

Court No. - 35

Case :- WRIT - A No. - 16778 of 2023

Petitioner :- Abdul Wahab

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

Counsel for Petitioner :- Arvind Srivastava, Mohd. Naushad Siddiqui

Counsel for Respondent :- C.S.C., Mohammad Ali Ausaf, Pranav Mishra

Hon'ble Vikas Budhwar, J.

1. Heard Sri Mohd. Naushad Siddiqui, learned counsel for the writ petitioner, Sri Shailendra Singh, learned Standing Counsel, who appears for respondent nos.1, 2 and 4 and Sri Pranav Mishra, learned counsel, who appears for respondent no.3 and Sri Mohammad Ali Ausaf, learned counsel who appears for respondent No. 5.

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

3. The case of the writ petitioner is that the fifth respondent, Committee of Management Masdarul Uloom Asdakiya, Purani Chakiya Chandauli is duly recognized under the provisions of Madarsa Education Act and it is in the grant-in-aid list since 16.01.2003 and the provisions of the U.P. Ashaskiya Arbi Tatha Farsi Madarso Ki Manyata Niyamawali 1987 dated 22.08.1987 as well as the provisions of the U.P. Board of Madarsa Education Act, 2004 (U.P. Act No.29 of 2004) and U.P. Non Governmental Arabic and Persian Madarsa Recognition, Administration and Services Regulation, 2016 in the madarsa established and on grant-in-aid, the Act of 2004 and Regulation-2016 are applicable.

4. It is also the case of the writ petitioner that he was appointed as an Assistant Teacher Tahtaniya on 14.08.1991 and thereafter he was promoted in the year 1998 on the post of Assistant Teacher Faukaniya and further promoted on the post of Assistant Teacher Alia. Owing to certain acts and the omission of the fifth respondent, his services stood terminated on 07.03.2006, which was subject matter of challenge in Writ - A No. 38143 of 2007, which came to be allowed on 13.02.2012, quashing the termination order and leaving it open to the fifth respondent to conduct fresh inquiry, if they so chose. However, according to the writ petitioner no inquiry whatsoever was conducted and he was allowed to join on 25.03.2012. However in the meantime, when the writ petitioner

was out of the institution in question, one Sri Nizamuddin was appointed on the post in question and questioning the order dated 13.02.2012 passed in Writ - A No.34458 of 2007 preferred by the writ petitioner and the other incumbent, Writ Petition No. 38143 of 2007 preferred two intra-court appeals, one by Taufeeq Ahmad, Special Appeal No.830 of 2014 and another by Nizamuddin, Special Appeal No. 829 of 2014, which came to be allowed on 13.11.2019 remitting the matter back to the learned Single Judge. Pursuant thereto, according to the writ petitioner his services came to be dispensed with on 25.06.2020.

5. The writ petitioner herein along with others preferred Special Leave Petition (Civil) No.13558-13559 of 2020. The said order has not been annexed with the writ petition but a copy whereof has been forwarded to this Court and this Court had required Sri Shailendra Singh, learned Standing Counsel to go through the said order and to make his argument in that regard. Order whereof is being quoted herein-under :-

"We have perused the affidavit now filed of 15.11.2021 and in terms of para 5 it is stated that two posts of Alia are lying vacant in the institution.

In view thereof, we consider it appropriate to direct that the adjustment can be made with these two posts and that would take care of the grievance raised in the present petitions by the petitioner (s).

Ordered accordingly.

The Special Leave Petitions accordingly stand disposed of.

Pending application, if any, stands disposed of."

6. It is the further case of the writ petitioner that now there appears to be an order dated 18.10.2022 of the fourth respondent, District Minority Welfare Officer, Chandauli entitling the writ petitioner to the benefits. He submits that though there happens to be various communications requiring the fifth respondent to furnish documents in that regard being in the shape of inputs, so as to facilitate grant of benefits to the writ petitioner but the said inputs have not been forwarded to the second respondent creating a situation, whereby the claim of the writ petitioner is not being processed.

7. Prayer in the present petition is for a direction to the fourth and fifth respondents to pay rest of salary of the suspension period (half salary) for the period 21.07.2019 to 25.06.2020, salary of the period whereby the services of the writ petitioner was terminated

along with the increments from 26.06.2020 to 16.12.2021, salary for the Month of February, 2022 and from August, 2022 to November, 2022 and one day salary of June, 2023 along with increments and salary of July, 2023 in the alternative to decide the representation of the writ petitioner dated 10.07.2023 and reminder dated 01.09.2023.

8. Sri Shailendra Singh, learned Standing Counsel, who appears for the official respondent nos.1, 2 and 4 as well as Sri Pranav Mishra, learned counsel, who appears for the respondent no.3 and Sri Mohammad Ali Ausaf, learned counsel who appears for respondent No. 5. on the other hand argued that the issues which the writ petitioner is claiming are to be decided at the first instance by the fourth respondent, District Minority Welfare Officer, Chandauli, who shall address to the claim of the writ petitioner. They further submit that they do not propose to file any response to the writ petition.

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

10. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed of granting liberty to the writ petitioner to represent his cause before the fourth respondent along with the self attested copy of the writ petition and on the receipt of the same, the fourth respondent shall put to notice the fifth respondent and the writ petitioner and thereafter proceed to decide the entitlement of the writ petitioner strictly in accordance with law within a period of three months from the date of the production of the certified copy of the order. In case, the fourth respondent is of the opinion that the matter needs to be addressed by any other authority, then the papers be transmitted to it with due information in writing in advance to the writ petitioner and the fifth respondent. The said exercise is to be completed within the time stipulated herein-above.

11. Needless to point out that the writ petition has been decided without seeking any response on the basis of the arguments advanced by the rival parties as well as the instructions produced by the learned Standing Counsel, thus passing of this order may not be construed to be an expression that this Court has adjudicated upon the merits of the matter.

12. With the aforesaid observations, this writ petition stands disposed of.

13. The instructions filed today are kept on record and marked as Appendix 'A' & 'B'.

14. The order of the Hon'ble Apex Court dated 16.11.2021 is being appended and marked as Appendix 'B'.

Order Date :- 30.10.2023

Rajesh