

Court No. - 35

Case :- WRIT - A No. - 16849 of 2023

Petitioner :- Kushal Pal Singh

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

Counsel for Petitioner :- Alok Dwivedi

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri Alok Dwivedi, learned counsel for the petitioner and Sri Shailendra Singh, the learned Standing Counsel, who appears for Respondent Nos. 1 to 5.

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

The case of the writ petitioner is that on account of the leave availed by one Kusum Chand, a vacancy stood arisen against which the writ petitioner participated in the selection and he was accorded appointment, which was approved on 04.10.1994 by the District Inspector of Schools, Agra, second respondent. It is also the case of the writ petitioner that a substantive vacancy also stood vacant pursuant where to the District Inspector of Schools accorded approval on 30.06.1995 and the writ petitioner claims to have been working as an Assistant Teacher (LT Grade) since 01.11.1994 till his superannuation, 31.03.2022. The papers relating to the pension of the writ petitioner was forwarded to the competent authority. However, since the writ petitioner was not paid his pensionary benefits, so he preferred Writ-A No.13780 of 2022, which came to be disposed of on 07.09.2022 directing the second respondent, District Inspector of Schools, Agra to consider the claim of the writ petitioner, which according to the writ petitioner has been negated on 30.12.2022.

Questioning the order dated 30.12.2022 passed by the third respondent, Deputy Director of Education, Agra Region, Agra, the writ petitioner has preferred the present writ petition. This Court had entertained the writ petition while passing the following orders on 13.10.2023:-

"The contention of the writ petitioner is that the order dated 30.12.2022 passed by the respondent no.3, Deputy Director of Education, Agra Region, Agra ;proceeds on the misconception of facts and law particularly in view of the fact that post retirement of the writ petitioner now on the basis of certain

investigation his retiral benefits are being withheld that too after a period of 36 years questioning the appointment of the writ petitioner.

Sri Shailendra Singh, learned Standing Counsel who appears for the respondents 1 to 5 seeks time to obtain instructions.

On his request put up this case on 28.10.2023 as fresh."

Sri Alok Dwivedi, learned counsel for the writ petitioner while assailing the order dated 30.12.2022 passed by the Deputy Director of Education, third respondent has sought to submit that the said order is wholly unsustainable in the eyes of law, as during the service of the writ petitioner till his retirement, no departmental proceedings, whatsoever has been initiated, and now, after his retirement after a period of 36 years of from the date of his appointment, all sorts of objections are being sought to be raised that too on the basis of alleged inquiry, which is being conducted by the Vigilance Department. He submits that in the order in question, nothing concrete has come and only on the basis of certain investigations/ enquiry by the Vigilance, his pension has been withheld. He submits that there cannot be any exercise in the manner in which it is being sought to be undertaken by the respondents, particularly in view of the fact that there is no provision under U.P. Intermediate Act, 1921 and the Regulations framed thereunder for withholding of pension that too on the basis of the Vigilance enquiry. He seeks to rely upon the decision in the case of **Ravindra Singh Rathor Vs. District Inspector of Schools, 2004 (1) AWC 310**. He further submits that before undertaking the said exercise for withholding the pension of the writ petitioner, the writ petitioner was not put to notice in this regard.

Sri Shailendra Singh, learned Standing Counsel, who appears for Respondent nos. 1 to 5 submits that he has received instructions dated 03.11.2023 under the signatures of the Deputy Director of Education, Agra Region, Agra, who was the authority, who had proceeded to pass the order and according to him, the third respondent has sought guidance from the State Government. He submits that on the perusal of the order in question, it is not forthcoming that the writ petitioner was put to notice and he also could not dispute the proposition of law available on land. He further submits that he does not propose to file any response to the writ petition. According to him, order in question be set aside and the matter be remitted back.

Learned counsel for the writ petitioner submits that in case the

matter is remitted back, then the writ petitioner be afforded opportunity of hearing.

Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being decided without seeking any response from the respondents granting liberty to the writ petitioner in the following manner:- (a) The order dated 30.12.2022 passed by the third respondent, Deputy Director of Education, Agra Region, Agra is set aside; (b) The matter stands remitted back to the third respondent, Deputy Director of Education, Agra Region, Agra to put the writ petitioner as well as the sixth respondent into notice and thereafter proceed to decide the entitlement of the writ petitioner strictly in accordance with law as well as taking into consideration the fact as to whether on the basis of the Vigilance enquiry and in absence of any enquiry during the service tenure of the writ petitioner, the pension could have been withheld. The said exercise is to be undertaken within a period of two months from the date of production of certified copy of the order.

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

The instructions dated 03.11.2023 of the third respondent, Deputy Director of Education, Agra Region, Agra, is taken on record and marked as Appendix 'A'.

Order Date :- 16.11.2023
N.S.Rathour