

Court No. - 35

Case :- WRIT - A No. - 16360 of 2023

Petitioner :- Sandeep Kumar Mishra

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

Counsel for Petitioner :- Bhawesh Pratap Singh

Counsel for Respondent :- C.S.C., Sanjay Kumar Dubey

Hon'ble Vikas Budhwar, J.

Heard Sri Bhawesh Pratap Singh, learned counsel for the petitioner, Sri Shailendra Singh, learned Standing Counsel, who appears for respondents 1 and 2 and Sri Sanjay Kumar Dubey, who appears for the third respondent.

With the consent of the parties, the writ petition is being disposed off at the fresh stage as Sri Shailendra Singh, learned Standing Counsel as well as Sri Sanjay Kumar Dubey do not propose to file any response to the writ petition.

The case of the writ petitioner is that the third respondent, Shri Subhash Intermediate College, Etawan, Chitrakoot is an institution recognised under the provisions of the U.P. Intermediate Education Act, 1921 and the Act No. 24 of 1971 stands applicable. It is further the case of the writ petitioner that there are three sanctioned post of Class-III employee and at present two Class-III employees namely Shri Ram Krishna, Head Clerk and Shri Dinesh Chandra, Assistant Clerk are working and getting salary however Shri Laxman Prasad Mishra, Head Clerk of the institution has attained the age of superannuation on 30.6.2021 resulting into a substantive vacancy.

Learned counsel for the writ petitioner submits that the Manager of the institution proceeded to seek prior permission from the second respondent, District Inspector of Schools, Chitrakoot on 16.8.2013 however no action was taken in that regard.

In these circumstances according to the writ petitioner advertisement was published on 4.10.2013 in daily news papers Prayagraj Times and Amrit Prabhat and thereafter a Selection Committee was constituted which conducted selections and submitted recommendations on 9.11.2013 which was duly forwarded to the District Inspector of Schools, Chitrakoot for

approval. However as per the writ petitioner no action was taken thus it compelled the writ petitioner to prefer Writ-A No.6000 of 2022 which came to be disposed of requiring the District Inspector of Schools, Chitrakoot to pass orders and now an order has been passed by the second respondent, District Inspector of Schools, Chitrakoot rejecting the claim of the writ petitioner on 7.7.2022.

Questioning order dated 7.7.2022 of the second respondent the writ petitioner has filed the present petition.

Learned counsel for the writ petitioner submits that the ground which has been sought to be taken negating the claim of the writ petitioner is that there happens to be ban imposed by the State Government on 15.3.2012 thus the approval cannot be granted. He further submits that the said ban is no more a ground to negate the claim of the writ petitioner as the said Government order was subject matter of challenge in writ petition, **Vipin vs. State of U.P. reported in 2013 (7) ADJ 274** wherein the said objection was repelled. He thus submits that the writ petitioner is entitled to relief.

Sri Shailendra Singh, learned Standing Counsel, relies upon the instructions dated 15.10.2023 under the signature of the District Inspector of Schools, Chitrakoot so as to contend that it is the only basis of the Government Order dated 15.3.2012 that the claim of the writ petitioner has been negated however according to him the order be set aside and the matter be remitted back for a fresh decision.

The said suggestion of the learned Standing Counsel has been accepted by Sri Dubey.

Considering the submissions of the rival parties as well as stand taken by them, the writ petition is being decided in the following terms:-(a) order dated 7.7.2022 passed by the second respondent, District Inspector of Schools, Chitrakoot is set aside, matter stands remitted to the second respondent, District Inspector of Schools, Chitrakoot to pass fresh order after hearing the writ petitioner and the third respondent bearing in mind the total number of sanctioned post, total number of vacancies, selection procedure as eligibility, suitability of the writ petitioner of the candidates and other ancillary and incidental issues. The said exercise is to be completed within a period of three months from the date of presentation of the certified copy of the order.

Needless to point out that the writ petition 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 gone into the merits of the case.

With the aforesaid observation, the writ petition is **disposed off**.

Instructions filed today are kept on record and marked as Appendix A.

Order Date :- 17.10.2023

piyush