

Court No. - 35

Case :- WRIT - A No. - 18265 of 2023

Petitioner :- Smt. Rama Devi

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

Counsel for Petitioner :- Rahul Jain

Counsel for Respondent :- C.S.C.,Yogesh Kumar Saxena

Hon'ble Vikas Budhwar,J.

1. Heard Sri Rahul Jain, learned counsel for the writ petitioner, Sri H.K. Shukla, learned Standing Counsel who appears for respondents No. 1 and 2 and Sri Yogesh Kumar Saxena, learned counsel who appears for respondent No. 4.

2. In view of the order which is bring proposed to be passed today, notice is not being issued to the third respondent.

3. The case of the writ petitioner is that the third respondent-institution, C/M Galuapur Inter College, Galuapur, Kanpur Dehat is recognized under the provisions of U.P. Intermediate Education Act, 1921 there are total four posts for Clerical Cadre, three of Assistant Clerk and one of Head Clerk. According to the writ petitioner two vacancies stood arisen firstly on 30.04.2020 and secondly on 31.08.2020 on the post of Assistant Clerk. It is also the case of the writ petitioner that he is junior to the fourth respondent. It is also the case of the writ petitioner that the fourth respondent preferred Writ Petition No. 12313 of 2023 (Dilip Kumar Tripathi Vs. State of U.P. & Others) for consideration of his claim for being accorded promotion as Assistant Clerk from class IV post which came to be disposed of on 31.07.2023.

4. Post passing of the order in the said writ petition on 09.10.2023 the second respondent, District Inspector of Schools, Kanpur Dehat has accorded approval to the appointment of the fourth respondent as Assistant Clerk.

5. Questioning the said order the writ petitioner has filed the present writ petition.

6. Sri Rahul Jain, learned counsel for the writ petitioner submits that the order impugned in the writ petition suffers from various illegalities firstly, the order in question has been passed without

hearing the writ petitioner and putting him to notice secondly, the writ petitioner was not qualified for the post in question particularly in view of the fact that though he possessed the academic qualification of High School in the year 2017, Intermediate in the year 2019 and CCC certificate in the year 2020 but he did not possess the required typing eligibility as encapsulated in the Government Order dated 04.01.2017. He further submits that the writ petitioner possesses all the qualifications which are required, might be he is junior but he ought to have been considered.

7. Sri Yogesh Kumar Saxena, learned counsel who appears for the fourth respondent submits that there happens to be a proposal for promotion of the fourth respondent from class IV post to class III post, however, in view of the fact that the writ petitioner possessed to CCC Certificate in the month of September, 2020, thus, his claim was not being considered but he possesses the required typing eligibility.

8. Sri Yogesh Kumar Saxena has also produced before this Court the computer certificate/proficiency issued by the Authorized Person of the Vintic Institute of Professional Studies according to which he possesses the said eligibility as the said certificate bears encroachment that the writ petitioner possesses the said qualification since 16.03.2020. He, thus, submits that in the wake of the subsequent vacancy which has arisen on 31.08.2022 the fourth respondent was qualified in this regard. He, thus, submits that the order in question cannot be faulted in any manner whatsoever.

9. Sri H.K. Singh, learned Standing Counsel supports the submission of the fourth respondent and according to him the Government Order dated 04.01.2017 the same stands applicable and the fourth respondent possesses relevant qualifications.

10. I have heard the learned counsel for the parties and perused the record carefully.

11. However, the only bone of contention between the parties is referable to the fact as to whether the fourth respondent possesses the typing certificate or not and whether it was available before the District Inspector of Schools, Kanpur Dehat on the date when the consideration was being done. Though, on one hand, Sri Yogesh Kumar Saxena submits that the said certificate was before the second respondent but Sri Rahul Jain disputes the said fact while coming up with the stand that in the earlier spell of litigation

preferred by the fourth respondent being Writ A No. 12313 of 2023 there was neither any recital nor any document appended thereto showing the fact that the fourth respondent possessed the typing certificate.

12. Reliance has also been placed upon the judgment in Writ A No. 7233 of 2019 (C/M Kisan Inter College Jaunpur and Others Vs. State of U.P.) wherein requirement of the Government Order dated 04.01.2017 was held to be mandatory.

13. On a pointed query being raised to learned counsel for the parties as to whether the fourth respondent has joined the institution in question or not, it has been apprised that the fourth respondent has joined the post in question on 09.11.2023 and he is getting salary. Since the writ petitioner has also not been heard and the said crucial aspects have not been taken into consideration thus this Court is of the opinion that the matter needs to be remanded back to the second respondent for fresh decision.

14. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed of requiring the writ petitioner to approach the second respondent, District Inspector of Schools, Kanpur Dehat raising his grievance and on the receipt of the same, the second respondent shall put to notice the third and fourth respondents and thereafter proceed to decide the claim of the writ petitioner. The order dated 09.10.2023 passed by the District Inspector of Schools shall abide by the final orders passed by the District Inspector of Schools, Kanpur Dehat, second respondent, however, the Court is at this stage not disturbing the continuance of the fourth respondent, he shall continue till the passing of the fresh order and the order passed earlier shall not come in the way of passing of fresh order.

Order Date :- 28.11.2023

Rajesh