

Court No. - 35

Case :- WRIT - A No. - 20716 of 2023

Petitioner :- Pradeep Kumar Gupta

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Prabhat Kumar Singh, Akhilendra Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

Heard Sri Prabhat Kumar Singh, learned counsel for the petitioner and Sri Saurabh, the learned Standing Counsel, who appears for Respondents 1, 2 and 3.

In view of the order, which is being proposed to be passed today, notices are not being issued to the 4th respondent.

The writ petitioner claims that in the Institution, Shahganj Public Inter College, Shahganj, District Jaunpur, a short term vacancy arose on account of promotion of one Sri Rajesh Prasad on 01.07.1996 on the post of Assistant Teacher, pursuant to an Advertisement, the writ petitioner claims to have been selected and appointed on 18.01.1999, approval whereof was granted by the District Inspector of Schools, Jaunpur on 22.01.1999, however, when the payment of salary was not made, he preferred Writ Petition No.1691 of 2000, in which an interim order was passed and thereafter on 25.04.2003, the salary of the writ petitioner was released and the Writ Petition No.1691 of 2000 was rendered infructuous on 20.03.2017 while passing the following orders: -

"By means of this writ petition, the petitioners have come to this Court with the prayer for directing the respondents to pay the current salary of the petitioners regularly and also for payment of arrears of salary.

The petitioner no.1 is claiming himself to have been appointed as Lecturer in the aided Intermediate College whereas the petitioner no.2 claims himself to have been appointed as L.T.Grade teacher in the same Institution. It is claimed that due to leave vacancy of one Ram Achhaibar Yadav who was then holding the post of Lecturer (Civics), the petitioner was appointed as being the senior most L.T.grade teacher with the qualification required on 1.7.1996. The papers were forwarded for approval which was granted by the DIOS on 20.6.1998 and since then the petitioner no.1 is working as Lecturer (Civics). The petitioner no.2, it is claimed, was appointed as L.T.Grade teacher through direct recruitment upon petitioner No.1 being approved on promotion as Lecturer. The approval of appointment of the petitioner no.2 was granted on 22.1.1999. It appears that a circular dated 10.3.1999 was issued that in cases of any appointment made by then DIOS, the payment of

salary shall not be made to such teachers as enquiry is being done and, therefore, it is claimed that the salary of the petitioners was stopped. The petitioner, therefore, filed a writ petition before this Court being writ petition No.43961 of 1999 which writ petition was disposed by order dated 12.10.1999 directing the concerned authority to decide the representation of the petitioner. In pursuance of the direction of this Court, the DIOS which is concerned authority passed an order in favour of the petitioners on 21.10.1999. Since then the petitioners are being paid salary and are performing their duties in the Institution and are also continuing to perform their duties till date.

Sri R.B.Tripathi , learned counsel appearing for the Committee of Management has denied the averments made in the writ petition and has submitted that at the time when the approval was granted, the DIOS who has granted approval was not in office and , therefore, such approval is meaningless.

I have considered the submission of the learned counsel for the parties. The petitioners were appointed in the year 1998 and 1999 respectively and their approval was also granted in the year 1998 as well as 1999. The petitioners then approached this Court and this Court directed the concerned authority to consider the claim of the petitioners and the authority concerned after considering the claim of the petitioners granted approval and since then the petitioners are being paid salary. It is submitted that the petitioners have also been paid arrears of salary. Considering the aforesaid facts and circumstances, I am of the view that since the dispute has been resolved and the authorities themselves have started to pay salary etc., no cause of action survives and the writ petition is dismissed as infructuous."

The writ petitioner claims that the approval orders are still intact and he is entitled to be considered for regularization in the light of Section 33-G of the U.P. Act No.5 of 1982.

Prayer in the present petition is for according regularization to the writ petitioner.

Sri Saurabh, learned Standing Counsel submits that the issue which the petitioner seeks to raise needs determination at the first instance by the committee constituted therein and the writ petitioner may represent his cause before the second respondent, Joint Director of Education, Varanasi Region, Varanasi, which shall transmit the entire papers to the committee so constituted therein. 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 granting

liberty to the writ petitioner to approach the second respondent, Joint Director of Education, Varanasi Region, Varanasi, along with a comprehensive representation accompanied with self-attested copy of the writ petition, who shall, on the receipt of the same, shall take a follow up action after putting to notice the fourth respondent within a period of three months from the date of production of certified copy.

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

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

Order Date :- 15.12.2023
N.S.Rathour