

Court No. - 35

Case :- WRIT - A No. - 17056 of 2023

Petitioner :- Ved Prakash

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

Counsel for Petitioner :- Rohit Upadhyay, Prabhakar Awasthi

Counsel for Respondent :- C.S.C., Nitinjay Pandey

Hon'ble Vikas Budhwar, J.

1. Heard Shri Prabhakar Awasthi along with Shri Rohit Pandey, learned counsel for the writ petitioner, Shri H.K. Shukla, learned Standing Counsel who appears for the respondent Nos. 1 to 4 and Shri Nitinjay Pandey, learned counsel for the respondent No. 5.

2. The case of the writ petitioner is that the respondent No. 5, Varshney Inter College, District Etah is an institution recognised under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No. 24 of 1971 stands applicable. The father of the writ petitioner was working as an assistant teacher in the institution in question, he died in harness on 30.12.1998 though he was to superannuate in the year 2003 after attaining the age of 60 years. The writ petitioner thereafter preferred an application for compassionate appointment on 02.06.1999, the application of the writ petitioner was processed for compassionate appointment and the District Inspector of Schools, Etah, fourth respondent proceeded to approve the appointment of the writ petitioner as assistant teacher L.T. Grade and thereafter the writ petitioner was issued an appointment order on 25.09.2000 and he assumed the charge. According to the writ petitioner, an inquiry/investigation was conducted by the District Inspector of Schools, Etah, fourth respondent pursuant to a complaint regarding the appointment of the writ petitioner and one Shri Sanjeev Chauhan assistant teacher (Hindi). A communication is stated to have been made on 17.06.2022 by the District Inspector of Schools, Etah, fourth respondent to the third respondent,

Joint Director of Education, Aligarh, Region Aligarh. A notice is stated to have been issued on 21.06.2023 by the Director of Education, Secondary U.P. at Lucknow calling upon the writ petitioner to appear for an inquiry on 30.06.2023. As per the writ petitioner, on the date fixed, the writ petitioner went to the office of Director of Education on 30.06.2023 but no proceedings were undertaken therein. Thereafter on 19.07.2023, the Director of Education (Intermediate) issued a communication, requiring the writ petitioner to be present with respect to the proceedings being conducted under Section 16 E (10) of the U.P. Intermediate Education Act, 1921. The writ petitioner tendered his reply on 02.08.2023. However on 26.09.2023, an order is stated to have been passed by the Director of Education, Madhyamik, second respondent whereby the appointment of the writ petitioner has been cancelled and his services has been dispensed with.

3. Questioning the order said order, the writ petitioner has been filed the present writ petition.

4. This Court entertained the writ petition on 18.10.2023 while passing the following orders:

"The contention of the learned counsel for the writ petitioner is that pursuant to the death of the father of the writ petitioner on 30.12.1998 the writ petitioner staked claim for compassionate appointment on 6.2.1999 and thereafter the District Inspector of Schools proceeded to approve the appointment of the writ petitioner on 22.9.2000 looking into the educational qualifications of the writ petitioner being B.A. Shiksha Visharad Degree, the writ petitioner claims to continue the post in question. However, now an order is being sought to be passed cancelling the appointment of the writ petitioner in dispensing him with service on 26.9.2023 on the basis of a judgement whereby the said qualifications has been put to naught.

The submission of learned counsel for the writ petitioner is that the such type of exercise was totally warranted as whatever defect was there it stood cured with the passage of time and further he seeks to rely upon a Full Bench decision of this Court in the case of Asha Saxena vs. S.K. Chaudhari 1990 (1) UPLBEC 516 and M.S. Mudhol and another. vs S.D. Halegkar and others

(1993) 3 UPLBEC 1782 in order to buttress his submission.

Since a writ of certiorari is being sought let the learned Standing Counsel seeks instructions or file affidavit.

Issue notice to the fifth respondent.

Steps to be taken by both ways by tomorrow i.e.19.10.2023.

