

Court No. - 20

Case :- WRIT - A No. - 29270 of 2019

Petitioner :- Anand Kumar Mishra

Respondent :- State Of U.P. Thru Prin.Secy. Higher Edu.
Lucknow And Ors.

Counsel for Petitioner :- Diwakar Singh Kaushik,Raja Ram
Pandey,Rajendra Pratap Singh,Surendra Pratap Singh

Counsel for Respondent :- C.S.C.

Hon'ble Shree Prakash Singh,J.

1. Sri Surendra Pratap Singh, counsel for the petitioner submits that the matter is identical to the Writ A No. 404 of 2019 which is decided finally vide the judgment and order dated 10.04.2024 alongwith other connected petitions. He next added that by the identical impugned orders, the representation of the petitioner including the other petitioners of writ petition nos. 404 of 2019, 424 of 2019, 429 of 2019 and 29325 of 2019 were rejected and those were challenged and after the exchange of pleadings, the matter was finally heard and issue was decided vide judgment and order dated 10.04.2024. He pressed that matter is ditto identical to the matter of Writ A No. 404 of 2019 and therefore, the present petitioner is also entitled for the same relief.

2. Learned counsels appearing for the opposite parties have no objection.

3. Considering the submission of counsel for the parties, it transpires that the vide order dated 10.04.2024, the following order was passed in Writ A No. 404 of 2019.

"Heard Sri Surendra Pratap Singh, learned counsel for the petitioner, learned Standing Counsel for the State and Sri Amit Kumar Singh learned counsel for the opposite party no. 5.

Since, the joint representation given by the present petitioner including the other petitioners of the connected writ petitions has been rejected by the opposite party no. 3 collectively vide order dated 18th September 2018, therefore, all the writ petitions are being decided collectively.

Under challenge is the impugned order dated 18th September 2018 passed by the Regional Higher Education Officer, Lucknow, whereby, he rejected the financial concurrence/approval to the appointment of the petitioner along with the other identical situated petitioners of the connected writ petitions.

Factual matrix of the case is that Baba Barua Das Post Graduate Degree College, Paruiya Ashram, District Ambedkar Nagar (hereinafter referred as 'Institution') is a recognized institution and affiliated with Dr Ram Manohar Lohia Avadh University (hereinafter referred to as 'University') and statute of the University is applicable and the eligibility and service condition of non-teaching staff of affiliated college are governed by Chapter 18 of the First Statute of the University.

In the Institution, there are 18 Class IVth posts sanctioned and five posts of Class IVth employees are lying vacant due to retirement of employees, namely, Sri Ramadhar Mishra, Sri Shriram, Sri Hardev, Sri Sitaram and Sri Ram Lochan, who were retired after attaining the age of superannuation at various period of time, up to year 2014.

The Principal of the Institution sought prior permission on 20th March 2015, from opposite party number 3 to fill up Class IVth posts and prior permission was granted by the opposite party no. 3 and since, the work of the Institution was suffering, and as such, the post in question was advertised in two widely circulated daily newspapers, i.e., on 8th June 2016 and 10th June 2016.

After the aforesaid advertisement, the petitioner along with the other petitioners in connected writ petitions have applied and a letter was written by the Principal on 15th June 2016 to DIOS, Ambedkar Nagar for his consent and the DIOS, accorded his consent for being present in the Selection Committee, which was scheduled to be held on 3rd July 2016. After concluding the formalities, the interview was held on 3rd July 2016, by the Selection Committee, in which the petitioner along with the other petitioners were selected on the basis of the highest quality point mark and thereafter, the appointment letters were duly issued on 4th July 2016 and in consonance thereof, they joined on 7th July 2016 in the Institution.

Thereafter, entire papers regarding selection/appointment of the petitioners, sent to the opposite party no. 3 for prior permission/approval to the appointment of the petitioner, which is duly received in the office of the opposite party no. 3, on 5th July 2016.

Once, no decision was taken by the opposite party no. 3, on the letter dated 4th July 2016, sent by the Principal of the Institution, the petitioner along with the other petitioners of the connected writ petitions filed Writ Petition No. 27800 (S/S) of 2017, wherein, this Hon'ble Court was pleased to pass an order, on 17.11.2017, whereby, the Regional Higher Education Officer, Lucknow was directed to consider the case of the petitioners, within three months and after contempt petition was filed, being annoyed, the opposite party no. 3, passed the order on 18th September 2018 and rejected the claim of the petitioners.

Contention of the learned counsel for the petitioner is that the impugned order dated 18th September 2018 is highly arbitrary, illegal and without application of mind, as the opposite party no. 3 did not consider the records available in his office and denied that the paper book of the petitioners were not received in the office, contrary to it, the correct fact is that the same has been duly got received in the office of the Regional Higher Education Officer on 5th July 2016, to one concerned clerk, namely, Saurabh Gaur. Adding his argument, he submits that he has pleaded this fact in paragraphs 16 and 31 of the writ petition and those have not been denied as evident from paragraph 10 and 18 of the counter affidavit filed by the opposite parties thus, as per the settled law, the same is amount to admission.

