

Court No. - 35

Case :- WRIT - A No. - 17722 of 2023

Petitioner :- Tilak Singh

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

Counsel for Petitioner :- Yogesh Kumar Saxena, Sanjeev Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

Rejoinder Affidavit filed today is taken on record.

Heard Sri Yogesh Kumar Saxena, learned counsel for the petitioner as well as Sri Saurabh, the learned Standing Counsel, who appears for Respondents 1 to 3.

This Court entertained the writ petition on 06.11.2023 while seeking response from the respondents and also issued notices to fourth and fifth respondents. There is an office report dated 13.12.2023 that the delivery of notice upon Respondent Nos. 4 and 5 is confirmed.

Till the dictation of the order, nobody has put in appearance on behalf of the Respondent Nos. 4 and 5, though a counter affidavit has been filed by the District Inspector of Schools, Kannauj on behalf of Respondent nos. 1 to 3 dated 04.12.2023.

The case of the writ petitioner is that there happens to be an Institution by the name of Jagdishwar Dayal Janta Inter College, Chhibramau, District- Kannauj, which is recognized under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No.24 of 1971 stand applicable. It is also the case of the writ petitioner that there are four sanctioned posts in Clerical Cadre, break up whereof 1 Head Clerk and 3 Assistant Clerks and as per the Regulation 2 of Chapter III of the 1921 Act, two posts falls within the promotion quota as well as two under direct recruitment quota. As per the writ petitioner, presently there are two incumbents, who are working in the Clerical Cadre, Alok Kumar Dwivedi (Head Clerk), Gaurav Kumar Yadav as Assistant Clerk. There remains two vacancies, which are liable to be filled on account of retirement of two permanent clerks namely Chandra Prakash Tripathi and Bhisham Singh Saxena.

The petitioner claims that he is fully eligible and qualified in all respects for being accorded promotion in the clerical cadre. An

order is stated to have been passed on 29.09.2023 by the third respondent, District Inspector of Schools, Kannauj according to compassionate appointment to the fifth respondent, Sri Divyanshu Dubey owing to the death of one Sri Vineet Kumar Dubey. Since the claim of the writ petitioner was not being considered for promotion and the said vacancy was being filled up on compassionate ground while making appointment of Respondent no.5 so the writ petitioner preferred the present writ petition questioning the order dated 29.09.2023 passed by the third respondent, District Inspector of Schools, Kannauj. This Court entertained the writ petition on 06.11.2023 while passing the following orders:

"The contention of Shri Yogesh Kumar Saxena, learned counsel for the writ petitioner is that there are as many as four sanctioned post of Class III employee in the institution i.e. one head clerk and three assistant clerks, however, there happens to be two incumbents who are already working under the direct recruitment quota, however, now the fifth respondent is being allowed to man the post through compassionate appointment that too beyond the quota which is earmarked for promotion as the writ petitioner claims to be the second senior most class-IV employee in that regard. He submits that the matter is quite urgent as in case, the post is filled up through compassionate appointment by the fifth respondent then it will block the chances of the writ petitioner. Further the contention of the learned counsel for the writ petitioner that today, nobody has joined.

Learned Standing Counsel appears on behalf of the respondent Nos. 1 to 3.

Issue notice to respondent Nos. 4 and 5.

Steps to be taken by day after tomorrow i.e. 08.11.2023.

Counter affidavit be filed 13.11.2023 thereafter rejoinder by 15.11.2023.

Put up this case as fresh on 05.12.2023.

Shri Manoj Vashisth, learned Standing Counsel has made a statement that he will make all the endeavours to get the instructions or file affidavit before the next date fixed."

In the counter affidavit filed by the third respondent, District Inspector of Schools, Kannauj, in paragraph-6 it has not been disputed that there are four sanctioned posts in Clerical Cadre and two are lying vacant. In paragraphs- 8 and 9, averments have been made to the extent that the fifth respondent, who claimed compassionate appointment has already been accorded placement in an Institution being Baba Haripuri Inter College, Kasawa, Kannauj and the writ petitioner, as per the document dated 31.10.2023 issued under the signatures of District Inspector of

Schools, Kannauj addressed to the Manager / Principal of the Institution is found to having a claim for being considered for promotion. Though in paragraph-7 of the writ petition, reference has been given to the fact that the writ petitioner herein had preferred Writ-A No. 56616 of 2023, but the said assertion and the allegation have been denied in paragraph no.4, so as to contend that the petitioner has no knowledge about the same.

Be that as it may, since a stand has been taken by the learned Standing Counsel in its counter affidavit filed by the third respondent, District Inspector of Schools, Kannauj that the fifth respondent has been accorded placement in other Institution, thus in the opinion of the Court, the order dated 29.09.2023 passed by the third respondent, District Inspector of Schools, Kannauj is liable to be set aside.

Accordingly, the order dated 29.09.2023 passed by the third respondent, District Inspector of Schools, Kannauj is set aside. A mandamus is issued to consider the claim of the writ petitioner for promotion in the Clerical Cadre in the Institution in question strictly in accordance with law, within a period of six weeks from the date of production of certified copy of the order.

With the aforesaid observations the writ petition stands **disposed off**.

Order Date :- 14.12.2023
N.S.Rathour