

Court No. - 34

Case :- WRIT - A No. - 4871 of 2024

Petitioner :- Asherfi Lal

Respondent :- State Of Up And 4 Others

Counsel for Petitioner :- Adarsh Singh, Indra Raj Singh

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal, J.

1. Petitioner claims that he was appointed against a short-term vacancy in the year 1993. He was paid salary till 30.06.1994. After that several long drawn litigation had taken place and finally an order was passed on 23.05.2006 granting financial approval to petitioner. Petitioner is claiming regularisation since 1993. This Court in bunch of matters had already passed detailed order on 30.09.2024 in case of **Vinod Kumar Srivastava vs. State of U.P. and others, Writ-A No. 21492 of 2024**. Pursuant to said order, State Government had issued a Government Order on 04.10.2024. The claim for regularisation has to be dealt with considering the Government Order of the year 2024.

2. Learned counsel for the petitioner submits that order impugned has been passed prior to issuance of Government Order which is in teeth of the said Government Order and guidelines laid down in judgment of **Vinod Kumar Srivastava (supra)** have not been followed. He has relied upon para no. 3 to 10 of the judgement rendered by co-ordinate Bench of this Court in case of **Shaheda Bano vs. State of U.P. and others, Writ-A No. 19679 of 2024**, decided on 11.12.2024, which are as under:-

"3. It is argued by learned counsel for the petitioner that the petitioner was appointed in the year 1996 as Assistant Teacher L.T Grade and since then he is working continuously. It is argued by learned counsel for the petitioner that the order impugned has been passed in complete violation of the law laid down by this Court in the case of Vinod Kumar Srivastava vs. State of U.P. and others (Writ A No. 21492 of 2023) dated 30.09.2024 in which a specific direction has been given by this Court in paragraph -149 of the judgment that the Regional Regularization Committee shall accord hearing to all the candidates whose claim is under consideration for regularization. It is further observe that Committee shall ask all the Management

Committee of the Institution to provide necessary documents which are needed for consideration of regularization. Paragraph-149 of the aforesaid judgment reads as follows:-

"149. Considering the facts and circumstances of the case, this Court is of the opinion that the matters which have been remitted back to the Regularization Committee shall be considered in the light of the following directions:

(i) The Regional Regularization Committee shall accord fresh consideration in all remitted matters within a period of six weeks from the date of remand.

(ii) As far as possible, the Regional Regularization Committee shall accord hearing to all the candidates whose claim is under consideration for regularization.

(iii) The Committee shall ask all the Management Committees of the Institution to provide necessary documents which are needed for consideration of regularization of the candidates within a period of two weeks from the date of this order. In case the documents are not provided by the Management Committees, the Regularization Committee shall proceed against the institution in question under the provisions of Act of 1921.

(iv) The Regularization Committee shall further accord due consideration to provision of Act of 1982 while considering the claim for regularization especially for all those candidates whose case fall under Sections 33-B, 33-C, 33-F, and 33-G.

(v) It is further provided that in view of clarification of Government Order dated 26.09.2024, all the candidates whose matters are under consideration before the Regional Regularization Committee, shall be paid their salary which has been stopped pursuant to the order dated 09.11.2023 within a period as prescribed in the clarification order dated 26.09.2024, till their claims are finally decided.

(vi) Further all the candidates whose claim has not been decided by the Regularization Committee shall be permitted to work.

(vii) It is clarified that in all those cases where the claim for regularization was rejected and the writ petition has been allowed by this Court and the matter has been remitted back for fresh consideration, those candidates shall be entitled for their entire salary till their claim is decided afresh. "

4. It is argued that taking into consideration the aforesaid judgment, a Government Order dated 04.10.2024 was also issued by the State-Government which reads as follows:-

महत्वपूर्ण

संख्या-1559/15-05-2024-1601 (696) / 2019 टी०सी०

प्रेषक,

कृष्ण कुमार गुप्त, विशेष सचिव, उ०प्र० शासन ।

सेवा में,

शिक्षा निदेशक (माध्यमिक) उ०प्र०, प्रयागराज ।

माध्यमिक शिक्षा अनुभाग-5 लखनऊ: दिनांक 04 अक्टूबर, 2024

विषय:- मा० उच्च न्यायालय, इलाहाबाद में याजित रिट याचिका स 0-21492/2023 विनोद कुमार श्रीवास्तव व अन्य बनाम उ० प्र० राज्य व अन्य के सम्बन्ध में ।

