

Court No. - 7

Case :- WRIT - A No. - 6999 of 2023

Petitioner :- C/M H.C. Junior High School Thru. Manager Shri Harish Chandra Mishra

Respondent :- State Of U.P. Thru. Prin. Secy. Basic Education Lko. And 2 Others

Counsel for Petitioner :- Krishna Madhav Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner, learned Standing counsel for respondent nos.1 & 2 and Shri Ran Vijay Singh, learned counsel appearing for respondent no.3.

2. With the consent of learned counsels appearing for the contesting parties, the writ petition is being finally decided.

3. Learned counsels appearing for the parties contend that the facts of the case have already been recorded in the order dated 04.10.2023. For the sake of convenience, the order dated 04.10.2023 is reproduced below:

"Heard.

The contention of learned counsel for the petitioner is that an advertisement for filling in a class III post was issued by the committee of management of the petitioner institution on 08.04.2023. The institution requested the concerned District Basic Shiksha Adhikari to send a nominee for constitution of a selection committee as per Rule 14 of the Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984 (hereinafter referred to as the Rules 1984) which prescribes one specialist to be nominated by the BSA. A reminder was sent on 09.05.2023 by the institution for sending of a nominee but no response was received. The institution proceeded to constitute a selection committee which was of two members namely the Manager and the Head Master of the School which interviewed the candidate on 14.05.2023

and thereafter the final result has been sent for approval on 16.05.2023. The BSA vide the order dated 28.07.2023 negated the said selection and hence the writ petition.

The contention of learned counsel for the petitioner is that a perusal of the order impugned dated 28.07.2023 would indicate that the selection has not been approved by the BSA on the ground that despite having received the letter dated 19.04.2023 for sending of a nominee, which was received in the office of the BSA on 20.04.2023, the BSA vide the letter dated 24.04.2023 had required the institution to send certain documents which were never sent and as such there was no occasion for the BSA to send a nominee as per Rules 1984 and consequently the selection which was proceeded without a nominee sent by the BSA, would be an illegal exercise.

The contention of learned counsel for the petitioner is that the letter dated 24.04.2023 was received by the institution on 04.08.2023 as specifically finds endorsed on the letter dated 24.04.2023 itself, a copy of which is annexure 13 to the petition, and consequently once there has been a fault on the part of the BSA of not sending a nominee as per the Rules 1984 consequently no premium can be raised on the said inaction on the part of the BSA.

Reliance has been placed on a division bench judgement of this Court passed in Special Appeal (Defective) No. 92 of 2016 in re: District Basic Shiksha Adhikari Ambedkar Nagar & Anr vs Chandra Prakash Tripathi And Ors decided on 02.03.2016 to argue that in case despite request a nominee of the BSA was not sent or was not available, as such the institution did not commit illegality in proceeding with the selection and the quorum would come into play once two members of the selection committee held the said selection and proceeded to recommend a candidate for selection to a class III post.

On the other hand, Shri Ran Vijay Singh, learned counsel appearing for the BSA has taken various grounds to justify the order impugned. However the grounds as are being argued by Shri Ran Vijay Singh do not find place in the order impugned and thus considering the law down by Hon'ble Supreme Court in the case of Mohinder Singh Gill and another vs the Chief Election Commissioner, New Delhi and another, AIR 1978 AIR 851 the said grounds cannot be permitted to be taken.

Shri Ran Vinay Singh, learned counsel for the BSA prays for and is granted 10 days' time to seek instructions as to when the letter dated 24.04.2023 has been served upon the Committee of Management which required the Committee of Management to

send the documents as per the said letter.

List thereafter as fresh."

4. Today, Shri Ran Vijay Singh, learned counsel appearing for respondent no.3 states that the respondent no.3 intends to pass a fresh order considering all aspect of the matter and prays that the order impugned be set aside with a direction to the respondent no.3 to pass a fresh order in accordance with law.

5. Considering the aforesaid statement given on behalf of respondent no.3, the writ petition is **allowed**. The order impugned dated 28.07.2023, contained as annexure 1 to the petition, is **quashed**. The respondent no.3 is directed to pass afresh order in accordance with law within a period of four weeks from the date of receipt of certified copy of this order.

Order Date :- 2.11.2023

S. Shivhare