

Court No. - 35

Case :- WRIT - A No. - 16898 of 2023

Petitioner :- Santosh Kumar Shankhwar

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sharad Chandra, Sankalp Narain

Counsel for Respondent :- C.S.C

Hon'ble Vikas Budhwar, J.

1. Heard Sri V.K. Singh, learned Senior Counsel assisted by Sri Aditya Vikram, learned counsel for the writ petitioner as well as Sri R.P. Dubey, learned Additional Chief Standing Counsel who appears for respondents No. 1 and 2.
2. This Court entertained the writ petition on 16.10.2023 while issuing notices to third and fourth respondents. There is an office report dated 09.11.2023 that the service upon the third and fourth respondents stands confirmed.
3. Since affidavits have been exchanged between the parties and the rival parties do not propose to file any further affidavits, thus, with their consent the writ petition is being decided at the fresh stage.
4. The case of the writ petitioner is that the fourth respondent, Gandhi Sainik Inter College, Pachayan Gaon, Etawah is an institution recognized under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No. 24 of 1971 stand applicable.
5. As per the writ petitioner there are 12 sanctioned posts for class IV employee out of which on 31.07.1998 one Sri Prabhu Dayal superannuated followed by one Sri Har Bilas on 28.02.1999. A decision was taken by the Principal of the institution in question to fill up the same by direct recruitments.
6. In para 9 of the writ petition, it is further asserted that in the year 1999 out of 12 posts of class IV employee in the institution, 10 posts were already filled by class IV employees and thereafter against two vacant class IV posts one Sri Santosh Kumar and Sri Sunil Kumar were appointed by direct recruitment and the papers were transmitted to the District Inspector of Schools, Etawah, second respondent for approval. The approval so sought with respect to Sri Santosh Kumar and Sri Sunil Kumar for appointment as a class IV employees stood refused on 08.03.2000 by the District Inspector of Schools, Etawah, second respondent.
7. Aggrieved against the same, Sri Santosh Kumar and Sri Sunil Kumar preferred Writ A No. 18093 of 20000. In the meantime, as per the writ petitioner, Committee of Management of the institution in question/Principal

in the wake of occurrence of one more vacancy consequent to the promotion of Sri Shiv Shankar Lal Verma on the post of Assistant Clerk on 30.06.2000 proceeded to advertise the class IV vacancies which included the vacancy which arose on account of retirement of Sri Prabhu Dayal and Sri Har Bilas on 30.06.1998 and 28.02.1998 and promotion of Sri Shiv Shankar Lal Verma on 30.06.2000. The said advertisement is dated 10.04.2001. It is also the case of the writ petitioner that he along with Sri Daya Nand and Sri Teeka Ram were selected against the three vacant class IV posts and papers were transmitted to the District Inspector of Schools, Etawah, second respondent which came to be approved on 26.06.2001 by the District Inspector of Schools, Etawah.

The details with respect to the post which stood approved on 26.06.2001 by the District Inspector of Schools, Etawah is recapitulated in the form of chart.

Name of selected candidate	Against the post manned by the incumbent	Date of retirement/promotion
Santosh Kumar Sankhwar (writ petitioner)	On account of promotion of Assistant Clerk On account of promotion as Assistant Clerk of Sri Shiv Shankar Lal Verma	30.06.2000
Daya Nand	Superannuation of Sri Prabhu Dayal	31.07.1998
Teeka Ram	Superannuation of Sri Har Bilas	28.02.1998

8. Assailing the appointment and the approval of Sri Dayanand and Teeka Ram, Sri Santosh Kumar as well as Sri Sunil Kumar preferred **Writ A No. 5956 of 2002** wherein District Inspector of Schools, Etawah, Regional Joint Director of Education, Kanpur, Daya Nand son of Himmat Singh and Teeka Ram son of Jhaman Lal, Committee of Management of Management, Mahatma Gandhi Sainik Inter College, Etawah, Principal, Mahatma Gandhi Sainik Inter College, Etawah and State of U.P. through its Secretary, Department of Secondary Education, Government of U.P., Lucknow were arrayed as party. In the said writ petition, relief was sought for quashing of

the order dated 26.06.2001 passed by the District Inspector of Schools, Etawah and not to interfere in the peaceful functioning of the writ petitioners in the said writ petition.

9. Pleadings reveal that **Writ A No. 18093 of 2000** questioning the order dated 08.03.2000 passed by the District Inspector of Schools, Etawah disapproving the selection and the appointment of Santosh Kumar and Sunil Kumar as well as **Writ A No. 5956 of 2000** assailing the order dated 26.06.2001 approving the appointment of Sri Daya Nand and Teeka Ram came to be consolidated together and was allowed on 22.02.2019. The order passed in **Writ A No. 18093 of 2000** dated 22.02.2019 as well as the order passed in **Writ A No. 5956 of 2002** dated 22.02.2019.-

"1. Heard Sri K.M. Asthana, learned counsel for petitioners and learned Standing Counsel for Respondents-1, 2 and 5. None appeared on behalf of Respondents-3 and 4 though the case is called in revised.

