

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 2943 of 2023

Applicant :- Ram Pyare Lal And 21 Others

Opposite Party :- Mr. Deepak Kumar Prin. Secy. Basic Edu. Lko

Counsel for Applicant :- Sanjay Kumar

Hon'ble Rajesh Singh Chauhan,J.

1. Heard learned counsel for the petitioners and Sri Mayanker Singh, learned Standing Counsel.

2. This Court has passed the order dated 15.09.2023 which reads as under:

"1. Heard learned counsel for the applicants/ petitioners.

2. Learned counsel for the petitioners has submitted that the order of the writ court dated 25.05.2022 passed in Writ-A No.3068 of 2022 has not been complied with inasmuch as the direction was issued to the effect that if any scheme is formulated by the State of U.P. in respect of the grievance of the petitioners, the same shall be considered strictly in accordance with law. For the convenience, the order dated 25.05.2022 is being reproduced herein below:-

"Heard.

The petitioners' counsel relies upon a judgment dated 21.04.2022 passed in Writ A No. 38477 of 2016 and seeks its benefit. The judgment reads as under:

"Heard Sri K. S. Kushwaha, learned counsel for the petitioners and learned Standing Counsel for the State-respondents.

This petition has been filed praying for directing the respondents to absorb the petitioners on appropriate regular post with pay-scale as per their eligibility and ability in any of the department in view of their long service rendered as Supervisor/Instructor in Non-Formal Education Project.

The brief facts of the petition are that petitioners were appointed on different dates fixed honorarium from the year 1989 to 2001 under the scheme of Non Formal Education of the Central Government, which was merged in the year 2001 in the scheme of the Central Government known as (Sarv Shiksha Abhiyan). The earlier scheme of Non Formal Education was closed w.e.f. 01.04.2001 as per order dated 24.03.2001. The Director of Formal Education intimated the Director of Secondary Education by his letter dated 28.03.2001 that State Government has decided to absorb the Project Officers / Supervisors appointed on adhoc basis on non-cadre post by down grading the pay-scale on cadre posts keeping in view their long service.

The grievance of the petitioners is that some Instructors / Supervisors have already been absorbed in different departments by the Government but the petitioners who were also Supervisors / Instructors have not been absorbed despite directions of this court to consider their grievances passed in Writ-A No.34185 of 2010 filed by the petitioners.

Petitioners claim that they have been discriminated and denied absorption while similarly situated Supervisors / Instructions have been absorbed in pursuance of pick and choose policy.

Counter affidavit has been filed by the learned Standing Counsel on behalf of respondent nos.1 and 2, Principal Secretary Basic Education U.P. Lucknow and Director of Education (Basic) U.P. Lucknow, wherein it has been stated that some Supervisors / Instructors have been given joining as 'Shiksha Mitra' as per Government Order 10.10.2005 and 24.04.2006 but some of them have been deprived of adjustment. It has been submitted that the appointment claimed by the petitioners is a policy matter to be decided at the Government level and the claim of the petitioners cannot be considered by the answering respondents.

Learned counsel for the petitioners has relied upon the judgement of Patna High Court dated 11.08.2015 whereby similarly placed employees were held entitled to be absorbed and directed accordingly.

Learned counsel for the petitioners has also placed before this Court the order of the Apex Court passed in Civil Appeal No.3751 of 2021 preferred by the State of Bihar against the order of the Patna High Court whereby the order dated 11.08.2015 of the High Court passing certain directions for rehabilitating the Supervisors working in the scheme of Non Formal Education was challenged. The Supreme Court dismissed the above Civil Appeal of the State of Bihar. Subsequently, a modification application was filed before the Hon'ble Supreme Court praying that the aforesaid relief granted by Patna High Court may be confined only to the petitioners and not to those who did not approach the Patna High Court. The Apex Court did not modified the order but directed the parties to approach the Patna High Court with the rider that matter which have become final shall not be reopened.

Learned Standing Counsel has submitted that the decision taken by the State of Bihar is not binding on the State and the judgements in this regard have no application to the present case.

After hearing rival submissions this Court finds that the State has not adopted any uniform policy in absorption of the Supervisors / Instructors employed in Non Formal Education Scheme. While some of them have been absorbed, the others, like petitioners, have been denied absorption without any rational basis. There is clear violation of Article 14 of the Constitution of India in this case and the right of the petitioners guaranteed under Article 21 of the Constitution of India stands violated.

In the counter affidavit filed by respondents they have not been able to point out any criteria for absorption some Instructors / Supervisors and non absorption of the similarly situated employees.

The sovereign power of the State cannot be permitted to be exercised by public servants arbitrarily or the State Government in discriminatory manner.

Writ of mandamus is issued to respondent no.1, the State of U.P. to formulate a policy for absorption of the petitioners within six months and absorb them in any department of the State Government and pay them their regular salary as per their eligibility and ability keeping in view their long service and more than 20 years period lost thereafter in pursuing litigation before this Court.

The writ petition stands allowed."

The counsel for the opposite party no. 3 says that the opposite party no. 3 has nothing to do with the matter. He relies on page 29 to submit that it is opposite party no. 2 as also the State Educational Research and Training Board which is the competent authority. The counsel for the petitioners says that he only seeks benefit of the judgment quoted hereinabove.

Be that as it may, the said judgment contained direction to the State of U.P. to formulate a policy for absorption of the petitioners therein who were working in the non-formal education scheme as Instructors within six months and absorb them in any department of the State Government and pay them their regular salary as per their eligibility and ability keeping in view their long service and more than 20 years period lost thereafter in pursuing litigation before this Court.

This judgment takes note of a judgment of Hon'ble the Supreme Court in Civil Appeal No. 3751 of 2021 against the order of the Patna High Court for rehabilitating Supervisors working in the scheme of non formal education, etc.

In view of the above, it is provided that if any scheme is formulated by the State of U.P., if at all, then the claim of the petitioners shall also be considered accordingly in terms thereof keeping in mind the aforesaid judgment.

The petition is disposed of. "

3. Learned counsel for the petitioners has further submitted that against the order of the writ court, the State of U.P. filed special appeal bearing Special Appeal Defective No.10 of 2023, which has been dismissed vide order dated 10.01.2023 as copy thereof has been provided to the Court, the same is taken on record.

4. Learned counsel for the petitioners has further submitted that the petitioners have given representation to the competent authority but no decision has been taken till date.

5. Learned counsel for the petitioners is directed to provide two copies of the contempt petition to Sri Sunil Bajpai, learned Addl. Chief Standing Counsel, who shall seek specific written instructions from the sole opposite party/ contemnors within a period of three weeks.

6. List on 11.10.2023 as fresh. "

3. In compliance of the aforesaid order, Sri Mayanker Singh has shown the copy of order dated 10th of October, 2023 preferred by the Deputy Secretary, U.P. Government addressing to the Chief Standing Counsel enclosing therewith the copy of office memo dated 10th of October, 2023 passed by Principal Secretary, Department of Basic Education, Govt. of U.P. taking decision in the issue of the petitioners, in compliance of the order of Writ Court, the same is taken on record.

4. The photo copy of the aforesaid order/office memo dated 10th of October, 2023 has been provided to learned counsel for the petitioners.

5. In the wake of aforesaid development, nothing remains to be adjudicated in the contempt petition.

6. Accordingly, the instant contempt petition is **dismissed**.

7. Notices, if any, are discharged.

8. However, it is always open for the petitioners to assail the order/office memo dated 10th of October, 2023, if the petitioners feel themselves aggrieved from the aforesaid order.

[Rajesh Singh Chauhan,J.]

Order Date :- 16.11.2023

kkv/