

Court No. - 35

Case :- WRIT - A No. - 20001 of 2022 (***Leading Petition***)

Petitioner :- Vikas Kumar

Respondent :- Director Higher Education And 3 Others

Counsel for Petitioner :- Dharmendra Vaish

Counsel for Respondent :- C.S.C., Pawan Kumar Vishwakarma, Pranab Kumar Ganguli, Seemant Singh

:with:

Case :- WRIT - A No. - 12461 of 2023 (***Connected petition***)

Petitioner :- Vikas Kumar

Respondent :- Director Higher Education U.P. Prayagraj And 7 Others

Counsel for Petitioner :- Dharmendra Vaish

Counsel for Respondent :- C.S.C., Pranab Kumar Ganguli, Seemant Singh

Hon'ble Vikas Budhwar, J.

Heard Sri Dharmendra Vaish, learned counsel for the petitioner in the leading petition as well as in the connected writ petition, Sri R.P. Dubey, learned Addl. Chief Standing Counsel, who appears for Respondent Nos. 1 and 2 in the leading writ petition and for Respondent nos. 1, 2 and 8 in the connected writ petition and Sri Pranab Kumar Ganguli, who appears for Respondent Nos. 6 and 7 in the leading as well as in the connected writ petition and Sri Seemant Singh, who appears for Respondent No.5 in both the petitions.

Since common questions of law are involved in both the writ petitions and the learned counsel for the parties do not propose to file any further affidavits, thus with their consent, the writ petitions are being decided at a fresh stage.

The case of the writ petitioner is that there happens to be an Institution by the name of K.B. Post Graduate College, Mirzapur, which is currently affiliated with Kashi Vidyapith University, Varanasi. According to the writ petitioner, various posts as Lecturer in Hindi, Sanskrit, Political Science and Physics are lying vacant, thus the Institution in question in order to eliminate the chances of jeopardizing of the interest of the Institution in question proceeded to advertise the said vacancies (leave) on 09.10.1991. The writ petitioner claims to have applied in pursuance of the said advertisement and thereafter, post selection, he was issued an appointment order on 15.11.1991 by the Principal, K.B. Post

Graduate College, Mirzapur appointing him as an ad hoc Lecturer in Physics. The writ petitioner further claims to have joined on the post in question on 15.11.1991. With the insertion of the provisions contained under Section 31-C of the Uttar Pradesh Higher Education Service Commission, 1980, the writ petitioner staked his claim for being considered for regularization. He preferred Writ A No.23071 of 1993, which came to be disposed of on 03.11.2011 requiring the concerned authority to examine the claim of the writ petitioner. According to the writ petitioner, there happened to be a communication dated 09.06.2016 of the Director, Higher Education addressed to the Regional Higher Education Officer, Varanasi, wherein inputs were required, which were furnished and according to the writ petitioner, name of the writ petitioner found place at Sl. No.2 and the name of Sri Sharad Mehrotra at Sl. No.3.

Post passing of the order in the said writ petition on 19.07.2016, the Principal of the Institution in question issued a communication to the Regional Higher Education Officer, Varanasi submitting notarized affidavits of the incumbents including the writ petitioner, who were seeking regularization. Since the claim of the writ petitioner was not being processed for regularization, so the writ petitioner preferred **Writ-A No.14040 of 2022, Vikas Kumar Vs. Director, Higher Education, U.P. Prayagraj**, which came to be disposed off with the direction to the first respondent to consider the claim of the writ petitioner. However, the claim of the writ petitioner has been negated on 12.10.2022 by the Assistant Director Higher Education on behalf of Director, Higher Education, U.P. Prayagraj.

Questioning the said order the writ petitioner has preferred the leading petition with a further relief not to interfere in the peaceful working of the writ petitioner and to pay salary to him. The said writ petition was entertained by this Court on 03.12.2022 while seeking response from the respondents and issuing notices to Respondent Nos. 3 to 7, who are represented through their counsels by Sri Ganguli and Sri Seemant Singh. However, since, an authorized controller is manning the Institution in question, though the learned Standing Counsel appears for the same, but nobody had put in appearance in private capacity on behalf of Respondent Nos. 3 and 4.

