

Court No. - 5

Case :- WRIT - A No. - 2202 of 2006

Petitioner :- Anil Kumar Upadhyay

Respondent :- State Of U.P.Through Secretary Secondary Education And 5 Ors

Counsel for Petitioner :- Dr.Lalta Prasad Mishra

Counsel for Respondent :- C.S.C.,Ashish Verma,C.P.M.Tripathi,H G S Parihar,H.S.Jain,Mukund M. Asthana

with

Case :- WRIT - A No. - 5858 of 2002

Petitioner :- Anil Kumar Upadhyay

Respondent :- State Of U.P.Thru Secy. Secondary Education Lucknow And 5 Ors.

Counsel for Petitioner :- Dr.L.P.Mishra

Counsel for Respondent :- C.S.C.,H.G.S. Parihar

Hon'ble Irshad Ali,J.

1. Heard Dr. L.P. Misra, learned counsel for the petitioner and learned Standing Counsel for the respondents-State.

2. While entertaining the writ petition, interim order was granted vide order dated 24.3.2006, operative portion is being quoted below :-

"In the meantime, operation of order impugned dated 2-12-2005 contained in Annexure-1 shall remain stayed so far as it relates to the petitioner, who is placed at Sl. No.9, till further orders of this Court."

3. Thereafter, vide order dated 13.11.2009, following order was passed in the present case :-

"List revised.

None appears on behalf of petitioner.

It has been stated by Sri Ashish Verma, learned counsel that the respondent No.6 has been selected by the Commission and earlier, on account of interim order passed by this Court, he was not permitted to resume duty by the committee of Management. Now, since the interim order is vacated, there is no occasion for the management not to permit the petitioner to resume duty.

Accordingly, it is provided that in case, the respondent No.6 has been selected by the Commission for the post of Lecturer in Sanskrit for the Institution in Tilak Inter College, Pratapgarh, he shall be permitted to resume duty forthwith. The D.I.O.S. Shall ensure compliance of the order."

4. Controversy involved in the present writ petition was engaging attention of the Division Bench of this Court. Thereafter, the matter was referred to the Larger Bench in Writ Petition No.655 of 2014 titled 'Abhishek Tripathi v. State of U.P. though Secy. Secondary Education, Lko. & Ors. which was decided vide order dated 17.12.2015 with the direction that the Committee of Management has no right to make appointment, therefore all appointments were held to be illegal.

5. The matter went up to the Hon'ble Supreme Court in Civil Appeal No.8300 of 2016 titled 'Sanjay Singh and others v. State of U.P. and others' wherein by means of a judgment the Hon'ble Supreme Court resolved that by enforcing special right fresh selection proceeding be initiated by giving weightage to the teachers appointed under Section 16-E(11) or on ad hoc basis. In pursuance to the direction issued by the Hon'ble Supreme Court, special right proceedings were initiated and selections were made by inviting applications from candidates who were parties to the litigation. The result of the same has been declared and selection proceedings have been completed and report in this regard has also been submitted before Hon'ble Supreme Court.

6. Special Appeal No.830 (M/B) of 2009 (Anil Kumar Upadhyay Vs. State of U.P.) was filed against the judgment and order dated 13.11.2009, passed by the learned Single Judge, whereby interim order granted in favour of the petitioner has been vacated with the further direction that respondent No.6 shall be permitted to resume duty forthwith and the District Inspector of Schools shall ensure compliance of the order.

7. Dr. L.P. Misra, learned counsel for the petitioner submits that the Division Bench of this Court, in the judgment dated 25.11.2009, passed in Special Appeal No.830 (M/B) of 2009, declined to interfere with the order passed by the learned Single Judge and observed that the joining of the respondent No.6 made in pursuance to the aforesaid order shall be subject to further orders which might be passed in the writ petition.

8. It is admitted case of the parties that the selected candidate (respondent No.6) moved an application on 31.3.2011 for leave without pay for one year and thereafter, he did not return to the institution. Meaning thereby, the post is vacant.

9. It is submitted that in view of the fact that selected candidate

has left the institution and post is lying vacant, it is the petitioner, who has right to continue on the post of Lecturer in Sanskrit.

10. In view of the foregoing discussion, this writ petition is finally **disposed of** with the direction to the respondents that the Teachers/ Lecturers who are at present the T.G.Ts. and Lecturers would continue to be so employed till regularly selected candidate is appointed and to the extent the financial benefits are given by the State Government to the institutions against appointments made in compliance with Section 16-E(11) of the Act, the same will also be given to provide succour to the T.G.Ts./ Lecturers.

11. It is however further clarified that the petitioner is entitled for the payment of salary from the date of joining till the regularly selected candidate joined the post.

Order Date :- 16.10.2023

Gautam