2. Petitioners were selected for appointment to Class-IV vacancies which occurred due to retirements of Sri Prabhu Dayal and Sri Hari Bilas, permanent Class-IV employees on 31.07.1998 and 31.01.1999, respectively from Mahatma Gandhi Sainik Inter College, Pachayan Gaon, District Etawah (hereinafter referred to as "College"). Papers were forwarded to District Inspector of Schools, Etawah (hereinafter referred to as "DIOS") on 13.01.2000. Having not received any reply from DIOS, appointment letters were issued on 18.01.2000.

3. Since no payment of salary was made, petitioners approached this Court in Writ Petition No. 7192 of 2000 which was disposed of on 11.02.2000 directing DIOS to pass appropriate order, whereupon impugned order dated 08.03.2000 has been passed holding that before advertisement no sanction was obtained from DIOS, reservation policy has not been followed and compassionate appointment has not been considered.

4. It is contended that under Regulation 101 Chapter III of the Regulations framed under U.P. Intermediate Education Act, 1921 (hereinafter referred to as "Act, 1921") there is no requirement of any sanction or approval from DIOS before advertisement but before appointment document were sent and when DIOS failed to communicate any decision within prescribed time thereafter appointment was made. It is further submitted that DIOS subsequently could not have declined approval stating that there is no provision of deemed approval under Regulation 101.

5. Issue, whether any approval before advertisement is necessary or not has been set at rest by a Division Bench in Jagdish Singh Vs. State of U.P. and others, 2006(3) ESC 2055 and it is held that once there is a deemed approval, DIOS could not have denied salary.

6. In view thereof, writ petition is allowed. Impugned order dated 08.03.2000 is hereby set aside."

The order passed in Writ A No. 5956 of 2002 dated 22.02.2019.-

"1. Heard Sri K.M. Asthana, learned counsel for petitioners and learned Standing Counsel for Respondents-1, 2 and 7. None appeared on behalf of Respondents-3 to 6 though the case is called in revised.

2. In view of judgment of date passed in connected Writ Petition No. 18093 of 2000 (Santosh Kumar and another Vs. District Inspector of Schools and others), since order of DIOS disapproving appointment of petitioners on Class-IV post has been set aside, result is that order dated 26.06.2001, impugned in this writ petition, appointing Respondents-3 and 4 also cannot be sustained.

3. In view thereof, writ petition is allowed. Impugned order dated 26.06.2001 is hereby set aside."

10. Since the orders passed of the Writ Court in the above noted writ petitions preferred by Sri Santosh Kumar and Sri Sunil Kumar were not complied with the same occasioned filing of Contempt (c) No. 7357 of 2019 in which not only notices were issued, however personal appearance of the competent authority was required which ultimately resulted in passing of the order dated 26.08.2023 by the second respondent, District Inspector of Schools, Etawah cancelling the appointment and dispensing with the services of the writ petitioner Daya Nand and Teeka Ram and stopping of the salary.

11. Questioning the order dated 28.06.2023 passed by the District Inspector of Schools, Etawah, second respondent, the writ petitioner has filed the present writ petition.

12. This Court entertained the writ petition on 16.10.2023 while passing the following orders.-

"The contention of the learned Senior Counsel for the writ petitioner is that in the fourth respondent institution the total sanctioned strength of Class IV post is 12, however, according to him with respect to two incumbents namely Santosh Kumar and Sunil Kumar they were accorded appointment against the vacancy which had arising on account of retirement of the two persons namely Prabhu Dayal and Har Bilas on 31.07.1998 and 31.01.1999 he submits that the order dated 08.03.2000 passed by the District Inspector of Schools seeking to negate the claim of Sri Santosh Kumar and Sunil Kumar for the approval was subject matter of writ petition in Writ A No. 18093 of 2000 Santosh Kumar and Sunil Kumar. As per the writ petitioner subsequently on 26.06.2001 approval has been granted in favour of the writ petitioner against the vacancy which has arisen Sri Shiv Shankar Lal Verma on account of his promotion. It is the case of the writ petitioner that on 26.03.2002 approval has been accorded to one Sri Santosh Kumar, Sri Daya Nand, Sri Teeka Ram in that regard. It is further the case of the writ petitioner that subsequently Santosh Kumar and Sunil Kumar had preferred Writ Petition No. 5956 of 2002 challenging the order dated 26.06.2001 whereby disapproval was accorded which came to be allowed on 22.02.2019 setting aside on 26.06.2001 and so far as the Writ Petition No. 18093 of 2000 is concerned preferred by Sri Santosh Kumar and Sunil Kumar the same came to be allowed on 22.02.2019 quashing the order dated 08.03.2000. It is further the case of the writ petitioner that contempt proceedings were also initiated and a special appeal has been preferred there is no interim order operating. According to the learned counsel for the writ petitioner, now an order has been sought to be passed on 26.08.2023 whereby the approval of the appointment of the writ petitioner has been cancelled the submission of the learned counsel for the writ petitioner is that the issue which was engaging attention in the case of Sunil Kumar and Santosh Kumar was nowhere related to the writ petitioner as the approval of the appointment of the writ

petitioner was accorded on 26.06.2001 which was with relation to the vacancy which had arisen on account of promotion of Sri Shiv Shankar Lal Verma.

