

Court No. - 1

Case :- SPECIAL APPEAL No. - 193 of 2006

Appellant :- State Of U.P.Through Secy Secondary Education Inre W.P.Sers

Respondent :- Manoj Kumar Bajpai

Counsel for Appellant :- C.S.C

Counsel for Respondent :- O.P.M.Tripathi,Akhilesh Kumar Kalra,Brijesh Kumar Singh,Jyotiresh Pandey,Lakshmi Kant Tripathi,R.M. Asthana,R.S. Tripathi,Rahul Kapoor,Ram Sewak Tripathi,Ram Shanker Singh,Som Kartik Shukla

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

1. Heard learned counsel for the parties.
2. This intra-court appeal filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 is directed against the judgement/order dated 21.04.2005 passed by the writ court in two writ petitions namely W.P.No.7749 (S/S) of 2003 (Manoj Kumar Bajpai and Ors vs. State of U.P and Ors) and W.P.No.1223 (S/S) of 2002 (Committee of Management vs. State of U.P & Ors.) The judgement passed by the writ court on 21.04.2005 for ready reference is extracted below:-

“Since the common question of fact and law are involved in both the writ petitions, they are being decided by a common judgement.

Heard learned counsel for the parties.

Learned counsel for the petitioner submitted that since the controversy involved in the judgement and order passed in writ petition no.2054(SS) of 2000(Committee of Management, Anand Singh Intermediate College, Rai Askaranpur, District Pratapgarh through its Manager vs. State of U.P & Ors) is identical to this writ petition, the writ petition may be decided as such, to which learned counsel for the opposite parties has no objection.

Writ petition, is therefore, also stands decided in the light of the observations made and in terms of the directions given in the aforesaid writ petition [Writ Petition No.2054(SS) of 2000 (Committee of Management, Anand Singh Intermediate College, Rai Askaranpur, District Pratapgarh through its Manager vs. State of U.P & Ors)].”

3. From the order extracted above, it is evident that both the writ petitions were decided in the light of a judgement dated 09.02.2004 rendered in W. P. No. 2054 (S/S) of 2000 (Committee of Management, Anand Singh Intermediate College, Rai Askaranpur, Distt. Pratapgarh through its Manager vs. State of U.P & Ors.).

4. We have already disposed of the appeal namely Special Appeal No.499 of 2004 arising out of the aforementioned judgment/order dated 09.02.2004 by passing a separate order.

5. In so far as challenge to the order passed by the writ court on 21.04.2005 giving rise to the present appeal is concerned, there is a dispute as regards the availability of posts in the institution. The contempt proceedings arising out of the judgement/order dated 21.04.2005 have also been dealt with by issuing certain directions. In compliance of the directions issued by the contempt court, an inquiry report has been drawn according to which only four posts of teachers were sanctioned and insofar as the appointment on the other posts against which the petitioners in W.P.No.7749 (S/S) of 2003 (Manoj Kumar Bajpai and Ors vs. State of U.P and Ors) had laid their claim or consent, the position has been clarified in the report drawn pursuant to the direction issued in contempt proceedings. The fresh report drawn in compliance of the direction issued by the contempt court has also become a subject matter of consideration in Writ-A No.6610 of 2012 and may be in some other writ petitions filed by the aggrieved persons. The relevant details of the pending writ petition, if any, may be provided by the State at the time when Writ-A No.6610 of 2012 is listed for hearing.

6. Learned counsel for the State while arguing the appeal has stated that since the question as regards the availability of posts was not dealt with by the writ court in the impugned judgment and parity was granted without any elaborate discussion, therefore, the issue on

merit as regards the availability of posts having remained unconsidered is pending in Writ-A No.6610 of 2012.

7. Learned counsel for the State has also referred to two full bench judgements of this Court in the case of ***Gopal Dubey vs. D.I.O.S, Maharajganj & Anr.***, passed in ***W.P.No.33704 of 1996*** decided on 27.11.1998 and in the case of ***State of U.P. & Ors. vs. C/M Sri Sukhpal Intermediate College, Tirhut, Sultanpur & Ors.*** reported in ***2015 (33) LCD 1398***.

8. We are of the considered opinion that except a bald observation of parity, nothing more was considered by the writ court in the judgement impugned here in this special appeal. No details as regards the status of 10 posts was dealt with, thus, all these questions deserved to be reopened in the fresh writ petitions which have been filed by the aggrieved persons before this court.

9. In the circumstances of the case, we hereby provide that no observation made in the order dated 09.02.2004 or in the impugned order dated 21.04.2005 shall come in the way of the proceedings of Writ-A No.6610 of 2012 or any other matter arising out of the same cause. The writ petition shall be decided on its own merit.

10. With the observations made above, the special appeal is accordingly ***disposed of***.

Order Date :- 6.11.2023

Shahnaz