

Court No. - 35

Case :- WRIT - A No. - 16556 of 2023

Petitioner :- C/M Shanti Niketan Inter College And Another

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

Counsel for Petitioner :- Awadhesh Kumar Malviya

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri A.K. Malviya, learned counsel for the writ petitioners, who are two in number as well as Sri P.K. Shahi, the learned Addl. Chief Standing Counsel, who appears for Respondent nos. 2 to 4.

In view of the order, which is being proposed to be passed today, notices are not being issued to the 5th respondent.

The case of the writ petitioner is that the petitioner no.1 Shanti Niketan Inter College, Barhi, District Ghazipur is an Institution recognized under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of Payment of Salary Act No.24 of 1971 are applicable. The petitioner claims to be the Manager of the petitioner no.1-Institution. As per the petitioner, on 11.12.2021, the Committee of Management of the Institution in question had sent a requisition for filling up the post of Assistant Teacher pursuant to the death of Sri Mrityunjay Singh Gautam. However, according to the writ petitioner, his son namely Ankesh Kumar Singh has been appointed on compassionate ground and his appointment has been approved on 15.03.2022 by the fourth respondent, District Inspector of Schools, District Ghazipur and pursuant to the approval, he has also joined the post in question. According to the writ petitioner, on 30.06.2023, an order is stated to have been passed by the third respondent, Deputy Director of Education, Madhyamik-III, Educational Directorate, U.P. at Prayagraj, whereby the fifth respondent has been transferred to the petitioner-Institution, who was earlier working as an Assistant Teacher (Social Science) at Fateh Memorial Inter College, Tamkuhiraj, Kushinagar. Thereafter an order is stated to have been passed on 29.08.2023 by the fourth respondent, District Inspector of Schools, Ghazipur addressed to the Principal/ Manager of the Institution in question requiring them to accord posting to the fifth respondent. The writ petitioner claims to have represented on 01.09.2023 and the same is stated to have been served by hand on 04.09.2023 before the respondents, no action whatsoever, according to the writ petitioner, has been taken.

It is the further case of the writ petitioner that on 20.09.2023, a communication has been issued under the signature of the third respondent addressed to the fourth respondent, District Inspector of Schools, Ghazipur requiring the fourth with joining of the fifth respondent, otherwise proceeding under Section 16-D (3) of the U.P. Intermediate Education Act, 1921 has been initiated.

It is further the case of the writ petitioner that on 21.09.2023, the fourth respondent made a communication to the Principal of the Institution in question to accord joining, otherwise proceedings will be drawn in that regard. Learned counsel for the writ petitioner submits that the aforesaid exercise is patently illegal and not in conformity and consonance with the directions issued by the Addl. Director Education (Madhyamik), U.P. at Prayagraj dated 04.07.2023 wherein it was stipulated that once the requisition has been issued, then there cannot be any transfer in this regard.

Learned counsel for the writ petition also relied upon the amendments made in the Regulations 55-61 of the Chapter III of the U.P. Intermediate Education Act, wherein modalities have been laid down. It is the further case of the writ petitioner that despite the fact that the writ petitioner has been representing the matter before the authorities, but no action whatsoever has been taken in that regard.

Prayer in the present petition is for quashing of the order dated 30.06.2023 passed by respondent no.3 as well as the order dated 21.09.2023 passed by the fourth respondent in that regard.

This Court entertained the writ petition on 11.10.2023 while passing the following orders:-

"1. Supplementary affidavit filed today is taken on record.

2. The contention of the learned counsel for the writ petitioners are that there is no vacant post of teacher L.T Grade in the institution in question. However, the fifth respondent is sought to be transferred in the petitioner Committee of Management despite the representations being sent raising the said objection, the same has not been decided.

3. Put up this case on 16.10.2023 on the top of the list at 2 P.M, in order to seek instructions by learned Standing Counsel."

Today, when the matter has been taken up, Sri P.K. Shahi, learned Addl. Chief Standing Counsel submits that the issues, which the writ petitioners are seeking to raise needs determination by the third respondent, Deputy Director Education (Madhyamik-3),

Education Directorate, U.P. at Prayagraj, as according to him, in case, according to the writ petitioner, the requisition was sent by the Committee of Management on 11.10.2001 and thereafter consequent to the death of one Sri Mrityunjay Singh Gautam on 05.01.2022, appointment has been accorded to the son of Ankesh Kumar Singh under compassionate appointment and approval whereof has been granted by the District Inspector of Schools, District-Ghazipur on 15.03.2022 and he has joined the post in question and it is the further plea of the writ petitioner that no post is vacant so as to give room and accommodation to the fifth respondent, thus according to him, the writ petitioner may represent his cause before the third respondent, who shall deal with each and every aspect of the matter without any delay and most expedition looking into the records in that regard. He further submits that he does not propose to file any response.

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

Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed off without seeking any response from the respondents granting liberty to the writ petitioner to approach the second respondent, along with a comprehensive representation accompanied with self-attested copy of the writ petition by 18.10.2023 and on receipt of the same, the second respondent shall put to notice the fifth respondent and after summoning the record and verifying the issues which have been sought to be raised by the writ petitioner and thereafter proceed to pass an order by 31.10.2023.

Needless to point out that the writ petitioner 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 adjudicated the matter on merits as this order has been passed with the concession of the parties.

Since this Court has directed the writ petitioner to prefer objection by 18.10.2023, thus the office is directed to issue a certified copy of the order by 19.10.2023.

With the aforesaid observations the writ petition stands **disposed off**.

Order Date :- 16.10.2023
N.S.Rathour