महोदय,

कृपया उपर्युक्त विषयक अपने पत्रांक सामान्य (1) तृतीय / 17264/2024-25, दिनांक 04.10.2024 एवं पत्रांक सामान्य (1) तृतीय /17773 / 2024-25, दिनांक 28.10.2024 का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके माध्यम से मा० उच्च न्यायालय, इलाहाबाद में योजित रिट याचिका संख्या-21492/2023 में पारित आदेश दिनांक 30.09.2024 एवं 03.10.2024 की प्रति एवं रिट याचिका संख्या-907 / 2024 राकेश त्रिपाठी बनाम उ०प्र० राज्य व अन्य में पारित आदेश दिनांक 07.02.2024 की प्रति संलग्न कर प्रेषित करते हुए प्रकरण में अग्रतर कार्यवाही हेतु आदेश/निर्देश प्रदान किये जाने का अनुरोध किया गया है।

2- विषयांकित रिट याचिका में मा० न्यायालय द्वारा दिनांक 30.09.2024 क विस्तृत आदेश पारित किया गया है। उक्त आदेश में तदर्थ शिक्षकों के विनियमितीकरण के प्रकरण पर विचार करने हेतु मा० न्यायालय द्वारा मापदण्ड / दिशा-निर्देश निर्गत किये गये हैं। उक्त के अतिरिक्त सम्प्रकृति की रिट याचिका संख्या -907 / 2024 में भी पारित आदेश दिनांक 07.02.2024 में मा० न्यायालय द्वारा तदर्थ शिक्षकों के विनियमितीकरण के प्रकरण पर विचार करने हेतु कतिपय बिन्दु निर्धारित किये गये हैं।

3- रिट याचिका संख्या-907 / 2024 राकेश त्रिपाठी बनाम उ०प्र० राज्य व अन्य में पारित आदेश दिनांक 07.02.2024 के प्रस्तर-15 में मा० न्यायालय द्वारा पारित आदेश/निर्धारित विन्द निम्नवत है :-

".....15. The Director of Education (Secondary) U.P. shall, therefore, ensure that Regional Selection Committees while rejecting claim of Ad-hoc teachers for regularization must returned findings of fact with reason broadly on following points:

(i) Existence of vacancy on the date of selection.

(ii) Eligibility of candidate selected on the date of selection.

(iii) Approval by the District Inspector of Schools;

(iv) If approval under the orders of this Court, justification for such disapproval or withholding of approval prior to intervention of Courts;

(v) Status of vacancy as on date;..."

4. " रिट याचिका संख्या-21492/2023 विनोद कुमार श्रीवास्तव व अन्य बनाम उ० प्र०

राज्य व अन्य में पारित आदेश दिनांक 30.09.2024 के प्रस्तर-149 में मा० न्यायालय द्वारा अपने निष्कर्ष का प्रतिपादन किया गया है, जिसमें तदर्थ शिक्षकों के विनियमितीकरण के प्रकरण पर विचार करने हेतु मापदण्ड / दिशा-निर्देश का निर्धारण किया गया है। प्रस्तर-149 में पारित आदेश एवं निर्धारित दिशा-निर्देश निम्नवत् है :-

".....149. Considering the facts and circumstances of the case, this Court is of the opinion that the matters which have been remitted back to the Regularization Committee shall be considered in the light of the following directions:

(i) The Regional Regularization Committee shall accord fresh consideration in all remitted matters within a period of six weeks from the date of remand.

(ii) As far as possible, the Regional Regularization Committee shall accord hearing to all the candidates whose claim is under consideration for regularization.

(iii) The Committee shall ask all the Management Committees of the Institution to provide necessary documents which are needed for consideration of regularization of the candidates within a period of two weeks from the date of this order. In case the documents are not provided by the Management Committees, the Regularization Committee shall proceed against the institution in question under the provisions of Act of 1921.

(iv) The Regularization Committee shall further accord due consideration to provision of Act of 1982 while considering the claim for regularization especially for all those candidates whose case fall under Sections 33-B, 33-C, 33-F, and 33-G.

