

Court No. - 35

Case :- WRIT - A No. - 18646 of 2023

Petitioner :- Bhanwar Singh

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Bajrang Bahadur Singh, Satya Prakash Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. Instructions filed today is taken on record and marked as Appendix 'A'.

2. Heard Sri S.P. Singh, learned counsel for the writ petitioner as well as Sri Shailendra Singh, learned Standing Counsel who appears for respondents No. 1 to 4.

3. In view of the order which is being proposed to be passed, notice is not being issued to the fifth respondent.

4. The writ petitioner herein had earlier approached this Court while filing Writ A No. 13158 of 2023 questioning an order dated 06.04.2023 passed by the Deputy Director of Education, Secondary, Saharanpur Region, Saharanpur whereby the writ petitioner's pension was not determined as Officiating Principal but as Lecturer.

5. The said writ petition came to be decided by this Court on 10.08.2023 while passing the following orders.-

"1. Heard Sri S.P. Singh, learned counsel for the writ petitioner, Sri Shailendra Singh, learned Standing Counsel who appears for the respondent nos. 1 to 4.

2. In view of the order which is proposed to be passed, notices are not being issued to the 5th respondent/Committee of Management.

3. The case of the writ petitioner is that the 5th respondent, Bhaila Inter College, Bhaila Saharanpur is a recognized institution under the provisions of U.P. Intermediate Education Act, 1921, the provisions of U.P. Act No. 5 of 1982 and the provisions of U.P. Act No. 24 of 1971 stand applicable. It is further the case of the writ petitioner that he was appointed as Assistant Teacher in L.T. Grade on 24.02.1993 on adhoc basis and he was regularized as L.T. Grade Teacher and granted promotion on the post of Lecturer in

Civics on 09.10.2012. One Sri Yashpal Singh, who was posted as a Principal of the Institution in question was to superannuate thus, the writ petitioner was accorded officiation on the post of Principal since 31.03.2020 and the petitioner claims to have been accorded attestation by the District Inspector of Schools, Saharanpur/4th respondent on 23.04.2020. It is further the case of the writ petitioner that the same was also accorded financial approval by the District Inspector of Schools, Saharanpur on 08.06.2020 and the writ petitioner superannuated on 31.03.2021 as an Officiating Principal of the institution in question. As per the writ petitioner, on the date of the retirement has been officiated Principal in the institution in question was getting salary of Rs. 99,484/- and thus, he became entitle to the payment of pension being half of the same, Rs. 49,742/-. However to the utter surprise of the writ petitioner, the same was reduced to Rs. 78,800/- being the gross salary and half of the pension being Rs. 39,400/-. Accordingly, pension paper also prepared and now by virtue of an order dated 16.03.2021 passed by the Deputy Director of Education (Secondary), Saharanpur Region Saharanpur, the claim of the writ petitioner for being granted salary and the benefits commensurate to this nature which he enjoyed as Officiating Principal was turned down by on dated 06.04.2023.

4. Questioning the order dated 06.04.2023 passed by the 2nd respondent/Deputy Director of Education (Secondary), Saharanpur Region Saharanpur, the writ petitioner has filed the present writ petition.

5. Sri S.P. Singh, learned counsel who appears for the writ petitioner submits that the said stand of the respondents is totally unjustified as the same omits to consider the issue as the said issue is no more res-integra as a Full Bench of this Court in Surendra Prasad Agnihotri vs. State of U.P. and 4 others reported in 2010 ADJ 51 has considered the said issue and has observed as under:

"Whether a teacher of Intermediate College who has already been appointed as officiating principal of the Institution by virtue of his seniority on attaining the age of superannuation in the extended period of his service shall continue as officiating principal or simply as a teacher?"

We may clarify that a teacher, after he attains the age of superannuation, cannot be offered any appointment either by way of direct recruitment or by way of officiating appointment and it is for this reason that the teacher, after attaining the age of superannuation, cannot claim appointment as Ad-hoc Principal, when he is continuing as teacher till the end of the academic session under Regulation 21 of Chapter-III. The fact situation in respect of such teacher is entirely different viz-a-viz a teacher who was appointed as Ad-hoc Principal before attaining the age of superannuation and is to continue on the strength of his seniority alone till regularly selected Principal is appointed or till the 30th June, following his age of superannuation under Regulation 21 of Chapter-III.

