

Court No. - 35

Case :- WRIT - A No. - 17431 of 2023

Petitioner :- Rajesh Srivastava

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

Counsel for Petitioner :- Yogesh Kumar Saxena

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

1. Heard Sri Yogesh Kumar Saxena, learned counsel for the writ petitioner and Sri Manoj Vashisth, learned Standing Counsel who appears for respondents No. 1 to 3.

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

3. The case of the writ petitioner is that the fourth respondent, Munni Lal Shukla Uchchattar Madhyamik Vidyalaya, Rewan, Kanpur Dehat is an institution recognized under the provisions of U.P. Intermediate Education Act, 1921, the provisions of U.P. Act No. 5 of 1982 and the provisions of U.P. Act No. 24 of 1971 stand applicable. The case of the writ petitioner is that he was appointed on the post of Assistant Teacher C.T. Grade on 31.01.1991 and the appointment was approved on 28.06.1997 and thereafter the said institution came in grant-in-aid list of the State Government on 01.09.1998 and the District Inspector of Schools, Kanpur Dehat thereafter forwarded the entire papers and recommended the name of the employees of the institution in question in that regard. A report was also sought on 09.05.2001. It is further the case of the writ petitioner that post completion of 10 years of service in C.T. Grade his status stood transformed into L.T. Grade Teacher. It is further the case of the writ petitioner that since the salary was not being paid as per the expectation and the admissibility so the writ petitioner preferred Writ Petition No. 35114 2001 which came to be disposed of on 24.05.2004 pursuant where to now a Regional Level Committee passed an order dated 09.11.2004 granting payment of salary with effect from 24.05.1994. It is also the case of the writ petitioner that against the order dated 09.11.2004 the writ petitioner preferred Writ A No. 10322 of 2005 claiming arrears of salary from 01.12.1998 to 24.05.2004. A statement has been made orally by the learned counsel for the writ petitioner that the said writ petition has been dismissed in default to which a

restoration application has been filed. The learned counsel for the writ petitioner, as per the averments contained in para 13 of the writ petition reference whereof has been given in Annexure 7 at page 51 has sought to contend that along with the writ petitioner one Sri Rajesh Kumar Mishra and Gyan Pratap Singh were sailing in the same boat, however, Sri Rajesh Kumar Mishra (since deceased) and Sri Gyan Pratap Singh they have been accorded the benefits of payment of pension taking into account the services prior to 24.05.2004 for the payment of pension as whereas the case of the writ petitioner has not been considered in that regard. He further submits that on the basis of the order passed on 09.11.2004 of the Joint Director of Education, Kanpur Mandal Kanpur that a finding has been recorded that the writ petitioner and 2 Others were within the sanctioned strength as whereas the case of Sri Subhash Chandra Shukla, Sri Arvind Kumar Dixit, Sri Sachin Kumar Tiwari and Baijnath Yadav was beyond the sanctioned strength. He, thus, submits that the writ petitioner is entitled for payment of pension including the services which have been undergone prior to 24.05.2004.

4. Prayer in the present petition is for a direction to the respondents to revise the pension of the petitioner by counting benefit of service rendered by the petitioner with effect from 1998 and to pay arrears of pension along with 10% interest.

5. Sri Gaya Prasad Singh, learned Standing Counsel who appears for respondents No. 1 to 3 submits that the issues which the writ petitioner is claiming needs determination at the first instance by the second respondent, Deputy Director of Education Kanpur Region Kanpur and the writ petitioner may represent his cause before the second respondent and the second respondent shall address all the bearing in mind the entitlement of the writ petitioner, he further submits that he does not propose to file any response to the writ petition.

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

7. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed of without seeking any response from the respondents granting liberty to the writ petitioner to prefer comprehensive representation along with the self attested copy of the writ petition before the second respondent, Deputy Director of Education Kanpur Region Kanpur shall on the receipt of the same thereafter proceed to decide the entitlement of the writ petitioner strictly in accordance with law

after putting to notice the fourth respondent and thereafter consider the claim of the writ petitioner within a period of three months from the date of production of the certified copy of the order bearing in mind the following fundamental and core issues:

(a) The entitlement of the writ petitioner for payment of pension including the services undergone from the year 1998 to 24.05.2004;

(b) import and the impact of the order dated 09.11.2004 of the Joint Director of Education, Kanpur Mandal, Kanpur;

(c) import and the impact of the pendency and the dismissal of the Writ Petition No. 10322 of 2005 claiming arrears of salary from 01.12.1998 to 24.05.2004;

(d) any other ancillary and incidental issue.

8. With the aforesaid observation, the writ petition stands disposed of.

9. Passing of this order may not be construed to be an expression that this Court has adjudicated on the merits of the matter.

Order Date :- 27.10.2023

Rajesh