

Court No. - 35

Case :- WRIT - A No. - 16892 of 2023

Petitioner :- Madhu Bala Dubey

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

Counsel for Petitioner :- Jitendra Rana, Shardeshwar Mishra

Counsel for Respondent :- C.S.C., Munna Kumar Singh, Prashant Sharma

with

Case :- WRIT - A No. - 1285 of 2022

Petitioner :- C/M Sri Devkali Nath Sanskrit Uchcharat
Madhyamik Vidyalaya And Another

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Indra Raj Singh, Adarsh Singh, Munna Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. Heard Shri Jitendra Rana, learned counsel for the writ petitioner in the leading writ petition and respondent No. 5 in the connected writ petition, Shri Shailendra Singh, learned Standing Counsel who appears for the respondent Nos. 1, 2 and 3 in the leading writ petition as well as connected writ petition and Shri Munna Kumar Singh, learned counsel who appears for the respondent Nos. 4 and 5 in the leading writ petition and writ petitioner in the connected writ petition.

2. Since common question of facts and law are involved in WRIT - A No. - 16892 of 2023 Madhu Bala Dubey Vs. State Of U.P. And 4 Others (in short 'leading writ petition') and WRIT - A No. - 1285 of 2022 C/M Sri Devkali Nath Sanskrit Uchcharat Madhyamik Vidyalaya And Another Vs. State Of U.P. And 6 Others (in short 'connected writ petition'), thus, with the consent of the parties the writ petition is being consolidated and decided by a composite order.

3. The counsel for the rival parties have made a joint statement that they do not propose to file any further affidavits thus with the consent of the parties, writ petitions are being decided at the fresh stage.

4. There is an office report dated 20.04.2022 in the connected writ petition that the notices have been issued to the respondent Nos. 5, 6 and 7 however the items stood delivered. In the connected writ petition, a Vakalatnama has been filed by Shri Vipin Rawat on behalf of the respondent No. 5 on 27.04.2023. The case of the writ petitioner in the leading writ petition is that there happens to be an institution by the name of Sri Devkali Nath Sanskrit Uchchatar Madhyamik Vidyalaya, Araipur, Barpar, Deoria which is an institution affiliated and recognised by the Sampurnanand Sanskrit Vishwavidyalaya, Varanasi up to the secondary level and the services of the teachers and non-teaching are governed under the provisions of U.P. Board of Secondary Sanskrit Education (Appointment and Condition of Service of Heads of the Institution Teachers and other Employees of the Institution Rules, 2009). The provisions of U.P. Act No. 24 of 1971 stands applicable.

5. It is further the case of the writ petitioner that an government order has been issued on 24.07.2021 providing for the modalities for engaging teachers in the sanskrit institutions in that regard. He submits that the teachers are to be appointed honorarium basis for the academic session 2021-22 and 2022-23 (excluding summer vacations) on fixed honorarium of Rs. 12,000/- per month for Purva Madhyama Level and Rs. 15,000/- for Uttar Madhyama Level. It is further the case of the writ petitioner that a circular had been issued on 19.08.2021 for strict compliance of the Government Order dated 24.07.2021. In para 6 of the writ petition, it has been asserted that pursuant

to the advertisement, selection were conducted with respect to the post of Assistant Teachers of 7 Sanskrit Schools including institution in question. In para 8 of the writ petition, it is further asserted that an interview letter was issued on 20.09.2021 inviting the participants to appear on 09.10.2021 and on the basis of the recommendations of the selection committee, the writ petitioner was found to be selected and an order was issued on 10.12.2021 approving the selections of the writ petitioner by the District Inspector of Schools, Deoria. The writ petitioners claims to have continued in the post in question, however by virtue of an order dated 28.06.2023, the District Inspector of Schools, Deoria, third respondent had proceeded to pass an order whereby owing to legality in the matter of engagement of the writ petitioner, the order dated 10.12.2021 has been cancelled, it has been further provided that without their being any basis the writ petitioner was allowed to function on honorarium basis which was illegal.

6. Questioning the said order, the writ petitioner has preferred the leading writ petition. The said writ petition on being presented on 16.10.2023 was tagged with the connected writ petition. The connected writ petition has been preferred by the committee of management of the institution in question and one Anita, daughter of Shiv Narain Shukla wherein besides the petitioner in the leading writ petition other incumbents have been made party. In the said writ petition, the order dated 10.12.2021 passed by the District Inspector of Schools, Deoria, according engagement to the writ petitioner has been questioned. Further the Government Order dated 24.07.2021 issued by the first respondent with the said writ petitioner Additional Chief Secretary (Secondary Education), U.P., Lucknow has been challenged.

