

**Court No. - 36**

**Case :-** WRIT - A No. - 18700 of 2023

**Petitioner :-** Bharat Bhushan

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

**Counsel for Petitioner :-** Shiv Poojan Yadav, Satyendra Chandra Tripathi

**Counsel for Respondent :-** C.S.C., Ashutosh Mishra

**Hon'ble Manjive Shukla, J.**

1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No. 1 and 2 as well as Sri Ashutosh Kumar Mishra, learned counsel appearing for the Respondents No. 3 to 5.

2. Petitioner, through this writ petition has assailed the order dated 13.10.2023 passed by the District Basic Education Officer, Baghpat and order dated 20.10.2023 passed by the Block Education Officer, Block Baraut, District Baghpat, whereby direction has been issued to the petitioner to take charge of the post of Headmaster, Composite School Jalalpur, District Baghpat.

3. Learned counsel appearing for the petitioner has submitted that State Government has issued a Government order on 22.11.2018, whereby it has been provided that if a Composite School is created by including two or more schools, then the Headmaster working in the Primary School, if is senior to the incharge Headmaster working in the Senior Basic School, shall be Incharge Headmaster of the Composite School.

4. Learned counsel appearing for the petitioner has argued that in terms of the aforesaid Government order dated 22.11.2018, Smt. Balesh Devi who was working on the post of Headmistress in the Primary School of Composite School and was senior to the Incharge of the Senior Basic School, therefore, was given charge of the post of Headmistress of the Composite School.

5. Later on, Smt. Balesh Devi has submitted an application wherein she pleaded that since petitioner is senior to her, therefore, petitioner should be given charge of the post of Headmaster of the Composite School.

6. Learned counsel appearing for the petitioner has further

argued that there is categorical provision in the Government order dated 22.11.2018, therefore, respondents have no choice except to give charge of the post of Headmaster of the Composite School to the Headmaster of the Primary School if he is senior to the Incharge Headmaster of the Senior Basic School.

7. This court after hearing parties counsels passed a detailed order on 22.11.2023, which is extracted as under:-

*"1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No.1 and 2 as well as Sri Ashutosh Mishra, learned counsel appearing for the Respondents No.3 to 5.*

*2. Learned counsel appearing for the petitioner has submitted that one Primary School and one Junior High School have been merged and now there is only one institution i.e. Junior High School (Composite) (Class 1 to 8) Jalalpur, Block Baraut, District Baghpat. Learned counsel appearing for the petitioner has further submitted that State Government has issued a Government order on 28.11.2018 and in Clause 2 of the said Government order, it is categorically provided that where two institutions are merged and a composite school comes into existence, the Head Master working in Primary School shall be given charge of the post of Head Master of the Composite School.*

*4. Learned counsel appearing for the petitioner has argued that petitioner is only an Assistant Teacher in Junior High School, therefore as per Government order dated 28.11.2018 he cannot be compelled to take over charge of the post of Head Master of the Composite School.*

*5. Prima facie, the argument advanced by the learned counsel appearing for the petitioner carries weight.*

*6. Let District Basic Education Officer, Baghpat file his personal affidavit explaining therein that when there is categorical provision under Government order dated 28.11.2018, then under what circumstances petitioner is being compelled to take over charge of the post of Head Master of Composite School.*

*7. List this matter on 4.12.2023 as fresh. "*

8. In compliance of the aforesaid order dated 22.11.2023, District Basic Education Officer, Baghpat has filed her personal affidavit, wherein, she has admitted that initially in compliance of the Government order dated 22.11.2018, Smt. Balesh Devi was given charge of the post of Headmistress of the Composite School but later on Smt. Balesh Devi submitted representation and therefore, orders impugned in the writ petition have been passed.

9. This court is of the view that the District Basic Education Officer, Baghpat while passing the impugned order dated

13.10.2023 has not taken into consideration the provisions of the Government order dated 22.11.2018.

10. Sri Ashutosh Kumar Mishra, learned counsel representing the District Basic Education Officer, Baghpat also could not give reply as to why, while passing the impugned order, she has not considered the provisions of the Government order dated 22.11.2018.

11. In view of the aforesaid reasons, this writ petition is allowed. Impugned order dated 13.10.2023 passed by the District Basic Education Officer, Baghpat and order dated 20.10.2023 passed by the Block Education Officer, Block Baraut, District Baghpat (Annexures No. 13 and 14 of the writ petition) are quashed. Matter is remanded to District Basic Education Officer, Baghpat to consider the entire matter again in light of the Government order dated 22.11.2018. and pass a fresh order, within a period of three weeks from the date of presentation of certified copy of this order.

12. It is made clear that the District Basic Education Officer, Baghpat while passing fresh order shall afford opportunity of hearing to the petitioner as well as Smt. Balesh Devi.

**Order Date :- 4.12.2023**

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