

Court No. - 35

Case :- WRIT - A No. - 16913 of 2023

Petitioner :- Lavkush Prajapati

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

Counsel for Petitioner :- Gopal Ji Rai

Counsel for Respondent :- C.S.C., Rajesh Singh, Shyama Charan Tripathi

Hon'ble Vikas Budhwar, J.

Heard Sri Gopal Ji Rai, learned counsel for the petitioner, Sri S.K. Mishra, learned Standing Counsel, who appears for respondents 1 to 4 and Sri Rajesh Singh, learned counsel for the seventh respondent.

In view of the order, which is being proposed to be passed today, notices are not being issued to the fifth and sixth respondents.

The case of the writ petitioner is that the fifth respondent, Lala Karamchand Thapar Inter College, Barari Baitalpur, District Deoria is an institution governed under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of the U.P. Act No.24 of 1971 stands applicable.

The writ petitioner claims to have been appointed as a Class-IV employee giving under dying in harness rules on 6.5.2006 as whereas the seventh respondent, Sant Kumar Gupta is claimed to have been appointed as Class-IV employee on 19.12.2006. It is further the case of the writ petitioner that a vacancy arose on 31.3.2023 consequent to retirement of Sri Bhatendu Ji Sharma, on the post of Senior Clerk and promotion Sri Pradeep Kumar as Assistant Clerk.

As per the writ petitioner there happens to be a seniority list of the year 2019-20 a copy whereof has been appended as annexure-2 at page 21 relevant averments have been made in para-9 wherein the name of the writ petitioner find place at serial no.2 and the seventh respondent at serial no.3. It is the further case of the writ petitioner that an exercise was undertaken with regard to transmission of the entire documents on 23.6.2023 along with resolution of the Committee of Management dated 30.4.2023 and on the receipt of the same on 28.6.2023, the District Inspector of Schools, Deoria, third respondent proceeded to promote the seventh respondent as

Assistant Clerk.

Questioning the order dated 28.6.2023 passed by the District Inspector of Schools, Deoria the writ petitioner has filed the present writ petition.

Learned counsel for the writ petitioner while assailing the order dated 28.6.2023 passed by the District Inspector of Schools, Deoria, promoting the seventh respondent has sought to contend that the said exercise has been undertaken behind his back and without even considering the claim of the writ petitioner, he submits that the writ petitioner is Senior to the seventh respondent. He further submits that he had preferred representation on 15.7.2023 and 10.8.2023 which was taken cognizance as per the the document which is at page 58 of the paper book annexure-13 reference whereof has been made in para 22 of the writ petition whereby a communication was issued to the District Inspector of Schools, Deoria to provide inputs, however nothing has been done in this regard. He further submits that the order in question be set aside and the writ petitioner's claim be considered.

Sri Rajesh Singh, learned Standing Counsel submits that from the perusal of the seniority list which has been appended at page 21 and 23 of the paper book it is clear that the writ petitioner only possessed the qualification of intermediate and he did not possess the CCC certificate which was a mandatory requirement as per the later on the Principal Secretary Uttar Pradesh address to Education Director Madhyamik dated 4.1.2017. He further submits that the writ petitioner was rightly not considered. According to him on 4.10.2023 there happens to be a communication of the District Inspector of Schools, Deoria, to Joint Director of Education, Seventh Region, Seventh Gorakhpur whereby the said issues have been taken into consideration and it was found that writ petitioner was not eligible.

Learned Standing Counsel adopts the submission of the learned counsel for the seventh respondent submits that the mere seniority will not be a any help to the writ petitioner particularly when he is not qualified.

In rejoinder learned counsel for the writ petitioner has invited the attention of the court towards page 20 of the paper book which happens to be CCC certificate and he further while inviting the attention towards paragraph 15 submits that the vacancy stood arisen on 31.3.2023 thus before the said date the writ petitioner had attained qualification and eligibility.

At this juncture Sri S.K. Mishra, learned Standing Counsel and Sri Rajesh Singh, learned counsel for the seventh respondent submit that once the seventh respondent has already been promoted on the post of Assistant Clerk and in case as per the writ petitioner pursuant to the filing of the representation/complaint dated 15.7.2023 and 10.8.2023 proceedings were drawn and inputs were required by the Joint Director of Education Seventh Region, Gorakhpur to the District Inspector of Schools, Deoria, and the inputs at that point of time were not furnished and now the inputs have been furnished on 4.10.2023 by the latter to the former thus, according to them they do not propose to file any response however the matter be directed to be decided at the level of the Educational Authority while considering the the claim of the writ petitioner which was put to cognizance by virtue of the communication dated 8.9.2023 within a period of three months from the date of production of certified copy of this order.

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

Considering the submissions of the rival parties as well as 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 Joint Director of Education, 7th Region, Gorakhpur while filing a comprehensive representation along with the self-attested copy of the writ petition and on the receipt of the same, the second respondent, shall in coordination with the third respondent and after putting to notice the fifth, sixth and seventh respondent decide the claim of the writ petitioner in that regard without being obsessed or influenced by any of the observation made herein above looking into the issues regarding eligibility, suitability and seniority of the writ petitioner on the date of the occurrence of the vacancy vis-a-vis the claim of the seventh respondent. It is further clarified that the order passed today is on the concession of the parties 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**.

The documents provided by Sri Rajesh Kumar Singh, learned counsel for the 7th respondent are kept on record and marked as Appendix-A.

Order Date :- 16.10.2023

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