

Court No. - 5

Case :- WRIT - A No. - 8993 of 2006

Petitioner :- Shiv Pratap Singh

Respondent :- State Of U.P. Thr. Prin Secy Education And 5 Ors

Counsel for Petitioner :- Rakesh Kumar Srivastava, Rakesh Kumar Srivastava, Seema Srivastava

Counsel for Respondent :- C.S.C, A.Z. Siddiqui

Hon'ble Irshad Ali, J.

1. Heard learned counsel for the parties.

2. By means of the present writ petition, the petitioner has prayed for the following reliefs:

(i) Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 19.09.2006 passed by the opposite party no.3 as well as the impugned order dated 02.09.2006 passed by opposite party no.4 as contained in Annexure Nos.10 and 12 to the writ petition.

(ii) Issue a writ, order or direction in the nature of Mandamus commanding the opposite parties to grant or to cause to grant post retiral benefits after granting benefit of regularization as well as the benefit of merger on the post of Assistant Teacher, L.T. Grade with effect from an appropriate date on the basis of government orders/ circular issued on the subject along with all the arrears of difference of salary as well as post retiral benefits payable to the petitioner within shortest possible time stipulated by the Hon'ble Court.

(iii) Issue a writ, order or direction in the nature of Mandamus commanding the opposite parties to regularize/ absorbed the services of the petitioner against one of the available post of the Assistant Teacher, L.T. Grade in the Institution and to allow him to continue in service along with all the service benefits, monetary as well as status.

(iv) Issue such other writ, order or direction which may be deemed just and warranted in the circumstances of the case.

(v) Award costs of the petition throughout in favour of the petitioner against the opposite parties.

3. Facts of the case are that Sudarshan Shikshan Sadan Inter

College, Manjhia, Hardoi (hereinafter referred to as 'Institution') is a recognized Intermediate College. Upto the High School standard the institution is receiving grant-in-aid whereas Intermediate level of the same is recognized only. As such, the provisions of U.P. Intermediate Education Act, 1921, U.P. Secondary Education Services Selection Board Act, 1982 and U.P. Secondary Education Services Selection Board Rules framed under the Act, 1982 as well as the Regulations made under the Act, 1921 and Government Orders issued on the subject are applicable on the above said institution.

Sri Suresh Pal Singh working on the post of Headmaster of the Institution was involved in a criminal case under Section 302 IPC and as such, he was placed under suspension on 2.1.1984. Above named Sri Suresh Pal Singh was convicted from the trial court by life imprisonment who filed appeal no.640 of 1986 before this Hon'ble Court against the above said conviction order which remained pending.

Due to suspension of Sri Suresh Pal Singh the vacancy on the post of Headmaster of the institution occurred. Accordingly, one Sri Vinay Kumar Singh, Assistant Teacher in L.T. Grade was promoted on adhoc basis on the post of Headmaster. The vacancy occurred on the post of Assistant Teacher in L.T. Grade due to promotion of Sri Vinay Kumar Singh was filled up through promotion of Sri Alam Prasad, Assistant Teacher in C.T. Grade.

Due to promotion of Sri Alam Prasad, a vacancy on the post of Assistant Teacher in C.T. Grade occurred. Accordingly, the vacancy on the post of Assistant Teacher in C.T. Grade mentioned above was filled up through direct recruitment by the opposite party no.5. The petitioner was duly appointed on the post of Assistant Teacher in C.T. Grade arising out from the promotion of Sri Alam Prasad in the institution vide appointment letter dated 5.11.1985 issued by the opposite party no.5.

Although the above mentioned appointment of the petitioner was made for the period till reversion of Sri Alam Prasad on his post of Assistant Teacher in C.T. Grade yet the opposite party no.4 vide his letter dated 2.1.1986 accorded sanctioned towards the petitioner's appointment for the fixed period upto 20.5.1986. The vacancy against which the petitioner was appointed remained available even after 20.5.1986 as Sri Suresh Pal Singh continued under suspension on account of which Sri Vinay Kumar Singh as well as Sri Alam Prasad continued on their promoted posts namely Headmaster and Assistant Teacher in L.T. Grade respectively.

