11.2023 submits that the instructions/directions are still awaited as the matter is stated to be pending before the State Government, thus, guidance has been sought. According to him, since a conscious decision is to be taken by the Director of Higher Education, second respondent, thus, the writ petitioner may approach the second respondent and the said order would not come in the way in considering the claim of the writ petitioner.

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

8. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed of granting liberty to the writ petitioner to approach the second respondent, Director, Higher Education, Prayagraj, Uttar Pradesh and in case the writ petitioner prefers an application before the second respondent then the second respondent, Director, Higher Education, Prayagraj, Uttar Pradesh shall take appropriate decision in accordance with law and the orders impugned in the writ petition dated 17.10.2022 passed by the third respondent, Regional Higher Education Officer, Jhansi shall not come in the way of disposal of the claim of the writ petitioner.

9. With the aforesaid observation, the writ petition stands disposed of.

**Order Date :- 16.11.2023**

Rajesh