Affidavit of service be filed before the next date fixed.

It is expected that the counter affidavit be filed by 9.11.2023 and rejoinder affidavit be filed by 16.11.2023.

Put up this case on 17.11.2023 as fresh."

5. There is an office report datd 26.10.2023 that the writ petitioners have not taken steps, however a counter affidavit has been filed on behalf of the fourth respondent dated 02.11.2023 sworn by one Shri Ashok Kumar Varshney who claims to be the real younger brother of the manager dated 02.11.2023.

6. A counter affidavit has also been filed on behalf of the respondent Nos. 1 to 4 sworn by the District Inspector of Schools, Etah dated 18.11.2023 to which a rejoinder affidavit has been filed.

7. Learned counsel for the writ petitioner while assailing the order dated 26.09.2023 passed by the second responent, Director of Education, Secondary, U.P. at Lucknow has sought to argue that the impugned order cannot be sustained for a single movement, particularly, in view of the fact that the same is in violation of principles of natural justice. He seeks to rely upon the averments made in para 19 of the writ petition so as to contend that on 21.06.2023, a communication was issued requiring the writ petitioner to be present in its office on 30.06.2023. On 30.06.2023, neither any proceedings were undertaken nor the writ petitioner was permitted to submit its reply or objection. Thereafter another communication was issued on 19.07.2023 by the second respondent, Director of Education, Secondary U.P. at Lucknow fixing on 02.08.2023. The writ petitioner submitted his reply on 02.08.2023, as on that date, the

writ petitioner was only required to submit its reply thereafter without fixing any other date, the order dated 26.09.2023 has been passed. He submits that in view of the provisions contained under Section 16 E (10) of the U.P. Intermediate Education Act, 1921, opportunity of personal hearing is to be accorded to the writ petitioner before taking any reverse action, since the writ petitioner was harping under the impression that after submission of his version on 02.08.2023, he would be accorded opportunity but no communication was issued fixing any date for personal hearing. He thus submits that the order impugned in violation of principles of natural justice.

8. Further submission of the learned counsel for the writ petitioner is that the appointment of the writ petitioner was approved on 22.09.2000 and he was accorded joining on 25.09.2000, however after a period of 23 years, it is not open for the respondents to cancel the appointment and dispensed with the services of the writ petitioner, particularly, in view of the judgment in the case of **Asha Saxena Vs. S.K. Chaudhari 1990 (1) UPLBEC 516**. Further submission is that in case, there was any deficiency in the eligibility of the writ petitioner then after a period of 20 years, the same stands condoned in view of the law laid down by the Hon'ble Apex Court in the case of **M.S. Mudhol and another Vs. S.D. Halegkar and others (1993) 3 UPLBEC 1782**, he further submits that the order impugned is also stigmatic to such an extent that it records a finding that the writ petitioner had procured appointment by committing conspiracy in an illegal manner. He submits that had the writ petitioner been afforded opportunity of hearing, he would have amply demonstrated that there was no occasion to pass such an order.

9. Countering the said submission, Shri H.K. Shukla, learned Standing Counsel submits that the appointment of the writ petitioner could not have been made as though he claims to be appointed under dying in harness Rules as at the time of the appointment, he possessed the degree of Shiksha Visharad issued by Hindi Sahitya Sammelan, however, the Hon'ble High Court vide its judgment and order dated 23.10.2009 passed

in **Writ A no. 1546 of 2003 (Uma Kant Tiwari and 39 others Vs. State of U.P. and 6 others)** declared the degree of Shiksha Visharad granted by Hindi Sahitya Sammelan, subsequent to 1967 is a invalid degree. According to him, the aforesaid judgment stands affirmed by the Hon'ble Apex Court in the case of **Rajasthan Pradesh V.S. Sardarshahar Vs. Union of India** reported in **AIR 2010 SC 2221**, he thus submits that **videly** the order impugned has been passed.

