

Court No. - 35

Case :- WRIT - A No. - 16832 of 2023

Petitioner :- Abhishek Mishra

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

Counsel for Petitioner :- Jitendra Kumar Srivastava

Counsel for Respondent :- C.S.C., Akhilesh Kumar Singh, Harish Kumar Srivastava

Hon'ble Vikas Budhwar, J.

1. Heard Sri Jitendra Kumar Srivastava, learned counsel for the writ petitioner, Sri P.K. Shahi, learned Additional Chief Standing Counsel who appears for respondents No. 1 to 4, Sri Harish Kumar Srivastava, learned counsel who appears for respondent No. 5 and Sri Akhilesh Kumar Singh, learned counsel who appears for respondent No. 6.

2. Since the learned counsel for the parties have made a statement at Bar that they do not propose to file any further response, thus, the writ petition is being decided at the fresh stage.

3. The case of the writ petitioner is that the fifth respondent, C/M Inter College, Meethepar, District Jaunpur is an institution recognized under the provisions of U.P. Intermediate Education Act, 1921, the provisions of U.P. Act No. 24 of 1971 and the provisions of U.P. Act No. 5 of 1982 stand applicable.

4. As per the writ petitioner, there are 24 posts sanctioned in the institution in question pursuant to the Government Order dated 29.05.2013 break up whereof, Principal 1, Lecturer 0, Assistant Teacher L.T. Grade 13, Head Clerk 0, Assistant Clerk 1, class IV employee 9. It is also the case of the writ petitioner that a writ petition is stated to have been preferred by the Committee of Management of the institution in question, Writ A No. 35810 of 2015 for re-determination of the post of the institution in question and thereafter, an order is stated to have been passed by the Director of Education, Madhyamic, U.P. on 25.01.2017 whereby in total 32 posts have been recommended to be sanctioned. However, no decision has been taken by the first respondent, Secretary, Secondary Education, Government of U.P. As per the writ petitioner there is only a single post of Assistant Clerk and on the said post one Sri Shyam Bihari Pandey was working as Assistant Clerk who retired on 30.07.2019. Since there was no class IV employee eligible and suitable for being accorded promotion in class III post so the Committee of Management of the institution in question sought permission from the District Inspector of Schools, Jaunpur,

third respondent for according approval for making selection on 17.11.2019. An order is stated to have been passed on 12.05.2021 by the second respondent, Director of Education, Secondary, Lucknow, U.P. whereby in the wake of the Government Order dated 30.10.2019 permission was declined. As the work in the institution in question was being jeopardized so the Committee of Management proceeded to advertise the said vacancy on the post of Assistant Clerk in two newspapers namely "Tejas Today" and "Swatantra Bharat" on 20.11.2021. The writ petitioner claimed that a selection committee was constituted on the basis of the qualitative chart being the select list, the writ petitioner was accorded appointment on 18.11.2021 and he joined the post in question on 23.12.2021. A communication was sent on 24.12.2021 by the Committee of Management to the third respondent, District Inspector of Schools, Jaunpur for according approval, however, the same has also been negated by virtue of the order dated 28.12.2021 passed by the District Inspector of Schools, Jaunpur. Both the said orders was subject matter of challenge in Writ Petition No. 11240 of 2022 which came to be decided on 06.08.2022 while quashing the order dated 12.05.2021 and 28.12.2021 and a mandamus was issued to re-consider the grant of financial sanction to the writ petitioner while passing a reasoned and speaking order. The said order was corrected on 11.08.2022.

5. According to the writ petitioner a communication was issued on 23.08.2023 by the District Inspector of Schools, Jaunpur to the Manager/Principal of the institution in question providing inputs. The Committee of Management/Principal of the institution in question is stated to have provided the said inputs on 11.09.2023 copy whereof is Annexure 13 at page 86 onwards reference whereof has been given para 27 of the paper book , however, according to the writ petitioner, now the impugned order has been passed by the District Inspector of Schools, Jaunpur on 11.09.2023 negating the claim of the writ petitioner and the fifth and sixth respondents.

6. Questioning the said order, the writ petitioner has filed the present writ petition.

7. This Court entertained the writ petition on 13.10.2023 while seeking response. A counter affidavit has been filed on behalf of the State official respondents dated 28.11.2023 sworn by the District Inspector of Schools, Jaunpur followed by another counter affidavit filed on behalf of the sixth respondent.

8. Sri Jitendra Kumar Srivastava, learned counsel for the writ petitioner has made a statement at Bar that he does not propose to file any rejoinder affidavit to both the counter affidavits.

9. Sri Jitendra Kumar Srivastava, learned counsel for the writ petitioner submits that there are two grounds mentioned in the order impugned negating the claim of the writ petitioner, firstly, that there are various discrepancies in conducting selections as neither the advertisement provided for reservation or any parameters required for the same, the details regarding the number of candidates who had applied and what was the mode by which the application was sought and submitted was not disclosed, the details of the selection committee was also not disclosed. The selections were sought to be conducted on the said post on 16.11.2021, however, 7 incumbents were further shown to have participated in selection but no basis whatsoever has been shown as to what was the criteria on the basis of the selection of the writ petitioner and there has been no disclosure of the details of the marks awarded to each incumbent. The second objection is to the effect that in view of the notification dated 04.07.2022 which had been issued in pursuance of the Government Order dated 25.11.2021, modalities has been pointed out with respect to selection of the class IV employees but the selections have not been done in pursuance of the Government Order dated 25.11.2021 and the notification dated 04.07.2022. Learned counsel for the writ petitioner has sought to argue that so far as the said discrepancy with relation to the selection as noticed above is concerned the said documents were already before the District Inspector of Schools provided by the Manager/Principal of the institution in question on 11.09.2023 pursuant to the communication of the District Inspector of Schools, Jaunpur dated 23.08.2023 which also is annexed as Annexure 13 at page 86 and onwards reference whereof has been given in para 27 of the writ petition. Learned counsel for the writ petitioner has further invited the attention of the Court towards para 10 of the counter affidavit so as to contend that there has been no specific denial of non-receipt of the said documents.

