

Court No. - 35

Case :- WRIT - A No. - 17489 of 2023

Petitioner :- Umesh Chandra

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

Counsel for Petitioner :- Yogendra Kumar Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri Yogendra Kumar Srivastava, learned counsel for the petitioner and Sri Awadhesh Kumar Mishra learned Standing Counsel, who appears for respondents 1 to 4.

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

The case of the writ petitioner is that the fifth respondent, Shri Virendra Singh Inter College, Bannadal, Ballampur, Mainpuri is an institution which is recognised under the provisions of U.P. Intermediate Education Act, 1921 the provisions of U.P. Act No.5 of 1982 as well as the provisions of U.P. Act No.24 of 1971 stands applicable.

The writ petitioner claims to have been appointed on the post of Assistant Teacher L.T. Grade on 20/22.7.1991 under the provisions of removal of difficulties orders and he assumed the charge in the month of July, 1991 however the approval was negated by the District Inspector of Schools which was subject matter of challenge in Writ-A No.32600 of 1991, Umesh Chandra and others vs. D.I.O.S. in which interim order was accorded and thereafter on 18.1.1992 approval was granted for the payment of salary to the writ petitioner till the regularly selected candidate comes and joins. It is the case of the writ petitioner had no regularly selected candidate joined in the post in question however ultimately the writ petition stood decided by virtue of an order dated 14.10.2021 which is quoted herein under:-

"Heard learned counsel for the petitioners and the learned standing counsel.

The petitioners claimed to have been appointed under the Removal of Difficulties Order issued under the provisions of the U.P. Secondary Education Services Commission and Selection Boards Act, 1982 (hereinafter referred to as the Act) by the Committee of Management after duly notifying

the vacancies to the Commission in July, 1991. Appointment letters were issued to the petitioners on 20/22.7.1991. The petitioners joined pursuant to the same and are working in different colleges. The papers relating to their selection and appointments were forwarded to the District Inspector of Schools, Mainpuri (for short 'the DIOS') for approval. However, DIOS by order dated 9.9.1991 declined to grant approval on the ground that the State Government had imposed a ban vide G.O's. dated 21.1.1991 and 17.7.1991 and also circular dated 31.8.1991 issued by the Director of Education U.P., Lucknow. The said order of disapproval was challenged by means of present writ petition. While entertaining the writ petition this Court passed an interim order dated 15.11.1991 staying the operation of the letter dated 9.9.1991 of the DIOS. Thereafter, the DIOS vide order dated 28.1.1992 granted conditional approval to the appointments of the petitioners. Two conditions were imposed by the DIOS; firstly, that the approval will be valid till regularly selected candidates join the institution; and secondly, subject to the order passed by this Court in the present writ petition.

Learned counsel for the petitioners states that the petitioners have been continuing to work and have been receiving due salary pursuant to the interim order and also conditional order of approval, referred to above. It is further stated that till date no duly selected candidate joined in the institution. It is also submitted that the reasons, which formed basis of the order of disapproval dated 9.9.1991, has already been held to be illegal by this Court as the G.O. imposing ban has since been lifted by the State Government on 26.9.1991. Reference has been made to the number of judgments in the cases of Civil Misc. Writ Petition No.35701 of 1991 (Smt. Neelam Agarwal v. State of U.P. and others) decided on 11.10.1991; Civil Misc. Writ Petition No.NIL of 1992 (Mahendra Pratap Singh v. District Inspector of Schools, Mau and others) decided on 16.4.1992 and Civil Misc. Writ Petition No.32247 of 1991 (Km. Prabhawati Dixit v. U.P. Madhyamik Shiksha Seva Ayog and others). In that view of the matter, the impugned order dated 9.9.1991 cannot be sustained and deserves to be quashed.

Learned counsel for the petitioner has pointed out that some of the petitioners have since retired and the others may be entitled to be regularized under Section 33-C of the Act.

Considering the facts and circumstances of the case, this writ petition stands allowed. Impugned order dated 9.9.1991 is quashed. It is further directed that the concerned authority shall examine the claim of the petitioners, who are still working, for regularization in accordance with the provisions of Section 33-C of the Act. This Court further directs the concerned authority to finalize and pay the post retiral benefits admissible to the retired petitioners."

It is further the case of the writ petitioner that the papers were transmitted to the Committee for considering the claim of the regularisation of the writ petitioner in the said writ petition including the writ petitioner herein. As per the writ petitioner on 11.5.2012 the Regional Level Committee proceeded to pass an order seeking to regularise the services of Sri Mohan Lal Dubey in this regard, however the claim of the writ petitioner was not

considered. As per the writ petitioner he was permitted to officiate as ad hoc Principal and his signatures stood attested on 5.7.2010 consequent to the retirement of one Sri Maheshwar Dayal Yadav on 30.6.2010. However according to the writ petitioner he applied for voluntary retirement and he was accorded the same on 17.7.2020 w.e.f. 31.7.2020.

It is the case of the writ petitioner that since his services were not regularised so he is not being made admissible for the payment of pension.

Reliance has been placed upon various interdepartmental communication so as to contend that the issue with respect to the regularisation and the payment of pension is engaging attention before the fourth respondent.

Learned counsel for the writ petitioner has invited the attention of the Court towards annexure-13 at page 65 of the paper book which happens to be a communication issued under the signature of the District Inspector of Schools, Mainpuri fourth respondent to fifth respondent institution.

Prayer in the present petition is for a direction to the second respondent, Joint Director of Education, Agra Region, Basti to accord pension to the writ petitioner.

Learned Standing Counsel on the other hand submits that the issue as to whether the writ petitioner is entitled for being considered for regularisation, pension and other benefits needs determination at the first instance by the second respondent who shall address to the claim of the writ petitioner. He further submits that he does not propose to file any response to the writ petition.

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

Considering the submissions of the rival parties as well as stand taken by them, the writ petition is being disposed off without seeking any response from the respondents granting liberty to the writ petitioner to prefer a comprehensive representation along with the self-attested copy of the writ petition before the second respondent, who shall on the receipt of the same, put to notice the fifth respondent and thereafter to decide the entitlement of the petitioner strictly in accordance with law within a period of three months from the date of presentation of the certified copy of the order bearing in mind the following fundamental and core issues:-

(a) the order dated 14.10.2011 passed in Writ-A No.32600 of 1991 setting aside the disapproval of the appointment of the writ petitioner dated 9.9.1991 (b) the import and impact of regularisation of the services of one Sri Mohan Lal Dubey by virtue of the order dated 11.5.2012 which according to the writ petitioner was sailing on the same boat (c) the voluntary retirement of the writ petitioner on 31.7.2020 (d) any other ancillary and incidental aspects.

Needless to point out that the writ petition has been decided without seeking any response from the respondents. Thus, passing of this order may not be construed to an expression that this Court has gone into the merits of the case.

With the aforesaid observation, the writ petition is **disposed off**.

Order Date :- 27.10.2023

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