He further contended that opposite party no. 3 constituted a committee for enquiry and in the enquiry report dated 5th August 2018, the Enquiry Committee submitted its report, in which he admitted that appointment of the petitioners has been made by the then Principal after constituting a Selection Committee but presently, no document is available before the Committee of Management, though, the fact remains that the then Principal, Dr Shiv Murti Verma, who retired after attaining the age of superannuation, has never been called upon by the opposite party no. 3, so as to verify the fact with respect to the appointment of the petitioners and further the Committee of Management has also been changed and the Committee of Management deliberately did not disclosed

the documents of the petitioners, which in their possession.

Adding his argument, he submits that in the information given in response to an application under Right to Information Act, it borne out that Dr RP Verma, who was; the then working as Principal, DIET in Sultanpur on 18.10.2018, he appeared as member of the Selection Committee and selection was held and further Dr Shiv Murti Verma, the then Principal has also intimated that the petitioners were appointed by the duly constituted Selection Committee and papers regarding the appointment of the petitioners were sent to the Regional Higher Education Officer in the month of July, 2016.

Concluding his arguments, he submits that the petitioners are continuously working in the Institution and they are making signatures on separate register as they have not been allowed to sign on the attendance register, for the reasons best known to the authority concerned. Therefore, submission is that findings recorded by the opposite party no. 3, are perverse and also contrary to the record, thus the impugned order dated 18.09.2018 is liable to quashed.

The learned counsel appearing for the State has controverted the above said facts and submitted that the order dated 18th September 2018 has rightly been passed, while adhering the Rules and Government Orders meant thereof and further the petitioner including the other petitioners of the connected writ petitions have never been appointed and no selection has been held. He also added that once the matter went up to the opposite party no. 3 for deciding the representation and when he called upon the record from the College, no records were submitted so far as the appointment of the petitioners are concerned. Further submits that prior permission was not granted and therefore, the appointment vitiates in the eyes of law.

Learned counsel appearing for the opposite party no. 5, has also adopted the aforesaid contention of the counsel for the State.

Having heard the counsel for the parties and after perusal of the material placed on record, it transpires that the dispute in question is with respect to grant of approval of financial concurrence and as per the alleged factual matrix, the appointment of the petitioner including the other petitioners of the connected writ petitions have been done adhering to the Rules, as the advertisements were published in two widely circulated daily newspapers and thereafter, while constituting a Selection Committee, the petitioners were appointed.

This Court has noticed the fact that the petitioner has sought an information under the RTI Act, wherein, it is apparent that Sri RP Verma, the then principal DIET, provided information that he was present in the Selection Committee and further, the then Principal of the College has also verified the fact that the appointment of the petitioners is done in his tenure, in lawful manner.

When this Court examines the aforesaid controversy on it's facts and law, it emerges that as per the information under the RTI Act, Dr RP Verma, Principal DIET informed that he was one of the member in the Selection Committee and he has signed on papers wherein, five persons (petitioners) were appointed and the selection which was held in the tenure of the then Principal, namely, Dr Shiv Murti Verma, has also fortified the contention of the petitioners, that the appointment of the petitioners have been done by duly constituted Selection Committee.

This Court has also noticed the fact that the petitioner in the writ petition has specifically mentioned in paragraph 16 that the papers were duly made received in the office of the opposite party no. 3, on 5th July 2016 and repeatedly it has been said in paragraph 31, but in the counter affidavit filed by the State, those facts are not denied and that is amount to admission on the part of the State, whereas, the fact remains that one of the plea taken for not granting the financial concurrence/approval, while deciding the representation dated 18th September 2018, is that no record with respect to the appointment is sent to the office of the opposite party no. 3, which, prima facie, seems to be contradictory.

Further, there is not a single whisper regarding the reply to the RTI, wherein, Dr RP Verma, the Principal DIET has stated that he was present in the Selection Committee and further the statement of Dr Shiv Murti Verma has also not been recorded, in the tenure of whom the selection is said to be done.

In view of the aforesaid submissions and discussions, the writ petition deserves to be allowed. Consequently, the impugned order dated 18th September 2018 is hereby quashed.

The petitioner including the other petitioners of the connected writ petitions are directed to submit a fresh claim for financial approval/concurrence before the opposite party no. 3, within a period of three weeks and if such claims are raised, the opposite party no. 3 is directed to consider and decide the same in light of the observations made hereinabove, particularly, regarding the statement of Dr RP Verma, the then Principal DIET as well as Dr Shiv Murti Verma, the then Principal of the College, including the Manager, Committee of Management within further period of eight weeks, with speaking and reasoned order.

It is also provided that if in any case, the records, which are said to be got received in the office of opposite party no. 3 is not available, the opposite party no. 3 can call for the copies of the records from the office of the Principal of the College or Manager of the Committee of Management, if those are available thereof. Further, the then Principal, Dr. Shiv Murti Verma and Dr. R.P. Verma, Principal DIET, Sultanpur are alive, their statements shall also be recorded.

The writ petition is allowed, accordingly. "

4. Since, by the same impugned order of rejection, the petitioner's representation is also turn down and therefore, the present petitioner is also entitled for the same relief.

5. In view of the above, the present petition is finally **disposed of**, while granting the benefits of the judgment and order dated 10.04.2024 passed in Writ A No. 404 of 2019.

6. Consequences shall be followed.

7. Consigned to records.

Order Date :- 6.5.2024

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