

Court No. - 35

Case :- WRIT - A No. - 17322 of 2023

Petitioner :- Dr. Jai Prakash Singh

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

Counsel for Petitioner :- Daya Shankar Singh, Saurabh Basu

Counsel for Respondent :- C.S.C

Hon'ble Vikas Budhwar, J.

1. Heard Sri Daya Shankar Singh, learned counsel for the writ petitioner as well as Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel, who appears for the respondent nos.1, 2 and 3.
2. In view of the order, which is being proposed to be passed, notices are not being issued to the fourth respondent.
3. The case of the writ petitioner is that pursuant to a selection conducted by the respondents, he was appointed on the post of Lecturer on 28.06.1992 and he assumed the charge on 08.07.1992. The order is stated to have passed by the District Inspector of Schools, Jaunpur according approval of the writ petitioner for the payment of salary from the date of the joining of the post in question on 09.11.1994.
4. As per the writ petitioner, he continued to function in the institution in question, Sarvajanik Inter College, Mungara Badshahpur, Jaunpur. However, thereafter pursuant to an Advertisement No.2/2008, the writ petitioner applied for the recruitment exercise undertaken for filling up the post of Principal and he was selected and issued appointment order on 24.12.2011 and he superannuated on 31.03.2023. When the writ petitioner staked his claim for being accorded pensionary benefits, now an order is being stated to have been passed on 16.09.2023, passed by

the second respondent, Deputy Director of Education (Secondary Education), Varanasi Region, Varanasi, whereby the claim of the writ petitioner for the grant of pensionary benefits have been negated.

5. Questioning the order dated 16.09.2023, passed by the second respondent, the writ petitioner has preferred the present writ petition.

6. Learned counsel for the writ petitioner, while assailing the order dated 16.09.2023 submits that the order in question records that there are two spells of services undergone by the writ petitioner. First being from 08.07.1992 till 26.01.2010 and the second from 27.01.2010 to 31.03.2023 (till his retirement). He submits that so far as the first spell of service is concerned, the same was approved by the District Inspector of Schools, by virtue of the order dated 09.11.1994 and consequent to the regular as recited he was appointed on the post of Principal and the said service is held to be regular while in the order impugned. He seeks to rely upon the decisions in the case of **Sunita Sharma vs. State of U.P. and Others**, passed in **Writ Petition No. 25431 of 2016**, decided on **20.12.2018**, as affirmed by Special Appellate Bench in order to buttress his submission.

7. Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel submits that he does not dispute the proposition of law propounded, however according to him in the wake of the fact that District Inspector of Schools has granted approval to the appointment of the writ petitioner on 09.11.1994 and there is no break in service and he has been selected and accorded appointment as Principal on regular capacity, thus matter needs re-look. He submits that the he does not propose to file any response to the writ petition and the order be set aside and the matter be

remitted back for passing a fresh order.

8. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being decided in the following terms :-

a) The order dated 16.09.2023, passed by the second respondent, Deputy Director of Education (Secondary Education), Varanasi Region, Varanasi is set aside;

b) The matter stands remitted back to the second respondent;

c) The writ petitioner shall approach the second respondent, while filing a comprehensive representation along with the self attested copy of the writ petition within a period of ten days from today. On the receipt of the same, the second respondent shall put to notice the fourth respondent and seek its version. A date shall be fixed, wherein the versions shall be exchanged;

d) A date shall be fixed for hearing and hearing be done on that date;

e) The orders be passed within a period of one month from the date of the conclusion of the hearing.

9. The second respondent while deciding the issue shall decide the issue strictly in accordance with law without being influenced or obsessed by any of the observations made herein-above.

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

Order Date :- 13.10.2023

S Rawat