In the event of availability of vacancy, the petitioner was again allowed to work with effect from 8.7.1986 i.e. in the next academic session against the said vacancy on the post of Assistant Teacher in C.T. Grade on adhoc basis and the opposite party no.5 sent a letter dated 8.7.1986 to the opposite party no.4 for approval. The opposite party no.4 in response to above-mentioned letter dated 8.7.1986 accorded approval/ consent towards the petitioner's appointment during the suspension period of Sri Suresh Pal Singh vide his letter dated 17.7.1986. The petitioner was allowed to continue in service in the institution on the post of Assistant Teacher in C.T. Grade who worked on his post with sincerity, honesty and full devotion to his services.

Vide Government Order dated 11.8.1989, the C.T. Grade has been declared as Dying Cadre and it has been further provided that the teachers of C.T. Grade in the Secondary Schools would be given their pay in L.T. Grade who possess the prescribed qualification and has completed required number of years of service. The qualification for the grant of L.T. Grade has been prescribed as ten years' satisfactory services and as such, the post of the Assistant Teacher held by the petitioner has automatically been converted in L.T. Grade.

Sri Suresh Pal Singh attained the age of superannuation on 31.12.2000 in view of the fact that his date of birth is 01.01.1941 and as such, a short-term vacancy arising out from the suspension of Sri Suresh Pal Singh became substantive on the day he attained the age of retirement on the facts and circumstances of the case. Accordingly, the vacancy against which the petitioner has been working also became substantive in chain due to the above mentioned fact that Sri Suresh Pal Singh attained the age of superannuation on 31.12.2000.

Previously, instead of regularizing the services of the petitioner the opposite party no.5 proceeded to dispense with the services of the petitioner and in the said background the above mentioned writ petition no.2303 of 2001 was filed. The opposite party no.5 issued an order dated 20.5.2001 giving intimation to the effect that the services of the petitioner have been automatically terminated on the date of occurrence of the vacancy on the post of Principal i.e. or 30.6.2001 as per approval order issued by the opposite party no.4.

Although the then incumbent namely Suresh Pal Singh has attained the age of superannuation as per date of birth on 31.12.2000 however opposite party no.5 has treated him to be continued in service on 30.6.2001 giving him benefit of academic session which ended on 30.6.2001. The above-

mentioned notice/ letter of termination could not be given effect to due to interim order passed by this Hon'ble Court and the petitioner is still working on his post.

The petitioner has learnt from the reliable sources that on 31.1.2003 the opposite party no.3 sent a requisition Adhiyachan vide letter dated 31.1.2003 giving information to the District Inspector of Schools about substantive vacancy. In addition to the vacancy in question, two other vacancies arose firstly in the month of August, 1998 due to death of Sri Prithvi Raj Singh, Assistant Teacher in L.T. Grade and secondly in the month of June, 2001 due to retirement of Sri Prem Naran Shukla, Assistant Teacher in L.T. Grade.

The vacancy occurred due to death of one Prithivi Raj Singh has been filled up by the opposite party no.5 by way of appointment by transfer of one Rajesh Kumar Singh, Assistant Teacher in L.t. Grade working in Ali Inter College. However, other vacancy due to retirement of Sri Prem Narain Shukla remained vacant w.e.f. 30.6.2001. As such, the petitioner after coming to know the fact about sending of requisition in the month of January, 2003 made a representation for consideration of his claim of regularization under the provisions of the Act, 1982 on 11.2.2003. In addition to the above mentioned representation the petitioner has made further representation to the opposite parties but no action has been taken by the opposite parties.

