

Court No. - 35

Case :- WRIT - A No. - 17710 of 2023

Petitioner :- Krishna Mohan Singh

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

Counsel for Petitioner :- Ramesh Chandra Dwivedi

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

1. Heard Sri R.C. Dwivedi, learned counsel for the petitioner as well as Sri P.K. Shahi, the learned Addl. Chief Standing Counsel, who appears for Respondents 1 to 4.

2. This Court entertained the writ petition on 06.11.2023 while issuing notice to the Respondent no.5. There is an Office Report dated 07.12.2023 that the item redirected to Madanpur S.O. on account of Insufficient address, but no unserved notice has been received in the office as yet. In view of the order, which is being passed today, the say of the Committee of Management is being protected.

3. Sri P.K. Shahi, learned Addl. Chief Standing Counsel submits that pursuant to the order dated 06.11.2023, he was called upon to file counter affidavit on behalf of Respondents 1 to 4, however, despite letters, he could not file the same, however in view of the order, which is being proposed to be passed, he is not seeking further time.

4. The case of the writ petitioner is that there happens to be an Institution by the name of Sri Thakur Prasad Rao Gantantra Intermediate College, Desahi, Deoria, to which the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No.24 of 1971 stand applicable. As per the writ petitioner, in the Institution in question, pursuant to the Government Order dated 31.03.1991, there were 15 sanctioned posts of teachers in the Institution. However, subsequently, two more posts stood sanctioned (Assistant Teacher) and thus in total there are 17 sanctioned posts. It is also the case of the writ petitioner that when the selection exercise pursuant where to the writ petitioner and other incumbent were selected, two posts already stood sanctioned, which were to be filled up. It is also the case of the writ petitioner that the two posts, which stood sanctioned were of Science and Maths. The Institution, in question in order to eliminate the chances of any obstruction in teaching work in the institution in

question, got published an advertisement in two daily newspapers pursuant where to the writ petitioner applied for the post of Assistant Teacher LT Grade in Science. As many as four incumbents applied for the said posts. Thereafter a Selection Committee was constituted which conducted the selection of the writ petitioner came to be fully eligible and qualified in all respects was selected by the Selection Committee. It is also the case of the writ petitioner that he was selected against the post of Lecturer (Science) and one Sri Ram Ganesh Singh on the post of Maths. The writ petitioner further claims that he was accorded joining on 22.08.1991, however, in the wake of the fact that there existed a ban imposed by the State Government on 30.07.1991, the approval of the appointment of the writ petitioner was not accorded. The writ petitioner claims to have represented the matter before the respondents. Since the claim of the writ petitioner was not being acceded to for the purposes of payment of salary so the writ petitioner herein preferred Writ Petition (Service Single) No.7173 of 2010, which was entertained. On 08.10.2010, the following orders were passed, relevant extract whereof is being quoted hereinunder:

"I am of the opinion that the interest of students and the education, is paramount in the democracy. The students cannot be made to suffer for the time, which is taken by the Board in filling up of the vacancies. Be it, due to procedure or otherwise. If the students cannot be allowed to be without a teacher for a short term vacancy, then it cannot be permitted by this Court that the students should be without a teacher for longer period than the short term vacancy period. Accordingly, if the appointment has been made and the teacher is discharging his duty of teaching the students, then it will be equitable that he should be paid salary.

Keeping in view the above two judgments, this Court feels that in case the petitioner is continuously working, he is entitled for the payment of salary by the opposite parties. Accordingly, this Court directs the opposite parties to make regular payment of salary to the petitioner forthwith.

Learned standing counsel prays for and is granted four weeks' time to file counter- affidavit, to which rejoinder- affidavit may be filed within a week thereafter. List thereafter.

It is made clear that the appointment of the petitioner shall come to an end as soon as the regularly selected candidate comes in pursuance of the requisition by the Board. No separate order for termination of the petitioner's services will be required to be passed."

5. It is also the case of the writ petitioner that despite the interim order accorded to the writ petitioner, salary was not paid, however, on 19.12.2012, there happens to be a report of the District

Inspector of Schools, Deoria addressed to the Director of Education (Madhyamik) Lucknow recommending the case of the writ petitioner for payment of salary. In pursuance thereof, the District Inspector of Schools on 30.10.2013 accorded approval to the appointment and payment of salary. The writ petitioner claims to have continued in the post in question. However, according to the writ petitioner in the meantime, he preferred Writ (Service Single) No.25990 of 2016 seeking his claim for regularization in terms of Section 33-C of the U.P. Secondary Education (Services Selection Boards) Act 1982, which came to be disposed of on 27.10.2016. Thereafter the claim of the writ petitioner for regularization was not processed in the wake of the fact that already the writ petition was pending before this Court. Finally, Writ-A No.7173 of 2010, Krishna Mohan Singh Vs. State of U.P., came to be disposed of on 01.07.2022 with a direction to consider the case of the writ petitioner for regularization and the interim order, which has already been granted to the writ petitioner was allowed to be continued till the passing of the fresh order, which resulted into the passing of the order impugned dated 19.09.2023 by the third respondent, Regional Selection Committee through its Chairman, Joint Director of Education 7th Region, Gorakhpur, whereby the said Committee proceeded to negate the claim of the writ petitioner on premise that the writ petitioner was made admissible for payment of salary w.e.f. 30.10.2013, thus this case does not come within the parameters envisaged under the relevant provisions pertaining to regularization.

