

Court No. - 35

Case :- WRIT - A No. - 19707 of 2023

Petitioner :- Ramsanehi Gautam

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Sanjeev Singh, Rekha Singh

Counsel for Respondent :- C.S.C

Hon'ble Vikas Budhwar, J.

1. Heard Shri Sanjeev Singh, learned counsel for the writ petitioner as well as Shri Ratan Deep Mishra, learned counsel for the respondent Nos. 1 to 5.

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

3. The writ petitioner herein had filed the Writ A No. 9882 of 2023 decided on 24.07.2023 wherein the following orders were passed:

"1. Today when this matter had been listed along with the bunch of writ petitions being leading Writ A No. 5537 of 2023 (Nand Lal Yadav vs. State Of U.P. And 6 Others), Shri Sanjeev Singh, learned counsel for the writ petitioner as well as Shri Shailendra Singh, learned Standing Counsel who appears for respondent nos. 1 to 5 have made a statement that in the present writ petition, the issues are somewhat different from the issues raised in the leading writ petition, at thus, according to them, the matter be heard separately.

2. Since, the counsel for the parties have consented that the matter be decided at the admission stage itself and they do not propose to file any response, thus, the writ petition is being decided at the fresh stage, while de-linking it with Writ A No. 5537 of 2023 (Nand Lal Yadav vs. State Of U.P. And 6 Others).

3. The case of the writ petitioner as portrayed in the writ petition is that he was appointed as an Assistant Teacher (L.T. Grade) School in subject English after promotion of one Shri Avadh Bihari Lal Yadav, lecturer in the sixth respondent institution which incidentally is Zila Panchayat Inter College, Mooradganj, Auraiya and the same was also accorded approval by the fifth respondent, District Inspector of Schools, District Auraiya and the writ petitioner pursuant to the appointment order dated 16.10.1995 was accorded joining on 21.10.1995. In Para 7 of the writ petition, the writ petitioner has come up with stand that since salary was denied to him so he approached this Court umpteen number of times and pursuant to the order dated 17.11.2003 passed by the Regional Level Committee and in pursuance of the order dated 18.11.2003 passed by the fifth respondent, District Inspector of Schools, Auraiya as evident from the letter of the second respondent, Director of Education (Secondary), Camp Office at Lucknow dated 08.04.2006, the writ petitioner is being paid regular salary. In para 8 of the writ petition, the writ petitioner is further come with a stand that pursuant to the litigation by the writ petitioner before this Court, an order was passed on 21.08.2018 whereby in terms of Section 33 (G) (1) of the U.P. Secondary Education Services Selection Board Act, 1982 as Gazetted on 22.03.2016, the writ petitioner's claim for regularization was considered and a regularization order was passed on 21.08.2018 pursuant to a consequential order was passed on 17.09.2018. As per the writ petitioner, he superannuated on 31.03.2023, however he was made entitle to GPF for an amount of Rs. 11,83,019/- but the ad-hoc services were not considered for the purpose of payment of pensionary benefits. Reliance has been placed upon the recent judgment in the case of State of U.P. and two others Vs. Surendra Singh and Another in Special Appeal (Defective) No. 172 of 2023 decided on 20.04.2023 wherein law laid down in the case of Smt. Sunita Sharma Vs. State of U.P. and others in Writ A No. 25431 of 2018 decided on 20.12.2018 affirmed in Special Appeal (Defective) No. 181 of 2020 decided on 11.06.2020 as well as the judgment in Nand Lal Vs. State of U.P. and four others in

Writ A No. 12070 of 2022 decided on 30.09.2022 has been placed. According to learned counsel for the writ petitioner, in the wake of the provisions contained under the U.P. State Aided Educational Institution Employees Contributory Funds Insurance and Pension Rules, 1964, the writ petitioner is entitled to pension after adding the ad-hoc services followed by regularization.

4. Prayer in the present petition is for a direction to the respondents to consider the claim of the writ petitioner for grant of pension while including the services undergone by him on ad-hoc basis.

5. Shri Shailendra Singh, learned Standing Counsel, on the other hand, submits that the issues with the writ petitioner is raising are to be addressed at the first instance by the fourth respondent-Deputy Director of Education (Secondary), Kanpur, Region Kanpur who shall address to the claim of the writ petitioner, in accordance with law within the time stipulated by this Court.

6. Learned Standing Counsel further submits that he does not propose to file any response, as a decision in black and white is to be taken by the authority in the light of the judgment and the law propounded by this Court.

7. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed of without seeking any response from the respondents, while directing the writ petitioner to prefer a comprehensive representation along with the self attested copy of the writ petition before the fourth respondent who shall on the receipt of the same, thereafter proceed to decide the entitlement of the pension to the writ petition in the wake of the fact that he got regularized on 22.03.2016 under Section 33 (G) (1) of the 1982 Act and he seeks to reliance on the judgment in the case of Surendra Singh (supra) as discussed above. The fourth respondent shall conduct the exercise after putting to notice sixth respondent who has though been impleaded as a party respondent but notices have not been issued, in view of the

peculiar facts and circumstances of the case, since mandamus has been sought. It is further clarified that in case the fourth respondent seeks any additional input from the petitioner or respondent No. 6 then it shall be put them on notice in writing in advance so as to enable it to decide the matter in the right perspective. The entire exercise is to be concluded within a period of three months from the production of the certified copy of this order."

4. Post passing of the said order, now an order has been passed by the fourth respondent, Deputy Director of Education (Secondary), Kanpur Region, Kanpur on 04.11.2023 whereby the claim of the writ petitioner has been negated by the payment of pension on the pretext that as per the pension scheme applicable herein he is not the authority to approve the said issue and further the writ petitioner is not entitled to the pension in this regard.

5. Shri Sanjeev Singh, learned counsel for the writ petitioner submits that it is the fourth respondent who is empowered to decide the said issue and even otherwise once it was the stand of the fourth respondent that he was the authority to decide the issue that he could not have gone into the merits of the matter. He further submits that his case stands covered by the judgment in the case of **State of U.P. and 2 others Vs. Surrendra Singh and another (Special Appeal (Defective) No. 172 of 2023)** decided on 20.04.2023 as well as other judgments to that said extent.

6. Shri Ratan Deep Mishra has produced before this Court the notification dated 17.12.1965 so as to contend that it is the fourth respondent who is entitled to pass orders in that regard.

He further submits that the order be set aside and matter be remitted back to the fourth respondent in this regard. He could not dispute the proposition of law in the case of **Surrendra Singh (supra)**.

7. Considering the submissions of the rival parties as well as stand taken by them, the writ petition is being disposed off in the following terms:

a). Order dated 04.11.2023 be set aside and the matter stands remitted back to the fourth respondent, Deputy Director of Education (Secondary), Kanpur Region, Kanpur to decide the matter afresh and pass the order afresh strictly in accordance with law bearing in mind the judgment in the case of **Surrendra Singh (supra)** after putting to notice the fourth respondent within a period of two months from the date of presentation of the certified copy of the order.

8. With the aforesaid observation, the writ petition is **disposed off**.

Order Date :- 4.12.2023

A. Prajapati