

Court No. - 35

Case :- WRIT - A No. - 17101 of 2023

Petitioner :- Amitabh Singh

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

Counsel for Petitioner :- Alok Dwivedi

Counsel for Respondent :- C.S.C.,Jitendra Kumar,Vijay Tripathi

Hon'ble Vikas Budhwar,J.

1. Heard Shri Alok Dwivedi, learned counsel for the writ petitioner, Shri P. K. Shahi, learned Standing Counsel, who appears for Respondents 1 to 4, Shri Vijay Tripathi for the 5th Respondent, and Shri Jitendra Kumar for Respondent Nos. 6.

2. A counter affidavit has been filed on behalf of the 5th and 6th Respondents, to which rejoinder affidavits have been filed.

3. Shri P. K. Shahi, learned Additional Chief Standing Counsel has made a statement at Bar that though on 30.10.2023 and 23.11.2023, time was sought for filing response, but he could not file the same. However, in view of the order, which is being proposed to be passed, he does not propose to file any response. Thus with the consent of the parties writ petition is being decided at the fresh stage.

4. The case of the writ petitioner is that there happens to be institution, 5th Respondent, Sri Kanthiram Baburam, Higher Secondary School, Motiganj, District Agra. The said institution is recognized under the U.P. Intermediate Education Act, 1921, and the regulations framed therein under, and provisions of the Payment of Salary Act No. 24 of 1971, stand applicable.

5. It is the case of the writ petitioner that he was appointed as a Class-IV employee in the Institution in question, the approval whereof was accorded by the District Inspector of Schools, Agra on 06.08.2016 and he was issued appointment order on 17.08.2016 and he joined the post in question on 20.08.2016. According to the writ petitioner, he passed high school, however, during the service period after obtaining permission, had pursued study referable to the Intermediate in the year 2020 and also obtained CCC certificate from National Institute of Electronics and Information Technology, NIEIT.

6. Pleadings reveal that there is one sanctioned post of class III

employee in the institution in question as one Shri Krishna Kumar Goyal who was working as Assistant Clerk in the institution died on 31.03.2002, thus a vacancy stood arisen. It is also the case of the writ petitioner that the Government Order dated 04.01.2017, provides criteria for promotion from the post of Class IV to Class III, which is CCC certificate with typing speed of 25 words per minute in Hindi and 30 words per minute in English with five years of satisfactory service in Class IV post. The writ petitioner further asserts that though there are certain Class IV employees, who were senior to the writ petitioner but none of them were qualified to be accorded promotion. Thus the writ petitioner preferred several applications before the respondents for consideration of his claim for being accorded promotion and since no action whatsoever has been sought to be taken thus the writ petitioner preferred Writ-A No. 20385 of 2022, which came to be disposed of on 07.12.2022 requiring the competent authority to pass orders thereafter though notices were sought to be issued by the erstwhile District Inspector of Schools, but without affording any opportunity of hearing, now the impugned order has been passed on 10.07.2023 by the second respondent, District Inspector of Schools negating the claim of the writ petitioner followed by another order dated 05.08.2023, whereby the sixth respondent has been accorded compassionate appointment in that regard. On 31.07.2023, the District Level Committee also proceeded to accord appointment to the sixth respondent.

7. Questioning the said orders, the writ petitioner preferred the present writ petition. In the said writ petition, on 30.10.2023, the following orders were passed:-

"The contention of the writ petitioner is that the orders impugned in the present writ petition dated 31.07.2023 passed by the District Level Committee and the orders dated 05.08.2023 and 10.07.2023 passed by the District Inspector of Schools, Agra proceed on misconception of facts and law, particularly when once the post in question being a Class-III post is a single post, then in view of the law laid down in Jai Bhagwan Singh Vs. District Inspector of Schools, reported in 2006 (9) ADJ Page 292 followed in Munna Lal Vs. Devendra Bahadur Singh Chandel, 2007 (10) ADJ 78, the post could not be filled by a compassionate appointment.

Since a writ of certiorari has been sought and the benefits have been accorded to sixth respondent, a response be filed by the respondents.

Sri Saurabh, learned Standing Counsel appears for the fifth respondent and Sri Vijay Tripathi for the sixth respondent.

Issue notice to the sixth respondent. Steps be taken by tomorrow by both modes.

Counter Affidavit be filed positively by 16.11.2023. Rejoinder, if any, may be filed by 21.11.2023.

Put up this case as a fresh case on 23.11.2023 in top of the list.

Affidavit of service be filed on the next date fixed."

8. Counter and Rejoinder affidavits have been exchanged between the parties in so far as the fifth and the sixth Respondents are concerned. In view of the order proposed to be passed, the learned Additional Chief Standing Counsel does not propose to file any response.

9. Shri Alok Dwivedi, learned Counsel for the writ petitioner submits that the impugned order cannot be sustained for a single moment, particularly in view of the fact that admittedly, there is only a solitary post of Class III employee in the institution in question, thus, in view of the law laid down by this Court in the case of ***Jai Bhagwan Singh v District Inspector of his School, 2006(9) ADJ 292***, the said post is to be filled only by virtue of promotion and not by the direct recruitment or by compassionate appointment. He submits that once the writ petitioner was eligible and qualified for being accorded promotion, then his claim could not have been negated while considering the claim of the sixth Respondent under compassionate appointment. Learned Counsel for the writ petitioner, while inviting attention towards the order impugned, submits that though the Committee of Management of the Institution in question had questioned the qualification and the eligibility of the writ petitioner, but while passing the order impugned in the Samiksha / discussion part, nothing has been recited as to why the writ petitioner was not eligible, but only one line has been mentioned that the writ petitioner was not eligible and qualified. He further submits that the writ petitioner possessed CCC certificate and also relevant qualifications and so far as the objection which is raised with respect to the fact that the said eligibility and qualification was obtained by the writ petitioner without approval of the appointing authority, same is misconceived, but particularly when there happens to be at page-36 of the paper book according permission to him. Learned counsel for the writ petitioner further submits that until and unless a finding is recorded to the effect that the CCC certificate and the eligibility of the writ petitioner is based upon the forged document or non-existent document, the claim of the writ petitioner could not have been negated. He further seeks to rely upon the judgment in the case of ***Dr. Vibha Pandey versus Ashok Kumar Srivastava*** reported in **2004 (4) ESC (All.) 2492** in order to buttress the said

