

Court No. - 2

Case :- SPECIAL APPEAL No. - 939 of 2005

Appellant :- State Of U.P.Through Secretary Education And 2 Ors

Respondent :- Rajesh Kumar Tripathi And 3 Others

Counsel for Appellant :- C.S.C., Vishnu Dev Shukla

Counsel for Respondent :- S.P.Tripathi, Aatreya Tripathi, Avinash Tiwari, Om Prakash Mani Tripathi, Ramesh Pandey, S P Tewari

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

Heard.

One of the objections raised by learned Counsel for the respondents in this appeal is that by a common judgment, two writ petitions were allowed but this appeal has been preferred by the State authorities only in respect of one of the writ petition's while in respect of the other writ petition, the judgment has been complied.

On being confronted with this objection, learned Counsel for the State submitted that the two writ petitions are related to two different institutions in two different districts. Moreover, he relies upon several judgments of Hon'ble the Supreme Court wherein faced with a similar situation, the Supreme Court declined to accept such objection. He has relied upon the decision of a three Judge Bench of the Supreme Court of India reported in *(1995) 4 SCC 683; State of Maharashtra Vs. Digambar*; a Constitution Bench decision of the Supreme Court of India reported in *AIR 1963 Supreme Court 913; The State of Punjab Vs. Joginder Singh*; and another decision reported in *1991 Supp. (1) SCC 138; State of West Bengal & Ors. Vs. Debdas Kumar & Ors..*

On the other hand, Counsel for the respondent relied upon a judgment reported in *(2015) 1 SCC 347; State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava & Ors.*; and he has also contended that the compliance in the other writ petition was made by the Director, Secondary Education himself, therefore, the fact that the institutions were of two different districts is inconsequential.

After hearing the matter at length, what comes out is that

essentially, the question before the Writ Court was as to whether the respondents hererin had been validly and legally appointed against a sanctioned post, so as to make him entitled to salary from the State ex-chequer or not. The writ Court has proceeded on the premise that as new sections were opened in the institution, therefore, the post had to be created and accordingly, direction has been issued to the Director of Education to create necessary post in the institution in respect of L.T. Grade Teachers according to the norms fixed by the State Government, as laid down in the Governmmnt Order dated 20.11.1997 w.e.f. the date of creation of additional Sections in the institution within a period of 90 days. Further direction has been issued to the District Inspector of Schools to pay salary and arrears of salary to the petitioners and non-teaching staff w.e.f. their initial appointment or w.e.f. 01.04.1996 in the institution, as informed, the date on which the respondent claims to have been appointed. Further direction was issued to the Director, Secondary Education to grant the post and also send the budget for payment of salary to the Teacher and of the petitioners of Writ Petition No. 3161 (S/S) of 1998 w.e.f. when they were initially appointed and in respect of the petitioners of Writ Petition No. 2641 (S/S) of 1999 w.e.f 01.04.1996 or actual date of appointment of Teachers whichever is later.

Now, this appeal arises out of Writ Petition No. 3161 (S/S) of 1998. The two institutions being different and being situated in two different districts, it is inexplicable as to why they were decided by a common judgment, as the facts of the cases would be very different including the date of appointment, the number of posts required etc., however, what is striking is that this judgment was passed on 1.10.2004, thereafter, this appeal was filed in 2005, and an interim order staying the operation of the impugned judgment has been in operation all along. What is most striking is that the writ Court decided the said pleadings without any response of the State Government or the Committee of Management.

Learned Counsel for the State says that the Committee of Management had served a copy of the counter affidavit in this appeal wherein it has denied the functioning of the respondent in the institution concerned except for one month, and also, that the respondent had been paid salary by the Managing Committee itself, but we do not find the said counter affidavit on record.

This was not a matter which could have been decided without a counter affidavit of the State and the Committee of Management on the facts and circumstances in which the

respondent had been engaged in the institution in question, if at all he had been engaged and without considering the factual issues. As regards, the contention of the respondent's Counsel that the other writ petition was decided by this very judgment has not been challenged in appeal, this ground can be raised by the respondent before the writ Court itself which can be considered as per law, but as of now, we are unable to accept the judgment impugned before us in the circumstances in which it has been passed. One of the issues to be considered would be, even if such posts are created, can there be a creation of post with back date that is w.e.f. 01.04.1996 or any other back date, entitling the respondent herein to salary from the said date without any inquiry as to whether the respondent has actually worked, if so, what was the circumstances under which he was engaged by the Institution concerned; and under which provision of law? Whether the law was followed; whether there was any advertisement before engagement or not? Therefore, all these issues required factual inquiry which has not been done by the writ Court. A presumption has been drawn and based on such presumptions, the directions have been issued. Therefore, we set aside the impugned judgment in so far as it relates to writ petition No. 3161 (S/S) of 1998. Consequently, the said writ petition shall stand restored and will be considered afresh.

The appellants herein shall file their counter affidavit in the matter positively within five weeks.

Shri Vishnu Dev Shukla, learned Counsel who had earlier appeared on behalf of the Committee of Management in this appeal says that he does not have instructions any more. Nevertheless, we grant opportunity to the Committee of Management to file its response within the same period.

A copy of this judgment shall be communicated by the State authorities to the Committee of Management through the D.I.O.S. and receiving thereof shall be obtained and filed before the writ Court. Thereafter, the writ Court shall consider and decide the petition on merits taking into consideration the relevant aspect. We request the learned Single Judge to consider and decide the petition at the earliest, say within three months of filing of the pleadings or there non filing within a period prescribed herein above.

As regards, the other Writ Petition No. 2641 (S/S) of 1999, as the orders passed therein have already been complied, therefore, the said petitioners shall remain unaffected by our judgment passed today.

The writ petition shall be listed before the writ Court in the

second week of November, 2024 in top 10 cases of the day with an endorsement in the order sheet regarding our request. Our judgment shall be placed on record and the Bench Secretary should bring it to the notice of the learned Single Judge concerned.

This appeal is accordingly **disposed of** in the aforesaid terms.

Order Date :- 26.9.2024

Lokesh Kumar

[Om Prakash Shukla, J.] [Rajan Roy, J.]