(v) It is further provided that in view of clarification of Government Order dated 26.09.2024, all the candidates whose matters are under consideration before the Regional Regularization Committee, shall be paid their salary which has been stopped pursuant to the order dated 09.11.2023 within a period as prescribed in the clarification order dated 26.09.2024, till their claims are finally decided.

(vi) Further all the candidates whose claim has not been decided by the Regularization Committee shall be permitted to work.

(vii) It is clarified that in all those cases where the claim for regularization was rejected and the writ petition has been allowed by this Court and the matter has been remitted back for fresh consideration, those candidates shall be entitled for their entire salary till their claim is decided afresh...?

5. उल्लेखनीय है कि मा० न्यायालय का उक्त आदेश मात्र दिनांक 30.12.2000 तक नियुक्त तदर्थ शिक्षकों के सम्बन्ध में है, न कि वर्ष 2000 के पश्चात नियुक्त तदर्थ शिक्षकों हेतु है। इस स्थिति को मा० न्यायालय ने अपने उक्त आदेश दिनांक 30.09.2024 के प्रस्तर-150 में स्पष्ट किया है, जो निम्नवत् है :-

"..... 150. The directions issued is only pertaining to the appointments

made against short term vacancy/ad hoc appointment upto 30.12.2000. Those cases in which appointment has been made post 2000, the judgment and directions given by this Court would not apply.?

अतः इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि उपर्युक्त प्रस्तर -3 व 4 में वर्णित रिट याचिकाओं में पारित आदेश / निर्गत दिशा-निर्देश के आलोक में तदर्थ शिक्षकों के विनियमितीकरण के प्रकरण पर गुण-दोष की विवेचना एवं सम्पूर्ण सुसंगत साक्ष्यों के विश्लेषण के साथ मेरिट के आधार पर नियमानुसार / निष्पक्ष एवं निर्विवाद निर्णय लेकर मा० न्यायालय द्वारा नियत समयावधि के अन्तर्गत विनियमितीकरण के प्रकरणों को निस्तारित किये जाने हेतु प्रदेश के समस्त मण्डलीय संयुक्त शिक्षा निदेशकों / मण्डलीय समितियों को आवश्यक दिशा-निर्देश तत्काल निर्गत करने का कष्ट करें।

भवदीय,

(कृष्ण कुमार गुप्त)

विशेष सचिव ।

संख्या-1559(1)/15-05-2024-1601 (696) / 2019 टी० सी०, तद्विनांक ।
प्रतिलिपि समस्त संयुक्त शिक्षा निदेशक (मा०) द्वारा शिक्षा निदेशक (मा०), उ०प्र० प्रयागराज को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित ।

आज्ञा से,

(अशोक कुमार)

संयुक्त सचिव।"

5. In this view of the matter, it is argued that since the order impugned has been passed by the Regularization Committee in violation of the law laid down by this Court in the case of Vinod Kumar Srivastava (Supra) as well as the Government Order and the same should be quashed. It is argued that though the petitioner is working continuously but his salary is not being paid.

6. Heard learned counsel for the parties and perused the record.

7. While going through the order dated 18.06.2024 the Court is of the prima facie opinion that neither any opportunity of hearing has been provided to the petitioner nor the Management Committee of the Institution was directed to provide necessary documents which are needed for consideration of regularization of the petitioner.

8. This fact is also admitted by the learned Standing Counsel appearing on behalf of the respondents.

9. In this view of the matter, the order dated 18.06.2024 passed by the Respondent No.3 is liable to be set aside and is hereby set aside. Respondent No.3 is directed to pass a fresh order strictly in accordance with law, specially in terms of the direction given by this Court in the case of Vinod Kumar Srivastava (Supra) as well as Government Order dated 04.10.2024 within a period of three months from the date of presentation of certified copy of this order.

10. It is made clear that since the petitioner is working continuously, he shall be

entitled for his salary till his claim is decided afresh."

3. In view of said fact, the order dated 03.02.2024 passed by Respondent No.3 is liable to be set aside and is hereby set aside. Respondent No.3 is directed to pass a fresh order strictly in accordance with law, specially in terms of the direction given by this Court in the case of **Vinod Kumar Srivastava (Supra)** as well as Government Order dated 04.10.2024 within a period of three months from the date of presentation of certified copy of this order.

4. It is made clear that since the petitioner is working continuously, he shall be entitled for his salary till his claim is decided afresh.

Order Date :- 24.7.2025

V.S.Singh