Matter requires consideration.

Since a writ of certiorari is being sought let the respondents seek instructions/file response.

Sri Pradeep Kumar Shahi, learned Standing Counsel may file its response by 07.11.2023, rejoinder affidavit by 09.11.2023.

Put up this case on 16.11.2023 as fresh.

Issue notice to respondents No. 3 and 4.

Affidavit of service be filed before the next date fixed.

Steps be taken by tomorrow i.e. 17.10.2023."

13. Though notices were issued to respondents No. 3 and 4 but service report dated 09.11.2023 despite delivery of notice being confirmed nobody has put in appearance. Till the dictation of the order nobody has put in appearance on behalf of respondents No. 3 and 4 though affidavit of service is on record.

14. Sri V.K. Singh, learned Senior Counsel appearing for the writ petitioner submits that the order dated 26.08.2023 cannot be sustained even for a single moment insofar as it relates to the writ petitioner particularly in view of the fact that not only the appointment of the writ petitioner was against a post which was not subject matter in the **writ petition No. 18093 of 2000 (Santosh Kumar and Others Vs. District Inspector of Schools & Others)** and **Writ A No. 5956 of 2000** and further the writ petitioner was not even impleaded as a party in the said proceedings, thus merely because the order dated 26.06.2001 had been quashed which also approved the appointment of the writ petitioner, the same would not ipso facto be a ground to negate the claim of the writ petitioner. According to him, the entire claim set up by Sri Santosh Kumar and Sri Sunil Kumar who had preferred the said writ petitions was against which the appointment was accorded to Sri Daya Nand and Teeka Ram as according to him, the perusal of the approval order dated 26.06.2001 passed by the District Inspector of Schools, Etawah will show that against the vacancy which has arisen on account of retirement of Sri Har Bilas on 28.02.1999, Sri Teeka Ram was accorded appointment and against the vacancy which had arisen on 31.07.1998 consequent to retirement of Sri Prabhu Dayal and Daya Nanad was accorded appointment and so far as the writ petitioner is concerned, his appointment was against the vacancy which had fell vacant due to promotion of Sri Shiv Shankar Lal Verma on 30.06.2000. He submits that in absence of any challenge so raised to the appointment and the approval of the appointment of the writ petitioner by Sri Santosh Kumar and Sri Sunil Kumar the order in question could not have been passed that too against the writ petitioner without affording him opportunity of hearing.

15. Sri R.P. Dubey, learned Additional Chief Standing Counsel who appears for State respondents that the entire exercise has been undertaken pursuant to the direction of the Contempt Court. However, he could not dispute the fact that the appointment of the writ petitioner was against the post which fell vacant on account of promotion of one Sri Shiv Shankar Lal Verma. According to him, Sri Santosh Kumar and Sri Sunil Kumar were appointed against the vacancy which had fell vacant on account of retirement of Sri Prabhu Dayal and Sri Har Bilas. He also does not dispute the fact that the writ petitioner was not put to notice before passing the order impugned. According to him, in view of the averments contained in para 19 of the counter affidavit filed by the State respondents, the writ petitioner could not have been accorded appointment. Sri Dubey, learned Additional Chief Standing Counsel has produced before this Court the order dated 05.12.2023, **Writ A No. 15988 of 2023 Daya Nand (Peon) and others Vs. State of U.P. & Others** so as to contend that against the order of the District Inspector of Schools dated 28.06.2023 a writ petition had been preferred by Sri Daya Nand and Sri Teeka Ram which came to be dismissed, however, the said order would not apply in the case of writ petitioner as the facts are distinguishable.

16. Considering the submission of the rival parties as well as the stand taken by the respondents and in view of factual backdrop, the order impugned in the writ petition does not take into account the contentions raised by the writ petitioner which are core and fundamental: since for the reason that the said order has been passed without putting to writ petitioner to notice, thus, the matter needs to be re-visited by the District Inspector of Schools, Etawah while passing a fresh order.

17. Accordingly, the writ petition is being decided in the following manner: (a) the order dated 26.08.2023 passed by the District Inspector of Schools, Etawah, second respondent insofar as it cancels the appointment/dispenses with the services/stops the salary of the writ petitioner is set aside; (b) The matter stands remitted back to the second respondent, District Inspector of Schools, Etawah to pass a fresh order strictly in accordance with law.

18. With the aforesaid observation, the writ petition stands partly allowed.

Order Date :- 11.12.2023

Rajesh