However, when nothing was done upon the aforesaid representation of the petitioner, the petitioner filed writ petition no.5634 (SS) of 2003 for issue a writ, order or direction in the nature of mandamus commanding the opposite parties not to fill up the post in question held by the petitioner by making appointment of any other person through direct recruitment in furtherance of the requisition/ adhiyachan letter sent by the opposite party no.5 vide letter dated 31.1.2003. The above-mentioned writ petition no.5634(SS) of 2003 was finally disposed of by this Hon'ble Court vide judgment and order dated 5.9.2003 directing the opposite party no.3 to decide the representation of the petitioner so preferred by a speaking and reasoned order.

In compliance of the above mentioned judgment and order dated 5.9.2003 the opposite party no.3 has passed an order dated 6.11.2003 disposing of the petitioner's representation dated 11.2.2003 and 30.7.2003, thereby refusing to regularize the services of the petitioner. Accordingly, by way of amendment of the writ petition no.2303 (SS) of 2001 the petitioner challenged the above mentioned order dated

6.11.2003.

Accordingly, after hearing both the parties, writ petition no.2303 (SS) of 2001 earlier filed by the petitioner, was allowed vide judgment and order dated 10.3.2006 whereby the impugned order dated 6.11.2003 passed by the opposite party no.3 was quashed and the opposite party no.3 was directed to reconsider all the facts in the light of what has been mentioned in the judgment and order and passed necessary orders.

When nothing was done by the opposite party no.3 the petitioner filed a contempt petition before this Hon'ble Court being Criminal Misc. Case No.1782 (C) of 2006 namely Shiv Pratap Singh v. Shri Sarvendra Vikram Bahadur Singh and in the said contempt petitioner, notices were directed to be issued by this Hon'ble Court and the petitioner is still pending for final disposal. No appeal of review whatsoever has been preferred by the opposite parties against the judgment and order dated 10.3.2006 passed by this Hon'ble Court in writ petition no.2303 (SS) of 20001 filed by the petitioner and the said judgment and order dated 10.3.2006 has become final.

In view of the above and in view of the facts and circumstances of the case and in view of the finding arrived at by this Hon'ble to the effect that the case of the petitioner regularized is covered under the provisions of Section 33-D of the Act, 1982 which comes the appointment made on or before May 13th, 1989 and the short term vacancy in accordance with the para 2 of the U.P. Secondary Education Services Commission (Removal of Difficulties)(Second) Act, 1981 which was subsequently converted into the substantive vacancy and under Section 33-F of the Act, 1982 appointment between 14.5.1991 to 6.8.1993 against the short terms vacancy has been directed to be regularized.

In response to the contempt notice issued by this Hon'ble Court, the opposite party no.3 issued an order dated 19.9.2006 purported to be in compliance of the judgment and order dated 10.3.2006 passed by this Hon'ble Court in writ petition no.2303 (SS) of 1001 whereby the petitioner claim of regularization has been rejected.

The claim of the petitioner's regularization has been rejected mainly on two grounds, firstly that the petitioner's appointment was made in C.T. Grade against the short term vacancy of L.T. Grade by the opposite party no.5 which is vacant substantively w.e.f. 30.7.2001 and against the same, the regularization of the petitioner cannot be made in accordance with law.

The circular dated 8.6.2001 issued from the office of the opposite party no.2 was found forged vide letter dated 22.9.2001 issued from the Directorate i.e. opposite party no.2 on the basis of which the regularization of the petitioner is not possible. At this stage, in the impugned order the petitioner's appointment has been disputed and it is said that the petitioner's appointment was made by the opposite party no.5 by concealment of facts. However, in the impugned order, it is nowhere stated as to what material fact was concealed at the time of the appointment of the petitioner by the opposite party no.5.

The petitioner could not know about the issuance of letter dated 22.9.2001 issued from the office of the opposite party no.2 and as such the petitioner has relied on the circular dated 8.6.2001 issued from the office of the opposite party no.2 while making his representation on 11.2.2003. By means of the impugned it came to knowledge of the petitioner that the said circular dated 8.6.2001 is a forged one in respect of which letter dated 22.9.2001 has already been issued from the office of the opposite party no.2.

