

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 931 of 2023

Appellant :- Deepak Dewvedi And Others

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

Counsel for Appellant :- Sharad Pathak

Counsel for Respondent :- C.S.C.,Prashant Kumar Singh,Ran Vijay Singh

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

1. Heard learned counsel for the appellants, Sri Prashant Kumar Singh for opposite parties no. 1, 2 and 4. Sri Ran Vijay Singh, learned counsel has put in appearance on behalf of opposite party no. 3.

Order on Delay Condonation Application

2. There is a delay of 29 days in filing this intra-court appeal under Chapter VIII Rule 5 of the Rules of the Court. An application for condonation of delay supported by an affidavit is filed alongwith the appeal spelling out the detailed reasons leading to the delay in filing the appeal.

3. Looking to the explanation offered in the affidavit filed in support of the application for condonation of delay, respondents do not wish to file any objections against the same.

4. Thus, the cause being sufficient and in the absence of any objections, the delay is condoned and the application for condonation of delay is **allowed**.

Order on Appeal

5. Learned counsel for the appellants has invited our attention to the judgement rendered by this Court in Writ-A No. 1074 of 2022 and similar other judgements passed on the same issue. It is thus argued that the claim of the appellants being similarly situated could not be rejected by the learned Single Judge merely on the ground that the appellants at the first instance had earlier petitioned before the apex court under Article 32 of the Constitution of India, wherein, general directions were issued in their case i.e. **Rahul Kumar Vs. State of U.P.** of which the benefit was extended by the High Court in all the similar matters.

6. On a bare perusal of the judgement rendered by the apex

court in Writ Petition (Civil) No. 378 of 2021, it is gathered that general directions on principle were issued to the State authorities for according the benefit of government orders equitably so that there is no discrimination as regards the appointment of Assistant Teachers between the same class. Although for non-compliance of the directions issued by the apex court, contempt proceedings arising therefrom were initiated which ultimately crystallized into a further direction for consideration of the appellants' representation. This direction ought to have been carried out by the State authorities at par with the similarly situated persons who straightaway approached the High Court. The failure on the part of the State authorities made the appellants run from pillar to post.

7. It is in these circumstances that the disparity which cropped up between the appellants who approached the Supreme Court directly and those who approached the High Court straightaway was agitated before this Court through a fresh writ petition.

8. The directions issued by the apex court for consideration of appellants' candidature remained unattended notwithstanding the reiteration of said directions in the contempt proceedings, but the directions issued by the High Court based on the same very apex court order have been carried out. The discriminatory treatment meted out to the appellants is nothing but a travesty of justice.

9. The writ court having regard to the fact that the appellants who had approached the apex court at the first instance would thus not be entitled to seek the implementation of apex court order before this Court unless there was a supporting case law, dismissed the writ petition. The view so taken for rejection of the writ petition, in our humble consideration, is too technical.

10. It goes without saying that any direction issued by the apex court has a binding effect upon the State, therefore, the same ought to have been implemented by the State as a matter of public duty. The situation becomes alarming when the inaction on the part of the State is noticed discriminatory. The State deserves to be visited with the cost of litigation in such cases.

11. The appellants had not placed themselves in an advantageous position and had rather projected their marks less, therefore, in the light of the principles laid down by the apex court in **Writ Petition (Civil) No. 378 of 2021** as well as by this Court in the case of **Chandra Shekhar Dwivedi v. State of U.P. and others** (Writ-A No. 1074 of 2022 decided on 14.3.2022) as well as **Secretary Basic Education Board & others v. Jubeda Bano** (Special Appeal No. 69 of 2022 decided on 8.3.2022), the

appellants deserve to be considered at par with the similarly situated persons without any further delay.

12. There is no reason as to why the benefit of above judgements may not be accorded to the appellants particularly when the SLP arising out of the judgement rendered in Special Appeal No. 69 of 2022 filed by the State has also been dismissed.

13. For the reasons recorded above, the judgment rendered by learned Single Judge is hereby set aside and the benefit of the directions issued by the apex court as well as judgements of this Court as mentioned above shall be available to the appellants in equal terms.

14. The authorities concerned are accordingly directed to consider the case of the appellants in the light of the directions issued by the apex court in the case of **Rahul Kumar v. State of U.P. and others [Writ Petition (Civil) No. 378 of 2021]** and, *inter alia*, by this Court in **Jubeda Bano case (Special Appeal No. 69 of 2022)** within a period of two months from today.

17. The special appeal is **disposed of** accordingly.

Order Date :- 8.12.2023
Fahim/-