

**Court No. - 35**

**Case :-** WRIT - A No. - 17913 of 2023

**Petitioner :-** Dhannu Kumar Chauhan

**Respondent :-** State Of U.P. And 5 Others

**Counsel for Petitioner :-** Anand Kumar Pandey

**Counsel for Respondent :-** C.S.C.

**Hon'ble Vikas Budhwar,J.**

Heard Sri Anand Kumar Pandey, learned counsel for the petitioner and the learned Standing Counsel, who appears for the respondent nos.1 to 4.

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

The facts of the case as worded in the writ petition are that the fifth respondent institution, namely Baba Laxman Das Rastriya Inter College, Ballia is a recognized institution under the provisions of the U.P. Intermediate Education Act, 1921 and the provisions of Payment of Salary Act, 1971 stand applicable.

In paragraph-4 of the writ petition, it has been averred that the total number of Class-IV post sanctioned is 22. It is the further contention of the writ petitioner that the sixth respondent, who happens to be the Principal of the fifth respondent institution corresponded with the fourth respondent, District Inspector of Schools, Ballia on 15.05.2015 for filling up six posts (1 OBC, 5 General) for according permission on account of the fact that Class-IV employees, who had earlier been working, had superannuated. Though repeated correspondence were being made, but no action whatsoever has been taken. It is the further case of the writ petition as portrayed in paragraph-8 of the writ petition that proceedings for holding selections were held and thereafter on the basis of the advertisement published on 20.05.2017 and 21.05.2017, interviews were conducted on 25.06.2017 and the petitioner post-obtaining high quality points were issued appointment order on 25.06.2017 and the assumed the charge on 01.07.2017. It is the further case of the petitioner that though requests was being made before the fourth respondent for according approval, but the same was not acceded to. In paragraph-13 of the writ petition, it has been further asserted that

the pursuant to the directions contained in the order dated 26.10.2010 in Writ-A No. 26307 of 2010 (Dhruv Narayan Singh vs. State of U.P., the educational authorities undertook proceedings to find out and determine the sanctioned strength vis-a-vis the number of the pupil so studying in the institution, and as per the averments contained in the writ petition, in particular, paragraph-15, out of the total sanctioned strength of 22 Class-IV employees, presently there are four employees working. In paragraph-16 of the writ petition, it has been further averred that representations were being made, but the same were not being decided thus far.

Grievance of the writ petitioner is that despite the fact that they have been validly appointed and they have assumed the post in question but till date financial approval has not been granted and thus, they are not being paid salary.

Prayer in the present petition is for a mandamus commanding the respondents to decide the claim of the petitioner for the post of peon and in alternative to decide the representation dated 24.06.2023 (Annexure-8) reference whereof has been given in paragraph-16 of the writ petition.

Learned Standing Counsel on the other hand while countering the submission of the writ petitioner has sought to submit that the grievances which are being raised by the petitioner are to be gone at the first instance by the fourth respondent, District Inspector of Schools, Ballia who shall accord consideration to the claim of the writ petitioner. According to learned Standing Counsel a conscious decision and determination is to be accorded as to whether the selections were in accordance with law, while taking into note the following aspects: (a) number of sanctioned posts; (b) the selection procedure; (c) the number of vacancies; (d) the compliance of the acts and the rules in question governing the field; and (e) the import and impact of holding selections without seeking approval from the authorities (f) with regard to delay in approaching the court that too being inordinate and unexplained in the light of the judgment in the case of **Rushaibai Jagdish vs. Bhavnagar Municipal Corporation JD 2022 (5) SC 470**.

Considering the submissions of the rival parties and the stand taken by them, the writ petition is being disposed off without seeking any response from the respondents granting liberty to approach the fourth respondent by filing a comprehensive representation along with self attested copy of the writ petition.

The fourth respondent before proceeding to decide claim of the

writ petitioner in the light of the observations made herein-above and shall also put to notice the fifth and sixth respondents and thereafter seek its version and consequently, proceed to decide entitlement of the writ petitioner within a period of three months from the date of production of certified copy of the order.

Needless to point out that the writ petition has been decided on ex-parte version 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.

**Order Date :- 26.10.2023**

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