

Court No. - 35

Case :- WRIT - A No. - 19920 of 2023

Petitioner :- Ramesh Chandra Dubey

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

Counsel for Petitioner :- Ramesh Chandra Dwivedi

Counsel for Respondent :- C.S.C

Hon'ble Vikas Budhwar,J.

Heard Sri Ramesh Chandra Dwivedi, learned counsel for the petitioner as well as Sri Saurabh, the learned Standing Counsel, who appears for Respondents 1 to 4.

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

The case of the writ petitioner is that the fifth respondent Institution, C/M Garg Inter College Itaura, District Firozabad is an Institution recognized under the provisions of U.P. Intermediate Education Act, 1921, the provisions of U.P. Act No.5 of 1982 and U.P. Act No.24 of 1971 stand applicable. It is also the case of the writ petitioner that he was appointed as an assistant teacher LT grade on ad-hoc basis on 02.01.1993, in pursuance of the provisions contained under the U.P. Secondary Education Services Commission, (Removal of Difficulties) Order 1981. Approval whereof was accorded by a district inspector of his school, Firozabad, on 07.08.1993. The writ petitioner claims that his case stood covered under the provisions of Section 33-C of the U.P. Act No. 5 of 1982, and according to the writ petitioner, a communication was issued on 20.05.2000 by the District Inspector of Schools, Firozabad, to the Manager of the Committee of Management in question, whereby the claim of the writ petitioner for regularization was not processed.

Challenging the said order, the writ petitioner claims to have preferred Writ Petition No. 41113 of 2000, ***Ramesh Chandra Dubey v. Director, Secondary Education U.P.***, which came to be decided on 31.07.2003, whereby order dated 20.05.2000 was set aside and the respondents were directed to consider the claim of the writ petitioner for regularization as an Assistant Teacher LT Grade, pursuant where to the writ petitioner submits that on 25.06.2016, his services stood regularized w.e.f. 20.04.1998 in view of the provisions contained under Section 33-C of the U.P. Act No. 5 of 1982 and he was on 11.11.2016 allowed to officiate

as a Principal while attesting his signatures. As per the writ petitioner, the Committee of Management of the Institution in question proceeded to dispense with the services of the writ petitioner on 01.09.2008, and the writ petitioner claims to have not been allowed to work on the post in question from November 2007 to February 2013. Learned Counsel for the writ petitioner has invited the attention of this Court towards page-56 of the paper-book, which finds part of the Annexure-6, reference whereof has been given in Para-11 of the writ petition, so as to contend that there happens to be a communication of the District Inspector of Schools, Firozabad dated 12.02.2013, addressed to the Manager of the Institution in question, according to which, neither any approval under Section 21 of the U.P. Act No. 5 of 1982, nor any proceedings under Section 16-E(10) of the U.P. Intermediate Education Act 1921 was resorted to while either cancelling the appointment of the writ petitioner or approving the dispensation of the services. Learned Counsel for the writ petitioner submits that the writ petitioner herein preferred **Writ-A No. 1590 of 2021, Ramesh Chandra Dubey v State of UP** seeking a mandamus for payment of arrears of difference of selection grade since January 2003 to May 2017 and the payment of promotional pay scale from May 2003 to May 2017. The said writ petition, according to the writ petitioner, stood disposed of on 23.06.2021, requiring the District Inspector of Schools to pass appropriate orders. Apart from the same, the writ petitioner further submits that the writ petitioner also preferred Writ Petition No. 2155 of 2020 with respect to the payment of arrears of salary. According to the writ petitioner, on 18.09.2023, the order impugned has been passed by the Director of Education (Madhyamik) Uttar Pradesh, whereby the claim of the writ petitioner for payment of arrears of salary to the tune of Rs. 1937751/- has been sought to be negated on the ground that the principle of "No Work No Pay" would apply and monetary benefits have been withheld. Learned Counsel for the writ petitioner submits that he was earlier granted the monetary benefits post-completion of 10 years and 12 years, but they have been withdrawn.

Questioning the order dated 18.09.2023, now the writ petitioner has filed the present writ petition.

Learned Counsel for the writ petitioner submits that once there happens to be a communication dated 12.02.2013 of the District Inspector of Schools, Firozabad, mentioning therein that the proposal of the Committee of Management to dispense with the services of the writ petitioner on 01.09.2008 had not been

approved, and further, there was no proceedings initiated under Section 16-E(10) of the U.P. Intermediate Education Act 1921, then, merely because the writ petitioner was restrained to perform the duty in question, which he actually wanted to perform, could not be a ground to treat it to be a break in service and disentitling the writ petitioner for the payment of salary. He further submits that on the fault of the Management, the writ petitioner cannot be made to suffer, particularly, when now the writ petitioner is already working on the post in question.

Shri Saurabh, learned Standing Counsel for official respondents submits that the issue, which the writ petitioner seeks to raise needs determination in the light of communication dated 12.02.2013 of the District Inspector of Schools, Firozabad, addressed to the Manager of the Institution in question regarding the fact that whether proceedings either under U.P. Act No. 5 of 1982 or Section 16-E(10) of the U.P. Intermediate Education Act 1921 was initiated or not. He thus submits that let the order impugned be set aside and the matter be remitted back permitting the second Respondent to pass a fresh order after giving a relook.

I have heard learned Standing Counsel for the parties and perused the records carefully.

The crucial question, which arises for determination is the fact that as to whether there is any approval of the dispensation of the services of the writ petitioner or not and whether any proceedings for cancellation of the appointment of the writ petitioner was undertaken. Apparently, from the order impugned, it appears that there was no proceedings for cancellation of the appointment of the writ petitioner was undertaken. Besides aforesaid fact, the order impugned only refers to the fact that the writ petitioner had not worked for the period from November 2007 to February 2013, owing to the suspension and termination of the services, proposal for continuation of the services from 01.09.2008, which in the *prima facie* opinion of the Court was not approved and thus, the matter needs reconsideration. The other incidental issue, which needs also to be considered is the stand as to what would be the net legal consequence for non-according of permission to the writ petitioner to work on the post in question, despite he was willing to work. Learned Counsel at this stage has relied upon the judgment in the case of ***Commissioner Karnataka Housing Board Vs. C. Muddaiah***, Civil Appeal No. 4108 of 2007 decided on 07.09.2007.

Considering the submission of the rival parties and the stand taken

by the learned Standing Counsel, the order impugned dated 18.09.2023 passed by Respondent no.2, Director of Education, Secondary, Uttar Pradesh, Lucknow, is set aside. The matter stands remitted back to the second respondent, Director of Education, Secondary, Uttar Pradesh, Lucknow to pass fresh order after putting to notice the petitioner and the fifth respondent within a period of three months from the date of production of certified copy of the order.

With the aforesaid observation, the writ petition is partly **allowed**.

Order Date :- 1.12.2023

N.S.Rathour