Even otherwise also since the circular dated 8.6.2001 mentioned above has not conferred any independent right and is based upon the provisions of the Act, 1982 it was incumbent upon the opposite parties to consider the case of the petitioner ignoring the circular dated 8.6.2001 in accordance with the provisions of the Act, 1982.

4. The matter was remanded back for reconsideration of the claim of the petitioner and vide order dated 19.9.2006 passed by opposite party no.3 as well as by means of the impugned order dated 2.9.2006 passed by opposite party no.4 contained as Annexure Nos.10 and 12 respectively, the claim setup by the petitioner has been rejected.

5. Assailing the impugned orders, submission of learned counsel for the petitioner is that the appointment of the petitioner has been made in the year 1985-86 and he has legitimate right of being regularized on the post in question. He next submits that the case of the petitioner is squarely covered under the provisions of Act, 1982 made for regularization as provided under Section 33-F of the Act of 5 of 1982.

6. Next submission of learned counsel for the petitioner is that the impugned order dated 19.9.2006 by the opposite party is illegal, arbitrary, malafide and unsustainable in the eye of law. He next submits that the petitioner has attained 50 years of age while serving under the opposite party on the post in question and he has become over age for being engaged in other service,

as such at this stage the impugned would be illegal and not sustainable in the eye of law.

7. Learned counsel for the petitioner next submits that vide order dated 2.9.2006 passed by the opposite party no.4 is contrary to the judgment and order dated 30.3.2006 passed by this Court in Writ Petition No.2303 (SS) of 2001. Last submission of learned counsel for the petitioner is that on attaining the age of superannuation the petitioner has retired from service on 31.3.2009 during pendency of the writ petition, as such he is entitled to be regularized as well as of benefit of margin of Assistant Teacher, L.T. Grade along with consequential benefits as well as stage in the same manner in which similarity situated retired Assistant Teacher have been paid.

8. On the other hand, learned Standing Counsel submits that the impugned orders are just and valid and do not suffer from infirmity or illegality. The claim of the petitioner has rightly been rejected by the respondent nos.3 and 4 as he is not entitled for regularization on the post of Assistant Teacher in the institution.

9. Having heard rival submissions of learned counsel for the parties, I have perused the material on record.

10. In the impugned orders it has been stated that Government Order dated 8.6.2001 has never been issued from the office of respondent. In this regard, the petitioner has produced a book showing the Government Order dated 8.6.2001, therefore, this fact cannot be denied that the Government Order was issued on 8.6.2001. It has further been recorded that while concealing the material fact, the Committee of Management obtained order of approval from the D.I.O.S. by playing fraud.

In fact, against the vacancy caused due retirement of Suresh Pal Singh, a vacancy on the post of Assistant Teacher, L.T. Grade and came into existence on which Shri Alam Prasad was granted appointment on the post of L.T. Grade and due to grant of appointment of Alam Prasad a vacancy in C.T. Grade came into existence against which the petitioner was granted appointment, therefore, the recital in the impugned order that fraud was committed by the Committee of Management is factually incorrect.

11. After attaining the age of superannuation, the petitioner has retired from service on 30.6.2018 and died on 22.6.2023. The petitioner's claim for regularization is fully covered under the provisions of Section 33-F of the U.P. Secondary Education

Service Act, 1982 and he is entitled for regularization.

12. In view of the reasons recorded above, this writ petition succeeds and is hereby **allowed**.

13. However, the respondents are directed to pass appropriate order of regularization in case of the petitioner in view of provisions contained under Section 33-F of the U.P. Secondary Education Service Act, 1982 within six weeks from the date of production of a certified copy of this order. Consequence is to follow.

Order Date :- 16.10.2023

GK Sinha