7. Shri Munna Kumar Singh, learned counsel who appears for the writ petitioner in the connected writ petition has sought to argue that the selection of the fifth respondent is per se illegal as entire attempt has been made just in order to secure selections to the writ petitioner in the leading writ petition, as even in fact, the minutes of the selection committee do not bear the signatures of the manager of the institution in question. He further submits that even otherwise the writ petitioner in the leading writ petition was not qualified and she did not possess relevant qualification in that regard. He seeks to question the fact that even the selection criteria was also tailored and made suitable to the fifth respondent. A counter affidavit has been filed in the connected writ petition by the District Inspector of Schools, Deoria sworn on 11.10.2022 to which rejoinder affidavit has not been filed.

8. Shri Jitendra Rana, learned counsel who appears for the writ petitioner in the leading writ petition while assailing the order dated 28.06.2023 passed by the District Inspector of Schools, Deoria, submitted that the said order is in violation of principle of natural justice and he was not put to notice and by a single stroke of pen the order has been passed that the writ petitioner was not entitled for payment of honorarium as his appointment order has been issued in an illegal manner. He further submits that had the opportunity on being accorded to the writ petitioner in the leading writ petition, he could have heavily demonstrated that there was no occasion to pass the said order. He seeks to argue that he possesses relevant qualification. Countering the said submission, Shri Munna Kumar Singh, learned counsel for the writ petitioner/committee of management submits that there are glaring infirmities found in the selection of the writ petitioner in the leading writ petition, he, however submits that rightly the remedial action has been taken by the District

Inspector of Schools, Deoria while passing the order dated 28.06.2023, he further submits that the entire selection is tailored and illegal and according to him, the writ petitioner in the leading is not entitled to the said benefits.

9. Shri Shailendra Singh, learned Standing Counsel who appears for the State official respondents submits that earlier the order dated 10.12.2021 was passed under misconception, however, the same stood rectified by virtue of the order dated 28.06.2023.

10. I have heard the learned counsel for the parties and perused the record.

11. The question which arises for determination before this Court is whether the action of the State-respondents can be said to be justified while passing the order dated 28.06.2023 in the wake of the fact that his engagement has been cancelled without affording opportunity to the writ petitioner. Though this Court finds that there are counter allegations levelled by the counsel for the committee of management of the institution not only challenging his appointment but also questioning the selection.

12. Shri Shailendra Singh, at this stage, submits that from the perusal of the order in question it appears that the writ petitioner in the leading writ petition was not put to notice. However, the crucial question which arises is regarding that determination of the status of the writ petitioner in the leading writ petition qua the adherence of the Government Order in question. He submits that the order dated 28.06.2023 passed by the District Inspector of Schools, Deoria be set aside, matter be remitted back, granting opportunity to the writ petitioner in the leading writ petition and the writ petitioner in the connected writ petition in that regard.

13. To such a suggestion, Shri Munna Kumar Singh who appears for the committee of management has no objection, however, he submits that liberty be accorded to the writ petitioner to challenge the government order if he so chooses and it is occasioned at a latter point of time. He further submits that let the matter be remitted back to the District Inspector of Schools, Deoria and he be directed to decide all the issues which the writ petitioner seeks to raise.

14. To such a submission, learned counsel for the writ petitioner, Shri Jitendra Rana has no objection and gracefully accepts the same.

15. Considering the submission of the rival parties as well as stand taken by them, the writ petition is being decided in the following terms:

a). The order dated 28.06.2023 passed by the District Inspector of Schools, Deoria in the leading writ petition is set aside.

b). The matter stands remitted to the District Inspector of Schools, Deoria to pass fresh order.

c). The District Inspector of Schools, Deoria shall fix a date in the week commencing 20.11.2023.

16. On that date, the writ petitioner Madhu Bala Dubey as well as the Committee of Management of the institution in question shall submit their versions.

17. The versions shall be exchanged between the parties on the said date.

18. Hearing be done in the last week of November 2023.

19. Orders be passed in the second week of December 2023.

20. The District Inspector of Schools, Deoria shall deal with the contentions legally or factually raised by the respective parties and shall pass a reasoned and speaking order strictly in accordance with law.

21. The District Inspector of Schools, Deoria shall not grant unnecessary adjournment and in case the adjournment is being granted then the same should not be for a period of more than two months.

22. Accordingly, the leading writ petition stands partly **allowed**.

23. Insofar as, the connected writ petition is concerned, since the order dated 10.12.2021 passed by the District Inspector of Schools, Deoria has been cancelled on 28.06.2023 thus the writ petitioner is not entitled for quashing of the first relief. However, with respect to the quashing of the Government Order dated 24.07.2021 as stated by Shri Munna Kumar Singh that at this stage he is not pressing the said relief and liberty be accorded to him to challenge the same at an appropriate stage and thus liberty is accorded to the writ petitioner to draw appropriate legal proceedings.

24. With the aforesaid observation, the connected writ petition stands **disposed of**.

Order Date :- 1.11.2023/A. Prajapati