During the pendency of the said writ petition, without there being any interim order operating, now an oral order has been passed on 01.11.2022 whereby the salary of the writ petitioner has been stopped.

Questioning the oral order and for a direction for payment of salary, the connected writ petition has been preferred. In the connected writ petition was entertained, notices were issued on 02.08.2023 and the same was tagged with the leading writ petition and now a counter affidavit has been filed by the State official respondent, on behalf of Respondent no.1 Joint Director of Higher Education, Director of Higher Education, U.P. Prayagraj dated 19.06.2023 and a counter affidavit by Sri Ganguli, who appears for Respondent nos. 6 and 7. To such affidavits, rejoinder affidavits have been filed.

Learned counsel for the writ petitioner while assailing the order dated 12.10.2022 passed by the Director of Higher Education, U.P. Prayagraj has submitted that the said order cannot be sustained for a single moment, particularly in view of the fact that in the advertisement in question, the nature of the post so sought to be advertised was Lecturer (Physics), on ad hoc basis, however, now the same has been shown to be on a part time basis. He further submits that the writ petitioner was fully qualified and eligible and in view of the provisions contained under Section 16 of the 1980 Act as was existing at that point of time and his name also found place in the Inter-departmental communication dated 09.06.2016 also, thus the writ petitioner is entitled to be considered for regularization. He further submits that he possesses relevant qualification in that regard. According to him, he is entitled for payment of salary.

Sri R.P. Dubey, learned Addl. Chief Standing Counsel, as well as the counsel appearing for the private respondents have argued that from the recital of the fact in the order impugned dated 12.10.2022, it is clear that despite being asked to submit documents relating to the selection of the writ petitioner, nothing was brought before the Director of Higher Education, so as to substantiate that the Selection Committee was constituted and further subject experts were made available for the University. He further submits that the Appointing Authority of the writ petition was the Committee of Management and not the Principal and further according to the respondents even in the writ petition, nothing has been brought on record to substantiate that a Selection Committee as per the relevant statute was constituted and the deserving candidates along with the writ petitioner, the case was considered.

I have heard learned counsel for the rival parties as well as the stand taken by them. In the order impugned dated 09.12.2022 passed by the Director of Higher Education, categorical finding

has been recorded that no documents whatsoever, was submitted regarding the selection of the writ petitioner. Even from the perusal of the writ petition, there is nothing on record to substantiate the same. Though in the counter affidavit filed on behalf of the State respondents in paragraph-9, the relevant averments have been made showing the deficiency and illegality in the alleged selections, but the same have been evasively replied in paragraph-6 of the writ petition. It is equally important at this juncture to note that the authorized controller is already manning the Institution in question, who has not chosen to represent itself, though the learned Standing Counsel appearing for the Authorized Controller. There is no counter affidavit filed on behalf of the Authorized Controller though service has been deemed to be sufficient. Clearly, in view of the matter, it is for the writ petitioner to stand on his own legs and he cannot borrow assistance from others. Since the pleadings themselves are absolutely lacking in the present writ petition, thus this Court is not in a position to address the claim of the writ petitioner. Even otherwise, a finding is also being recorded that the writ petitioner is getting salary from the Management fund and in case, there is any default whatsoever, the payment of salary or any grievance is attributable to it, thus it is always open for the writ petitioner to take appropriate proceeding against the Committee of Management in respect of non-payment of salary as the State will be bound only in these contingency, when it is found that the claim of the writ petitioner is as per the four-corners of law.

Accordingly both the writ petitions are **dismissed**. The interference in the impugned order 12.10.2022 in the leading petition and the oral order dated 01.11.2022 in the connected petition is declined.

Passing of this order may not be construed to an expression that this Court has throttled or blocked the right of the writ petitioner to approach under common law for redressal of his grievances, if permissible in that regard.

Order Date :- 22.11.2023
N.S.Rathour