10. I have heard the learned counsel for the parties and perused the record carefully.

11. The facts of the case are not in dispute. It is admitted to the parties that the writ petitioner was appointed on compassionate ground on 25.09.2000 pursuant to the approval order of the District Inspector of Schools, Etah dated 22.9.2000 and at the time time of appointment, the writ petitioner was having acadamic qualifications of B.A. Sikhsha Visharad on the post of Assistant Teacher LT. grade. It is also not in dispute that a Division Bench of this Court in the above noted decision has been held that any confirmet of the degree by the Hindi Sahitya Sammelan, posts 1967 would not be a valid degree. Though in paragraph No. 19 of the writ petition, the writ petitioner has come up with the stand that he was not accorded opportunity of hearing as initially date was fixed on 30.06.2023 but no proceedings were undertaken thereafter on 19.07.2023, a communication was issued fixing on 02.08.2023 and on the said date the writ petitioner was required to submit his version which the writ petitioner was submitted on 02.08.2023 but without giving any opportunity of hearing to the writ petitioner, the writ petitioner's appointment came to be cancelled.

12. The submission of the learned counsel for the writ petitioner is that had he been afforded opportunity wherein the Court would have amply demonstrated that there was no case for cancellation of the appointment. Para 19 of the writ petition has been replied in para 18 of the counter affidavit wherein it has been stated after opportunity to the hearing to the

writ petitioner recording his statement in writing and other relevant records/evidence available on record, order impugned has been passed. Perusal of the order impugned dated 26.09.2023 of the second respondent, Director of Education, Madhyamik reveals that the same is of four pages, the first and the second page extracts the written version submitted by the writ petitioner on 02.08.2023. Then comes the second page which talks about the communications and the third page extracts the judgment of the Division Bench of this Court in that regard and then comes the order. This Court finds that the said order does not contain any recital to the fact that as on which date and by which mode, the writ petitioner was required to be present for personal hearing. Reliance has been placed upon the provisions contained under Section 16 E (10) of the U.P. Intermediate Education Act, 1921 so as to contend opportunity of being heard was a must before taking any action. The impugned order also recites that the writ petitioner committed conspiracy and was granted appointment illegally. The said findings so recorded is stigamatic and it would be for the time immemorial be treated to be adverse against him.

13. At this stage, Shri H.K. Shukla, learned Standing Counsel submits that since in the counter affidavit as well as in the order impugned in the writ petition, there is no specific recital about the fact as to whether the writ petitioner was heard in person and coupled with the facts that certain adverse findings regarding conspiracy while obtaining appointment has come so according to him, the order in question be set aside and the matter be remitted back to pass fresh order.

14. Considering the submission of the rival parties as well as stand taken by them, including the allegations made in the para 19 of the writ petition and the reply of the State-respondents in para 18 of the counter affidavit, the order dated 26.09.2023 is set aside, matter stands remitted back to the second respondent, Director of Education, Secondary U.P. at Lucknow to pass a fresh order. Since the writ petitioner has already submitted his version on 02.08.2023, the second respondent shall fix a date in the week commencing on 04.12.2023. The writ petitioner as well as the fifth

respondent are already represented before this Court thus they shall appear on the date fixed by the second respondent, Director of Education, Secondary, U.P. at Lucknow who shall after hearing the writ petitioner and the fifth respondent proceeded to decide the issue by 15.12.2023.

15. Shri Prabhakar Awasthi, learned counsel for the writ petitioner as well as Shri Rohit Pandey have made a statement at bar after receiving instructions from their client that his client shall not take any adjournment on the date fixed. The reinstatement and payment of salary to the writ petitioner shall be subject to the outcome of the final orders to be passed by the second respondent.

16. However, it is clarified that the order has been passed on the ground that the writ petitioner was not granted opportunity wherein since there was a infraction in violation of principles of natural justice thus passing of the order may not be construed on merits.

17. With aforesaid observations, the writ petition is being **disposed of**.

Order Date :- 29.11.2023

A. Prajapati