In all, we are of the view that the answer of the reference to the question of law would be as such:- 'Yes. A teacher of Intermediate College, who has already been appointed as officiating Principal of the Institution, by virtue of his seniority on attaining the age of superannuation in the extended period of his service, shall continue as officiating Principal, not simply as teacher'.

Reference is decided, accordingly."

6. Thus, he submits that the order be set aside the matter remitted back.

7. Sri Shailendra Singh, learned Standing Counsel on the other hand submits that there is no quarrel to the proposition of the law as laid down in the case of Surendra Prasad Agnihotri (Supra) which governs the subject and according to him the view taken by the 2nd respondent is unsustainable as the writ petitioner is entitled to the benefits which he was enjoying as Officiating Principal prior to his retirement. Learned Standing Counsel further submits that he does not propose to file any response to the writ petition as the issue raised in the present writ petition, is not only legal but the facts also not in dispute.

8. Considering the submissions of the rival parties as well as stand taken by them, the writ petition is being decided in the following manner:

a. The order dated 06.04.2023 passed by the 2nd respondent/Deputy Director of Education (Secondary), Saharanpur Region Saharanpur is set aside.

b. The Deputy Director of Education (Secondary), Saharanpur Region Saharanpur is directed to reconsider the issue afresh in the light of the judgment in the case of Surendra Prasad Agnihotri (Supra) within a period of six weeks from the date of production of the certified copy of this order.

9. Since the 5th respondent is not represented before this Court and an order has been passed without seeking their version, thus before undertaking the exercise, the 5th respondent be put to notice and its version be also taken into consideration with the aforesaid observations.

10. The writ petition stands partly allowed, accordingly."

6. Post remand, now an order has been passed by the second respondent, Deputy Director of Education, Secondary, Saharanpur Region, Saharanpur on 17/18.10.2023 whereby the claim of the writ petitioner has been negated.

7. Sri S.P. Singh, learned counsel for the writ petitioner submits that the reasons so recorded in the order impugned cannot be sustained particularly in view of the fact that one Sri Yash Pal Singh who was posted as Principal of the institution in question retired and the writ petitioner was accorded officiation on the post of Principal since 31.03.2000, approval to the officiation of the writ petitioner was accorded by the District Inspector of Schools, Saharanpur on 24.03.2020 and the writ petitioner continued as Officiating Principal and he was to superannuate on 31.05.2020, however, he was given the session benefits and he superannuated on 31.03.2021 as Officiating Principal. He submits that the order impugned insofar as it denies the pension to the writ petitioner as Officiating Principal and determines basis Lecturer is patently

misconceived and out of context as payment of salary on 08.06.2020 entitling the writ petitioner for payment of salary from 01.06.2020 and paying salary from 01.06.2020 is totally irrelevant as once the writ petitioner was officiating as Principal of the institution in question since 31.03.2020 and attestation was done on 23.04.2020 then mere payment of monetary benefits from a subsequent date would not be a relevant factor. He further submits that the writ petitioner even officiating as Principal prior to his retirement, thus, he is entitled to the benefits. He seeks to rely upon the judgment in the case of ***Surendra Prasad Agnihotri Vs. State of U.P. 2010 ADJ 51*** as well as the order passed in the earlier spell of litigation in Writ Petition No. 13158 of 2023 decided on 10.08.2023. Lastly, he submits that now a new ground has been sought to be taken just in order to deny the benefit to the writ petitioner.

8. Sri Shailendra Singh, learned Standing Counsel who appears for the official respondents does not dispute the factual and legal positions, however, he submits that the matter needs a re-look in view of the decision of this Court as well as the fact that the writ petitioner was officiating as Principal from 31.03.2020 and his signatures were attested on 23.04.2020.

9. Sri Shailendra Singh, learned Standing Counsel who appears for the official respondents submits that he does not propose to file any response to the writ petition as he has received instructions dated 21.11.2023 which has been perused by the Court.

10. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed of, the order dated 18.10.2023 is set aside, matter stands remitted back to the second respondent, Deputy Director of Education (Secondary), Saharanpur who shall pass a fresh order strictly in accordance with law before putting to notice the fifth respondent within a period of six weeks from the date of production of certified copy of the order.

11. With the aforesaid observations, the writ petition stands disposed of.

Order Date :- 23.11.2023

Rajesh