

Court No. - 35

Case :- WRIT - A No. - 18151 of 2023

Petitioner :- Nitin Kumar

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ajay Kumar Sharma

Counsel for Respondent :- CSC

Hon'ble Vikas Budhwar,J.

Heard Sri Ajay Kumar Sharma, learned counsel for the petitioner and Sri Shailendra Singh, the learned Standing Counsel, who appears for Respondents 1 to 2.

In view of the order, which is being proposed to be passed today, notices are not being issued to the 3rd respondent.

The case of the writ petitioner is that his father Karan Singh was working as a Peon in Saraswati Inter College Titron, Saharanpur, third respondent and he died in harness, pursuant whereunto the claim of the writ petitioner for compassionate appointment was considered by a Committee constituted therein and the writ petitioner was selected as an Assistant Clerk on 19.06.2012 and he was offered appointment order on 21.06.2012. However, according to the writ petitioner, now the District Inspector of Schools, Saharanpur, second respondent has proceeded to pass an order dated 19.05.2023 addressed to the third respondent-Institution, whereby on the basis of the Government Order dated 22.10.1999 relating to the grant of compassionate appointment in Clerical cadre, the salary of the writ petitioner has been withheld on the premise that the petitioner does not possess the relevant CCC Certificate/ Typing eligibility.

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

Learned counsel for the writ petitioner submits that the said order is in violation of principles of natural justice and the writ petitioner has not been put to notice and in this regard, he has relied upon paragraph-11 of the writ petition. He further submits that after a period of more than 10 years, the said exercise could not have been undertaken in this regard. According to the writ petitioner, on 13.09.2023, only the writ petitioner was required to appear for typing test, which even otherwise was not permissible under law, as at least before passing of the order in question, which is adverse

to the writ petitioner, opportunity of hearing ought to have been accorded. He lastly submits that the order in question only stops his salary without terminating or cancelling his appointment.

Sri Shailendra Singh, learned Standing Counsel, who appears for the respondents has produced before this Court the instructions dated 18.11.2023 issued under the signatures of the District Inspector of Schools, Saharanpur, according to him, since the writ petitioner did not have the CCC certificate or the Typing eligibility, thus his appointment was not as per law, in view of the Government Order dated 22.10.1999. He, however, does not dispute the fact that before passing of the said order, the writ petitioner was not put to notice and the services of the writ petitioner have neither been terminated nor his appointment has been cancelled, but only salary has been stopped. He further submits that he has complete instructions in the matter and he does not propose to file any response.

Considering the submission of the rival parties as well as the stand taken by them, this Court is of the opinion that since prima facie, there is no element of fraud, misrepresentation or concealment of any fact and the appointment of the writ petitioner was made way back on compassionate appointment in the year 2012 and in the year 2022, the salary of the writ petitioner has been stopped and neither the appointment of the writ petitioner has been cancelled nor his services have been terminated, thus in the opinion of the Court, the writ petitioner ought to have been accorded opportunity of hearing before passing of the order.

Consequently, the writ petition is **allowed**.

The order dated 19.05.2023 passed by the District Inspector of Schools is set aside. The passing of the order may not preclude the second respondent, District Inspector of Schools, Saharanpur to initiate appropriate proceedings in accordance with law, if they so choose.

The instructions filed today are taken on record and marked as Appendix 'A'.

Order Date :- 20.11.2023
N.S.Rathour