

Court No. - 35

Case :- WRIT - A No. - 16006 of 2023

Petitioner :- Mr. Premchand

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

Counsel for Petitioner :- Braj Mohan Singh

Counsel for Respondent :- C.S.C.

Connected with

Case :- WRIT - A No. - 13321 of 2020

Petitioner :- Prem Chand

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

Counsel for Petitioner :- Aravind Kumar Tripathi, Braj Mohan Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. Since, common questions are involved in Writ - A No. 16006 of 2023, (in short 'leading writ petition') as well as Writ - A No. 13321 of 2020, (in short 'connected writ petition'). Thus, with the consent of the parties, the writ petition is being decided by composite order.

2. Heard Sri Braj Mohan Singh, learned counsel for the writ petitioner in both the writ petitions as well as Sri Ratan Deep Mishra, learned Standing Counsel, who appears for the respondent nos.1, 2 and 3 in the leading writ petition as well as respondent nos.1 to 4 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 fourth and the fifth respondent in the leading writ petition and respondent nos.5 and 6 in the connected writ petition.

4. Since, the rival parties before this Court have made a statement at Bar that they do not propose to file any affidavits and the writ petition be decided on the basis of the averments contained in the writ petition, thus both the writ petitions are being decided with the consent of the parties at the fresh stage.

5. The case of the writ petitioner, Premchand, son of Sitaram is that he was selected as a Class IV employee / Paricharak on 22.07.2014 in the fourth respondent's institution, Dayanand Anglo Vaidic Post Graduate College (D.A.V.P.G.), District - Gorakhpur.

6. As per the writ petitioner, he assumed the charge on 23.07.2014. Though, the writ petitioner claims to be fully eligible and qualified in all respects for being accorded promotion on the Class III post, but his candidature was not being considered. According to the writ petitioner, on 19.07.2019, an advertisement is stated to have been published by the institution in question for filling up the post of *Daftari*. The writ petitioner claims to have preferred the connected writ petition with a *mandamus* directing the respondents to consider the case of the writ petitioner for promotion on the post of *Daftari*. It was further alleged that the representation preferred by the writ petitioner was also not decided and it was kept pending.

7. According to the writ petitioner, the claim of the writ petitioner for being accorded promotion in the Class III post was forwarded by the competent authority and thereafter the Principal of Dayanand Anglo Vaidic Post Graduate College (D.A.V.P.G.), District - Gorakhpur, fifth respondent has proceeded to negate the claim of the writ petitioner to be addressed on merit on 04.08.2023 in the wake of fact that the writ petitioner had preferred Writ - A No.13321 of 2020 (Prem Chand vs. State of U.P.) and he was

unnecessary making correspondences in that regard.

8. Questioning the order dated 04.08.2023, passed by the Principal of the institution in question, the leading writ petition has been preferred.

9. This Court while entertaining the leading writ petition on 19.10.2023, proceeded to pass the following orders :-

"Put up this case along with the records of Writ A No. 13321 of 2020 (Prem Chand Vs. State of U.P. & 5 Others) on 26.10.2023 at 2:00 P.M. as fresh.

Showing the names of the counsels as well as the particulars of the parties when the case is next listed."

10. Pursuant thereto, the connected writ petition is before this Court today.

11. This Court finds that there happens to be a withdrawal application number 3 of 2023, preferred on 13.09.2023 by the writ petitioner seeking to withdraw the connected writ petition no.13321 of 2020 (Prem Chand vs. State of U.P. and Others). Since, there is no opposition to the withdrawal application, thus by my separate order, the writ petition has been withdrawn, while allowing the withdrawal application.

12. Sri Brij Mohan Singh, learned counsel for the writ petitioner while assailing the order dated 04.08.2023 has sought to argue that one of the basis reason attributable for non consideration of the claim for promotion on merits was with regard to the pendency of the connected writ petition and once the connected writ petition is being withdrawn, then a direction be issued to the authorities to decide the matter in that regard.

13. Sri Ratan Deep Mishra, learned Standing Counsel has no objection to the same. According to him, once it is the freewill of

the writ petitioner to withdraw the connected writ petition, then at least propriety demands that a direction be issued for consideration of the claim of the writ petitioner provided he comes within the zone of consideration coupled with the fact that he is eligible, qualified and suitable in that regard and the vacancies are lying vacant, so as to accommodate and give room to him.

14. Though in normal circumstances, this Court could have sought reply from the respondents, while issuing notice to the respondent nos.4 and 5 and in the leading writ petition and respondent nos.5 and 6 in the connected writ petition, but in view of the stand taken by the writ petitioner that he has withdrawn the writ petition, thus a conscious decision is to be taken by the fifth respondent, if he happens to be a competent authority in that regard.

15. It is the submission of the learned Standing Counsel that it is always open for the writ petitioner to approach the fifth respondent raising his grievances, who shall consider the same with most expedition.

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

17. 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 Principal, Dayanand Anglo Vaidic Post Graduate College (D.A.V.P.G.), District - Gorakhpur for redressal of his grievances and in case such a representation is preferred along with the self attested copy of the writ petition, then the fifth respondent or any other competent authority shall address to the claim of the writ petitioner strictly in accordance with law putting to notice the affected parties looking into account the claim of the writ petitioner for promotion in the

background of the sanctioned strength, number of vacancies lying vacant, suitability, eligibility of the writ petitioner and the deserving candidates. The said exercise is to be undertaken within a period of three months from the date of the production of the certified copy of the order strictly in accordance with the Statute in question and further the order challenged in the leading writ petition shall not come in the way in that regard.

18. With the aforesaid observations, the leading writ petition is ***disposed of*** and the connected writ petition is ***dismissed***.

Order Date :- 26.10.2023

S Rawat