submission. On the procedural part, he seeks to rely upon various paragraphs of the writ petition including Para-24 and other paragraph so as to contend that the hearing was done by erstwhile District Inspector of Schools, but the order has been passed by the successor. He further submits that no hearing was conducted by the authority who has passed the order. According to him, had the writ petitioner been given adequate opportunity, he could have convinced the respondents that it was a case wherein the writ petitioner's claim ought not to have been negated. Lastly, it is being argued on behalf of the writ petitioner while drawing attention towards Para-38 that the sixth respondent happens to be a close relative of the present Management.

10. Shri Vijay Tripathi, learned Counsel for the 5th Respondent submits that rightly the 6th Respondent has been appointed on compassionate basis, particularly in view of the fact that the writ petitioner was not eligible and qualified as in the version of the 5th Respondent before the District Inspector of Schools, relevant objections have been taken, might be they have not been considered. However, he submits that the judgment in the case of **Jai Bhagwan** (*Supra*), which the writ petitioner seeks to rely, can come to the aid of the writ petitioner provided he is eligible and qualified.

11. Shri Jitendra Singh, learned Counsel for the 6th Respondent, adopts the submission of Shri Vijay Tripathi. He further submits that once the writ petitioner is not qualified and eligible, then obviously he cannot resist the claim of the sixth respondent for compassionate appointment. He also seriously disputes the bald allegation labelled that the 6th Respondent is related to the Manager of the Institution in question. He further submits that the 6th Respondent has already joined the post in question and is working in the institution in question.

12. Shri P.K. Sahi, learned Additional Chief Standing Counsel, who appears for the State Official Respondent, adopts the submission of the learned Counsel for the respondents. However, he submits that the order in question appears to have skipped crucial and vital facts particularly when a stand has been taken by the committee of management that the writ petitioner was not qualified and eligible in that regard.

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

14. The facts of the case are not in dispute. It is also not in dispute

that there is a single post in the clerical cadre in the institution in question. The law in this regard is well settled in the case of **Jai Bhagwan Singh** (*supra*), that single post is not to be filled up by direct recruitment or compassionate account. However, the applicability of the said judgment in so far as the case of the writ petitioner is concerned is to be based upon the facts. Once there happens to be a stand of the committee of management and that the writ petitioner was not eligible and qualified and the CCC certificate was not verifiable and the typing experience, which the writ petitioner has obtained is under the cloud then the District Inspector of the Schools Agra ought to have adverted to set crucial issues while recording a finding in coming to the conclusion. The said exercise is absolutely lacking in the order impugned. More so, it is the case of the writ petitioner that he had obtained the said eligibility and qualification after getting the approval of the competent authority, though it is disputed by the Committee of Management of the institution in question. Allegations have been made by the writ petitioner that proper opportunity of hearing was not accorded as the order was passed by the authority, who never heard the petitioner, but the Counsel for the respondents disputes the fact.

15. Considering the submission of the rival parties as well as the stand taken by them, this Court finds that the District Inspector of Schools has skipped the fundamental and core issues, which ought to have been discussed in detail while coming to the conclusion as to whether the writ petitioner was qualified or not and since the said exercise is lacking, thus the order impugned dated 10.07.2003 is set aside. The matter stands remitted back to the District Inspector of Schools, Agra, second respondent to pass a fresh order strictly in accordance with law after putting to notice the writ petitioner and the fifth and the sixth respondents within a period of three months from the date of production of the certified copy of the order after fixation of dates, say, by 28.02.2024.

16. Since the order dated 31.07.2023 and 05.08.2023 are dependent upon the order dated 10.07.2023 passed by the District Inspector of Schools, Agra, thus their fate would be dependent upon the order to be passed post-remand by this court.

17. At this stage, a specific query was raised to the writ petitioner as to whether the 6th Respondent is working or not, to which the learned Counsel for the writ petitioner made a submission that the 6th Respondent has already joined the post in question. Thus, the continuance of the 6th Respondent shall be subject to the final order to be passed post-remand.

18. Shri Jitendra Kumar Singh, learned Counsel for the 6th Respondent, submits that even otherwise the eligibility and the suitability of the 6th Respondent has not been disputed for being accorded compassionate appointment. Thus, in any eventuality, the claim of the writ petitioner stands endorsed in his favour, then the continuance of the 6th Respondent may not be disturbed, as obviously under compassionate ground, there is a provision for appointment on supernumerary post. At this juncture, this Court finds that the said argument is quite premature as whenever law contemplates certain benefits, then it would be available to the sixth respondent to claim the same as now at this stage only the entitlement of the writ petitioner is to be considered.

19. It is expected that the District Inspector of the Schools, Agra second respondent shall pass an order strictly in accordance with law.

20. With the aforesaid observation the writ petition stands **disposed off**.

Order Date :- 6.12.2023
N.S.Rathour