

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 133 of 2018

Appellant :- State Of U.P.Throu Additional Chief
Secy.Secondary Edu.And Anr

Respondent :- Santosh Kumra And Another

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Sameer Kalia,Diwakar Singh
Kaushik,Krishna Madhav Shukla,P.S. Bajpai,Prem
Shankar,Sagheer Hasan,Ved Prakash Singh

Hon'ble Pritinker Diwaker,Chief Justice

Hon'ble Rajan Roy,J.

Heard Shri Rajesh Tiwari, learned Standing Counsel for the State-appellant and Shri Krishna Madhav Shukla, learned Counsel for the respondents.

This is an appeal against the judgment and order dated 08.12.2017 passed in Writ Petition No. 6187 (S/S) of 2012.

The facts of the case in brief are that the respondents herein claim to have been appointed on class four (IV) post in Rajendra Bharti Inter College, Chafa, District - Sidharth Nagar sometimes in the year 2008. As salary was not being paid, therefore he approached the authorities whereupon an order was passed on 03.09.2011 declining to grant approval to his appointment on the ground that there was ban vide Government Order date 06.01.2011 on such appointments by the Government. Accordingly, the District Inspector of Schools rejected the claim for approval. This order was put to challenge in the above mentioned writ petition and the writ petition has been allowed by the impugned judgment dated 08.12.2017. The only point to be considered by the Writ Court was as to whether the DIOS was justified in rejecting the claim for approval of appointment on the ground of a ban based on the Government Order dated 06.01.2011? On a perusal of the writ Court's judgment, we find that the writ Court has considered this aspect and held that the aforesaid ban imposed by the aforesaid G.O. dated 06.01.2011 has already been quashed by this Court vide judgment dated 23.02.2012 passed in Writ Petition No. 11760 (S/S) of 2011. However, after taking note of the aforesaid fact, not only the writ Court has quashed the order of the DIOS dated 03.09.2011 but it has further held that proper procedure for making appointment was followed and accordingly, the opposite parties have been directed for paying salary.

We find that so far as the writ Court has quashed the order dated 03.09.2011, the same does not require any interference but the direction to pay salary has to be set aside for the reason that in such circumstances, the writ Court should have remitted the matter back to the DIOS for consideration of approval of appointment of the respondent in the light of the provisions contained in Regulation 101, Chapter III of the Regulations made under U.P. Intermediate Education Act, 1921, as in the impugned order before the writ Court merits of the matter had not been considered. Not having done so, we set aside the writ Court's judgment dated 08.12.2017 only to the extent it directs the opposite parties before the writ Court to pay salary to the petitioner instead we provide that the DIOS shall now reconsider the matter regarding approval of the appointment of the respondent no. 1 who was the petitioner before the writ Court in the light of Regulation 101 referred above and the law on the subject and take a decision on the subject positively within two months. Based on it, the consequences shall follow, as per law. It is made clear that we have not at all entered into nor adjudicated the merits of the claim of the respondent no. 1 herein.

The appeal is **allowed in part**.

Order Date :- 18.5.2023

Lokesh Kumar

[Rajan Roy, J.] [Pritinker Diwaker, C.J.]