

Court No. - 35

Case :- WRIT - A No. - 19867 of 2023

Petitioner :- D.B.S. College Govind Nagar And Another
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Gautam Baghel
Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri Gautam Baghel, learned counsel for the writ petitioner and Sri Santosh Kumar, learned Standing Counsel, who appears for Respondent Nos. 1, 2 and 3.

Sri Jitendra Kumar Srivastava, has appeared in person with an apprehension that the post of Accountant is being sought to be filled up while seeking permission from the authorities as with regard to termination of his services, he has already filed a Writ-A No. 12243 of 2023, which is pending. He submits that there is a dispute with regard to the post of Accountant, thus it would not be appropriate to issue direction for filling up the said post. At this juncture, Sri Gautam Baghel, learned counsel for the petitioners has referred to paragraph-9 of the writ petition, which reads as under: -

"9. That petitioner institution is also having a vacant post of accountant as the vacancy has occurred on account of the termination of the incumbent Jitendra Kumar Srivastava on 23.07.2022 however, since Jitendra Kumar Srivastava has instituted writ petition before this Hon'ble Court being Writ Petition No. 12243 of 2023 and the matter is currently posted under the caption of fresh matter therefore, as such the petitioner is reserving the right to file writ petition regarding the post of accountant in case the requirement occurs at a later stage."

Since it is already the stand of the writ petitioner herein that he is not seeking permission for the post of Accountant at the present juncture reserving the right to again approach the Court, if the occasion arises, thus the apprehension of Sri Jitendra Kumar Srivastava is misconceived and illusory.

The case of the writ petitioner is that there is a society by the name of Dr. Virendra Swarup Educational Foundation, which is

registered under the provisions of Societies Registration Act, 1860 and it runs a degree college by the name of D.B.S. College, Kanpur. The said institution is affiliated with Chhatrapati Sahu Ji Maharaj University, Kanpur and the provisions of the U.P. State Universities Act, 1973, stands applicable. The service conditions of the Class III employees are also governed under the relevant statute by the University in question.

As per the writ petitioner, on 12.07.1998, a Government Order has been issued contemplating requirement of prior approval before initiating selection process. On 22.08.1994, another Government Order was issued wherein the duties and the responsibilities of the post of Higher Education Officer has been defined.

As per the writ petitioner, the various Class III post, as detailed in paragraph no.8 of the writ petition became vacant, due to superannuation of the incumbents being Junior Assistant, Laboratory Assistant and Electrician either under direct recruitment or promotion quota. On 06.01.2011, State Government had forbidden making of any selections, however by virtue of a subsequent Government Order dated 24.02.2015, while exercising powers under Section - 50 (6) of the U.P. State Universities Act, proceedings were initiated to amend the statute to the extent although ban of appointment of the Class IV employees would continue but it would not be extended in the case of Class III employees.

The writ petitioner claims to have represented before Regional Higher Education Officer, Kanpur Region, Kanpur on 25.05.2023 to fill up the vacant post in question. The third respondent according to the writ petitioner has granted prior permission as well as approval for making appointment of Class III post in respect to the sisters institution governed by the parent society, by virtue of the orders dated 24.06.2016, 06.07.2016 and 26.06.2016.

Learned counsel for the writ petitioner has invited the attention of the Court towards paragraph no.15 of the writ petition, Annexure No.9 at Page no. 64 of the paper book, so as to contend that Special Appeal No. 198 of 2020, State of U.P. vs. Committee of Management, Mahatma Gandhi Shanti Smarak Degree College and Another was preferred, whereby the act of the State Government in objecting to making selections were turned down.

Prayer in the present petition is for a direction to the respondents to grant permission for filling up vacant Class III post as being done in the sisters institution of the parent institution.

Learned Standing Counsel, who appears for the respondents submits that the issue as to whether the approval/permission is to be granted is to be determined at the first instance by the third respondent and the writ petitioner may represent his cause before the third respondent, Regional Higher Education Officer, Kanpur Region, Kanpur. He further submits that he does not propose to file any response to the writ petition.

To such a submission, learned counsel for the writ petitioner has no objection and he gracefully accepts the same.

Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed off without seeking any response granting liberty to the writ petitioner to prefer a comprehensive representation before the third respondent, Regional Higher Education Officer, Kanpur Region, Kanpur, along with the self attested copy of the same and on the receipt of the same, the third respondent shall proceed to decide the entitlement of the writ petitioner for according permission for filling up the post in question within a period of three months from the date of the production of the certified copy of the order, bearing in mind the following fundamental and the core issues :-

- a) The total sanctioned number of post;
- b) The vacancies available;
- c) Any other ancillary and incidental issue;

Needless to point out that this Court has not adjudicated upon the merits of the matter.

With the aforesaid observations, the writ petition stands disposed off.

Order Date :- 1.12.2023

N.S.Rathour