

Court No. - 35

Case :- WRIT - A No. - 18246 of 2023

Petitioner :- Shiv Kumar Mishra

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- J.P. Singh, Shriyansh Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. Heard Sri J.P. Singh, learned counsel for the writ petitioner and learned Standing Counsel, who appears for the respondents.

2. Prayer in the present petition is for quashing the orders impugned orders dated 14.12.2022, 19.04.2023, 23.06.2023 and 30.09.2023 passed by Respondent Nos. 3/4, 6, 7 and 8 respectively and to issue a writ, order or direction in the nature of mandamus commanding the respondents to ensure payment of arrears of the promotional pay-scale pursuant to Director's order dated 28.12.2017 order dated 28.12.2017 within the time to be specified by the Hon'ble Court.

3. Sri J.P. Singh, learned counsel for the writ petitioner while inviting attention has submitted that the writ petitioner was appointed as Lecturer Hindi in the erstwhile undivided State of Uttar Pradesh, Uttarakhand and he was transferred from one institution to another and thereafter he was posted in the State of Uttar Pradesh and he stood retired on 31.03.2023 as Incharge Principal having substantive lien as lecturer Hindi, however, without affording opportunity of hearing now recovery has been sought to be made and the benefits have been withheld early in this regard. He seeks to rely upon Para 37 of the writ petition. Reliance has been placed upon the judgment in the case of State of *Punjab and Others Vs. Rafiq Masih (White Washer) and Others (2015) Page 334* and *High Court of Punjab and Haryana and Others Vs. Jagdev Singh (2016) 14 SCC Page 267* as well as other judgments in this Court including the judgment of the *Hon'ble Apex Court in the case of Thomas Daniel Vs. State of Kerala and Others in Civil Appeal No. 7115 of 2010 decided on 02.05.2022*.

4. This Court entertained the writ petition on 20.11.2023 while seeking response from the respondents and on 25.11.2023, instructions have been provided by Sri Ratan Deep Mishra on behalf of the District Inspector of Schools, Banda. This Court thereafter on 28.11.2023 is required the learned Standing

counsel to obtain further instructions which have been forwarded.

5. Today, when the matter has been taken up a specific query being raised to the learned Standing counsel as to whether the writ petitioner was to put to notice before passing the order impugned/ communications. He submits that the writ petitioner claims to have submitted his version on 30.12.2022 before this eighth respondent Principal, Government Inter College, Kalinjar, Banda. However, he could not dispute the fact that the writ petitioner was not put to notice or heard before passing the orders.

6. Since certain valuable rights of the writ petitioner has been violated and the writ petitioner is the retired incumbent, thus in the fitness of the matter the Court provides, let the writ petitioner represent his cause before the Finance Controller, Secondary Education, U.P., Shiksha Arth-2 Pre Audit Cell, Prayagraj by filing a comprehensive representation along with the said self attested copy and the receipt of the same, the third respondent shall put to notice the writ petitioner and the institution whereat the writ petitioner claims to have worked and thereafter proceed to pass an order within a period of three weeks thereafter.

7. In case, the third respondent is of the opinion that the matter needs to be addressed by some other authority the writ petitioner be put to notice in that regard and inputs if required be sought from the writ petitioner. The orders passed which are impugned in the present writ petition shall be subject to the final orders to be passed therein. The question of payment of promotional pay scale and leave encashment shall also be determined and considered by the said authority.

Order Date :- 29.11.2023

Suraj Srivastav