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

7. Sri Dwivedi, learned counsel for the writ petitioner submits that the order dated 19.09.2023 passed by the third respondent, Regional Selection Committee through its Chairman, Joint Director of Education 7th Region, Gorakhpur, cannot be sustained for a single moment, particularly in view of the fact that it is not a case wherein the appointment of the writ petitioner was made against a post, which was not sanctioned. He further submits that the writ petitioner was fully eligible and qualified for the post in question and he was accorded selection by a duly constituted selection committee. However, in view of the ban so imposed by virtue of the Government Order dated 30.07.1991, the claim of the writ petitioner for approval of his payment was not considered. However, the writ petitioner kept on working on the post in question and when now the fruits are to be bestowed to the writ petitioner, now an objection has sought to be taken in the wake of

the fact that w.e.f. 30.10.1993, the approval has been granted, thus the writ petitioner was not entitled to be considered for regularization.

8. Submission is what is relevant is factum with respect to the existence of the vacancy, sanctioned strength, eligibility, suitability and the legal procedure so adopted therein. Once all the ingredients tilt in favour of the writ petitioner, then he cannot be denied benefits, even otherwise the order barring the objection taken that the salary of the writ petitioner has been paid from 30.10.2013, there is no other material, which could have been a ground for taking up all the benefits. In the alternate, Sri Dwivedi further argues that though it might be the case of the respondents that in view of the applicability of the Limitation Act, the writ petitioner would be entitled for payment of salary from the date it is being claimed, three years prior to it, however, working of the writ petitioner could not have been ignored, particularly, when the matter stands already decided in a decision in the case of Writ-A No. 8234 of 2020 and 1981 of 2021, Pramod Kumar Singh vs. State of U.P.

9. According to Sri Dwivedi, the Committee of Management has itself recommended the case of the writ petitioner, which finds presence in the order impugned at page-105, internal page-4 in that regard. Sri Dwivedi has also argued that the approval order dated 30.10.2023 in no manner whatsoever restricts the payment of salary from the date when the order is being passed and thus according to him, it will relate back from the date of the appointment/ joining of the writ petitioner.

10. Sri P.K. Shahi, learned Addl. Chief Standing Counsel submits that might be the writ petitioner claims to have been working w.e.f. 22.08.1991, but what is relevant is the date, when the approval has been accorded and further the writ petitioner was sleeping over his rights might be he was representing to respondents, but he did not approach this Court while exercising the rights and sought mandamus. Thus the writ petitioner was not entitled for being considered for regularization in the aforesaid provisions. He further submits that the legal issues which the writ petitioner seeks to raise needs re-determination and re-look, thus the Regional Level Committee be directed to revisit the entire matter in the light of the aforesaid facts. He further submits that when the fresh exercise is undertaken, then the Committee of Management may also put to notice and the documents be summoned, so as to enable the adjudicating authorities to pass the orders strictly in accordance with law.

11. I have heard learned counsel for the parties and perused the records.

12. The facts are not in dispute. However, the only bone of contention between the parties is with regard to the approval order passed by the District Inspector of Schools dated 30.10.2013 whether it will relate back from date of appointment or will be made applicable from the date, when the same was issued. Another important aspect of the matter is with respect to the import and impact of the order dated 01.08.2022 passed in Writ-A No.7173 of 2010 preferred by the writ petitioner wherein direction was issued for consideration of regularization of the writ petitioner and his continuance till the passing of the fresh order. Nonetheless, the order impugned also does not address to the selection procedure adopted for selecting him as Assistant Teacher LT Grade in Science. Thus in the opinion of the Court, the order impugned in the writ petition is liable to be set aside. Matter be remitted back for re-examination by the Regional Selection Committee.

13. Accordingly the writ petition is decided in the following manner: (a) the order dated 19.09.2023 passed by the Regional Selection Committee through its Chairman, Joint Director of Education 7th Region, Gorakhpur is set aside; (b) Matter stands remitted back to the third respondent to pass fresh order after putting to notice the writ petitioner as well as the Committee of Management of the Institution in question. While passing a fresh order post-remand, the third respondent shall bear in mind the following fundamental and core issues: (i) The issue with respect to the entitlement of the writ petitioner for regularization in light of factual aspect relating to sanctioned strength, vacancies, adherence to the Rules applicable to the selections; (ii) The approval order dated 13.10.2013 of the District Inspector of Schools, Deoria; (iii) The continuance of the writ petitioner on the basis of the interim order; (iv) issue with regard to the non-payment of the salary for the period prior to 30.10.2013 in light of the judgment in the case of **Pramod Kumar** (*supra*); and (f) the claim/ entitlement of the writ petitioner for payment of salary shall be considered in view of the judgment passed in **Rushi Bhai Jagdish Vs. Bhav Nagar Municipal Corporation**, JT 2022(5) SC 4.

14. The said exercise is to be conducted / concluded within a period of four months from the date of production of certified copy of the order.

15. With the aforesaid observation, the writ petition stands **partly allowed**.

Order Date :- 8.12.2023
N.S.Rathour