

Court No. - 35

Case :- WRIT - A No. - 17908 of 2023

Petitioner :- Brij Bhushan Shahi

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Saumitra Dwivedi

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

On the oral request of Sri Saumitra Dwivedi, the Committee of Management, Gandhi Inter College, Mahuapar, Gorakhpur through its Manager to be impleaded as fifth respondent.

Heard Sri R.K. Ojha, learned Senior Counsel assisted by Sri Saumitra Dwivedi, for the petitioner and Sri Shailendra Singh, learned Standing Counsel, who appears for respondents 1, 2 and 3.

In view of the order, which is being proposed to be passed today, notices are not being issued to the 4th and 5th respondents.

The case of the writ petitioner is that the fifth respondent, Gandhi Inter College, Mahuapar, Gorakhpur is an institution recognised under the provisions of U.P. Intermediate Education Act, 1921, the provisions of U.P. Act No.5 of 1982 and U.P. Act No.24 of 1971 are applicable. It is further the case of the writ petitioner that the writ petitioner was appointed as an Assistant Teacher on 5.10.1993 and subsequently by virtue of the order of the District Inspector of Schools, Gorakhpur is payment of salary was made w.e.f.1.8.1994 subsequently in the wake of the provisions contained under Section 33G of the U.P. Act No. 5 of 1982 his services stood regularise w.e.f. 22.3.2016 on 18.4.2017 and thereafter the writ petitioner came to be superannuated on 31.3.2022 and it was also made entitle to the selection grade etc.

Since the writ petitioner was not made admissible to the pensionary benefits so the writ petitioner preferred Writ Petition No.15128 of 2022, Brij Bhushan Sahai vs. State of U.P. & others which came to be disposed of on 23.9.2022 requiring the second respondent in the said writ petition to decide the claim of the writ petitioner. Now by virtue of the order dated 20.1.2023 the second respondent, Deputy Director of Education (Secondary), 7th Division, Gorakhpur has proceeded to negate the claim of the writ petitioner for according pension.

Questioning the order dated 20.1.2023 passed by the second respondent the writ petitioner has preferred the present writ petition.

Learned Senior Counsel for the writ petitioner relies upon the judgement in the case of **State of U.P. vs. Surendra Singh and others** being **Special Appeal No.172 of 2023** decided on 20.4.2023 as well as the judgement in **Special Appeal (D) No.181 of 2020, State of U.P. vs. Sunita Sharma** decided on 11.6.2020 so as to contend that once the ad hoc services stood regularised and there has been no interruption of the services that to the satisfaction of the employer after completing the probation period then the services undergone on ad hoc basis is to be considered for regularisation.

Sri Shailendra Singh, learned Standing Counsel on the other hand submits that though he does not dispute the legal proposition of law culled out in the judgement of **Sunita Sharma (Supra)**, and **Surendra Singh (Supra)** however according to him the order which is being subject matter of challenge proceeds on wrong direction and perspective. He further submits that the order in question be set aside, the matter be remitted back to the second respondent to decide the same afresh strictly in accordance with law. According to him he does not propose to file any response to the writ petition.

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 in the following terms:-(a) the order dated 20.1.2023 passed by second respondent, Deputy Director of Education (Secondary), 7th Division, Gorakhpur is set aside (b) the matter stands remitted to second respondent, Deputy Director of Education (Secondary), 7th Division, Gorakhpur to decide the matter afresh strictly in accordance with law after putting to notice the fourth and fifth respondent within a period of three months in the light of the judgement in the case of **Sunita Sharma (Supra)**, and **Surendra Singh (Supra)**.

Needless to point out that the writ petition has been decided without seeking any response from the respondents thus the second respondent shall pass order with independent application of mind in accordance with law.

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

Order Date :- 27.10.2023/piyush