10. Submission of the learned counsel for the writ petitioner is that the said document was received by the institution in question as the same was sent by the Manager of the institution in question. Learned counsel for the writ petitioner further submits that so far as the issue relatable to the Government Order dated 25.11.2021 and the notification dated 04.07.2022 is concerned the same would not come into play particularly when the vacancies are prior to the issuance of the said Government Order as earlier the claim of the writ petitioner/Committee of Management of the institution in question stood negated by virtue of an order dated 12.05.2021 passed by the Director of Education, Madhyamic U.P., Lucknow wherein no such objection was raised and the only objection was with regard to

the Government Order dated 30.10.2019.

11. Further submission is that after selections when the matter was placed before the District Inspector of Schools, Jaunpur, third respondent who also proceeded to negate the said claim on 28.12.2021 but no reference to the Government Order dated 25.11.2021 was taken, he submits that since post of the Assistant Clerk fell vacant on 30.07.2019 and the Government Order dated 25.11.2021 and the notification dated 04.07.2022 are post occurrence of the vacancy, thus, they will not apply. It is, thus, claimed on behalf of the learned counsel for the writ petitioner that the order be set aside, matter be remitted back.

12. Sri P.K. Shahi, learned Additional Chief Standing Counsel who appears for the official State respondents submits that the order impugned in the writ petition is perfectly valid in accordance with law no fault whatsoever can be attributed in this regard. Submission is that once that the Government Order dated 25.11.2021 and the notification dated 04.07.2022 would play a role as on the date of consideration of the claim of approval the said Government Orders are in existence, thus, they will operate they will occupy the field. According to him, though the writ petitioner has harped upon para 27 Annexure 6 that he has submitted documents but there is nothing on record to suggest that they were available before the respondents while passing the order impugned.

14. Sri P.K. Shahi, learned Additional Chief Standing Counsel, at this stage, submits that the issues which the writ petitioner seeks to raise based upon the documents which are shown to be deficient in the order impugned claim to have been submitted before the third respondent, District Inspector of Schools, Jaunpur as well as the legal issues regarding applicability of the Government Order dated 25.11.2021 and the notification dated 04.07.2022 in the vacancies which fell prior to the issuance of the Government Order, notifications coupled with the advertisement published therein needs determination and re-look at the level of the third respondent, District Inspector of Schools, Jaunpur. He submits that the order be set aside, matter be remitted back to decide afresh.

15. Sri Harish Kumar Srivastava as well as Sri Akhilesh Kumar Singh who appears for the respondents have submitted that let a fresh exercise be undertaken by the District Inspector of Schools Jaunpur, third respondent.

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

17. The facts of the case are not in dispute. The bone of contention between the parties is with regard to the fact as to whether the deficiency pointed out by the third respondent, District Inspector of Schools, Jaunpur was fulfilled by the writ petitioner, Committee of Management/Principal of the institution or not. Though in the order impugned it has been recited that the said deficiencies were not fulfilled by the Committee of Management/Principal of the institution in question but the writ petitioner is relying upon in para 17 Annexure 6 that all the documents were furnished before the District Inspector of Schools, Jaunpur, third respondent.

18. Apart from the same as rightly pointed out by the learned Additional Chief Standing Counsel that the issue with regard to the applicability of the Government Order dated 25.11.2021 and the notification dated 04.07.2022 vis-a-vis occurring of the vacancy on the post of Assistant Clerk on 30.07.2019 also needs determination.

19. Viewing the case from all points of angle and considering the submission of the rival parties, the Court is of the opinion that the matter needs re-look, accordingly, the writ petition is being decided in the following terms:

(a) the order dated 11.09.2023 passed by the third respondent, District Inspector of Schools, Jaunpur, is set aside; (b) the matter stands remitted back to the District Inspector of Schools, Jaunpur, third respondent to decide the issue afresh after providing opportunity to the affected parties within a period of two months from the date of production of certified copy of the order bearing in mind the fundamental and core issues; (i) sanctioned strength of class III employees; (ii) vacancy status; (iii) adherence to the rules for making selections; (iv) eligibility, suitability of the writ petitioner and the deserving candidates; (v) issue with regard to the claim of the class IV employees who were eligible and qualified for being promoted; (vi) the claim of the writ petitioner, the Committee of Management and the Principal of the institution in question that the selections were conducted as per the statute and all the papers were transmitted to the District Inspector of Schools, Jaunpur; (vii) application of Government Order dated 25.11.2021 and notification dated 04.07.2022; (viii) any other ancillary and incidental issue.

20. With the aforesaid observations, the writ petition stands partly allowed.

Order Date :- 29.11.2023

Rajesh