

Court No. - 10

Case :- WRIT - A No. - 16690 of 2023

Petitioner :- Neetu Gupta

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

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C., Devansh Misra, Pranab Kumar Ganguli

Hon'ble Kshitij Shailendra, J.

1. This petition has been nominated to this Bench under the order of Hon'ble the Chief Justice dated 17.11.2023.

2. Learned counsel for the petitioner is permitted to correct the array of respondent no.2 during the course of day.

3. Heard Sri Ashok Khare, learned Senior Counsel, assisted by Sri Anurag Ojha, learned counsel for the petitioner, learned Standing Counsel for the respondents no.1, 2 and 3, Sri Devansh Misra, learned counsel for the respondent no.4 and Sri V.K. Singh, learned Senior Counsel, assisted by Sri Pranab Kumar Ganguli, learned counsel for the respondent no.5 and perused the record.

4. There is no dispute about the fact that both the petitioner as well as respondent no.5 were appointed as Routine Grade Clerk in the concerned Degree College and when a vacancy for the post of Office Superintendent occurred, the question of promotion of the seniormost Routine Grade Clerk arose. There is also no dispute about the fact that the petitioner is junior to respondent no.5, however, the submission of Sri Khare is that when the respondent no.5 expressed her unwillingness to accept promotion by submitting a document in writing to the Committee of Management, the petitioner, being next candidate in the order of seniority, was promoted on the post of Office Superintendent and due approval was granted to her promotion by the order dated 03.01.2023 passed by the Joint Director of Education (Higher), U.P., Prayagraj with an observation that in case any concealment of fact comes to the notice of the authorities, the Director of Education (Higher Education) would be competent to set aside the promotion.

5. Sri Khare submits that challenging the order dated 03.01.2023, the respondent no.5 has filed Writ-A No.6134 of 2023 which is pending without there being an interim order, however, in the meantime, the Joint Director of Education has issued the order

impugned dated 13.09.2023 setting aside the approval granted on 03.01.2023. It is contended that the order impugned being ex-parte in nature as petitioner has not been provided opportunity to make her say in the matter before passing of the order, it cannot sustain.

6. Sri V.K. Singh, on the other hand, submits that the order impugned refers to an inquiry report submitted by the Inquiry Officer on 23.08.2023 and during the course of such inquiry proceedings, not only the petitioner but also the Committee of Management were provided opportunity of hearing and based upon the said inquiry report, the order impugned has been passed recording a clear finding that the Degree College has concealed certain facts and the promotion to the petitioner has been accorded contrary to the provisions of law.

7. Sri Khare submits that even if the inquiry was conducted in this matter and the petitioner was heard, at least before arriving at a conclusion based upon the said inquiry report, the Joint Director of Education should have put the petitioner to notice to make her say in the matter and, therefore, the order impugned cannot sustain.

8. Sri Devansh Misra appearing for the respondent no.4-Committee of Management submits that the respondent no.5 had submitted willingness to forego her claim for promotion and, therefore, there is no illegality in the promotion order accorded to the next seniormost candidate, i.e. the petitioner.

9. Having heard the learned counsel for the parties, this Court is of the opinion that the petitioner should have been afforded an opportunity to make her say after the inquiry report was submitted and before the order based upon the said inquiry was passed. There being nothing in the order impugned dated 13.09.2023 to indicate that the petitioner was ever heard after conclusion of the inquiry by the Joint Director of Education, the order impugned cannot sustain on the this ground alone.

10. The writ petition stands **allowed in part**, setting aside the order impugned dated 13.09.2023.

11. The petitioner, the Manager of the Committee of Management as well as the respondent no.5 shall appear before the Director of Education (Higher Education), U.P. Prayagraj (respondent no.2) **on 18.12.2023** along with certified copy of this order.

12. The Director of Education (Higher Education), U.P. Prayagraj (respondent no.2) shall ensure service of copy of the inquiry report

upon the petitioner on that very day.

13. The parties shall get opportunity to make their say in relation to the inquiry report.

14. The Director of Education (Higher Education), U.P., Prayagraj shall pass fresh order after providing opportunity of hearing to the petitioner, Committee of Management and the respondent no.5 **on or before 15.01.2024.**

15. Necessary consequences shall follow.

Order Date :- 6.12.2023

AKShukla/-