

Court No. - 7

Case :- WRIT - A No. - 2364 of 2015

Petitioner :- Sushma Pandey

Respondent :- State Of U.P.And 3 Others

Counsel for Petitioner :- Ajay Kumar,Akhileshwar Singh

Counsel for Respondent :- Ashish Kumar Singh,C.S.C.,R.B.Yadav,Ram Bilas Yadav

Hon'ble Prakash Padia,J.

1. Heard Sri Ajay Kumar, learned counsel for the petitioner, Sri Ashish Kumar Singh, learned counsel for respondent no. 4 and learned Standing Counsel for the State-respondent nos. 1, 2 and 3.

2. The petitioner has preferred the present petition inter alia with the following prayer:-

"(A) Issue a writ, order or direction in the nature of certiorari quashing order dated 22.08.2014, and the advertisement dated 03.09.2014 (Annexure 4 and 5 to the writ petition) as far as it relates to applicant/petitioner, issued by respondent no. 4.

(B) Issue a writ, order or direction in the nature of mandamus commanding the respondents to treat the petitioner as full time teacher in their institution namely Kasturba Gandhi Balika Vidyalaya Shamsabad, District Agra and pay her salary accordingly."

3. Facts in brief as contained in the present petition are that the petitioner was initially appointed on contractual basis on the post of Assistant Teacher vide order dated 26.12.2006. On the basis of aforesaid, contract of the petitioner renewed from time to time. The last renewal was continued till 31st May, 2014. On 27.08.2014 an order was passed by respondent no. 4/District Basic Education Officer, Agra, District Agra by which the contract of services of the petitioner was terminated. It is argued that the services of the petitioner are governed by the circular issued by the State Project Director. On 12.10.2012 a circular was passed by respondent no. 2. Certain guidelines were contained in the aforesaid circular but without compliance of the same, the decision has been taken. It is further argued that while passing the aforesaid order certain allegations were also made against the petitioner

but before passing of the same no notice and opportunity has been provided to the petitioner. Counsel for the petitioner also placed reliance upon the judgment and order passed by Hon'ble Apex Court ***in Case of U.P. State Road Transport Corporation & Ors. Vs. Brijesh Kumar and Anr 2024 0 Supreme(SC) 711.*** Apart from the same counsel for the petitioner also placed reliance upon judgment and order passed by Division Bench of this Court in ***Special Appeal No. 576 of 2015 (Nem Kumari And 7 Others Vs. State Of U.P. And 5 Others) decided on 25.08.2015.*** Order reads as follows:-

"8 of the original 18 writ petitioners are in appeal before us challenging a judgment rendered by the learned Single Judge on 07 August 2015.

The learned Single Judge found that all the appellants had been appointed on contract basis and that their renewal was subject to certification of satisfactory work.

The learned Single Judge has found that the order of 06 July 2015 passed by the District Basic Education Officer, Bulandshahar which was impugned in the writ petition recorded cogent reasons in justification of non renewal of their contracts and consequential termination of service. He accordingly proceeded to dismiss the writ petition, however, giving the appellants liberty to approach the competent higher authority if they were so aggrieved by the order passed by the District Basic Education Officer.

All the appellants were appointed as part-time teachers in the Kasturba Gandhi Balika Vidyalaya established under a scheme formulated by the Government of India for setting up educational institutions for the benefit of the girl child residing in backward development blocks. The orders of appointment of all the appellants show that their engagement was contractual and was for a period of one year subject to renewal upon it being found that their work and conduct was satisfactory. The District Basic Education Officer, Bulandshahar while passing the order dated 06 July 2015 has found that the work and conduct of the appellants was not satisfactory and basing his order on the recommendation of the Evaluation Committee proceeded to reject the claims for renewal and consequently the services of the appellants came to an end.

Learned counsel for the appellants appearing in support of this appeal has submitted that the working of the institutions in question and the assessment of the work of teachers stood governed by the provisions of a circular dated 12 October 2012 issued by the State Project Director which inter alia provided that the work of teachers employed in the institutions must be assessed objectively and reasons in respect thereof be clearly recorded. The circular further provided that in no case would orders terminating their contractual engagement be passed without the approval of the State Project Director, Sarva Shikshya Abhiyan, U.P. It is his submission that in light of the above circular, the power to terminate the contractual engagement stood vested in the State Project Director and that the District Basic Education Officer, Bulandshahar had clearly exceeded the jurisdiction vested in him in proceeding to terminate their contract.

*In support of his submission, learned counsel for the appellant has further referred to a judgment rendered by a learned Single Judge of the Court in **Sumita Devi Vs. State of and others** [Service Single No. 3510 of 2014, decided on 17 Jul 2014], wherein faced with a similar contention, the learned Single Judge held as follows:-*

"From a perusal of the impugned order, it appears that the decision has been taken unilaterally by the District Basic Education Officer, Hardoi based upon the report obtained from the Warden and the order does not indicate that any opportunity of hearing was given to the petitioner.

It is further noticed that the impugned order dated 20.6.2014 has been passed by the District Basic Education Officer, Hardoi. Under the G.O. dated 29.7.2013 the District Basic Education Officer, Hardoi is not the competent authority inasmuch as the competent authority is the District Magistrate, who is the Chairman of the District Selection Committee under the Sarva Shiksha Abhiyan.

In this view of the matter, the impugned order dated 20.6.2014 is wholly illegal and without jurisdiction and in violation of Government Order dated 29.7.2013 (Annexure-14 to the writ petition) and cannot survive and is accordingly quashed.

The writ petition is allowed.

The matter is remitted to the District Magistrate, Hardoi, respondent no.6 to reconsider the matter and pass fresh order within one month from the date a certified copy of this order is received by him after giving an opportunity of hearing to the petitioner."

The applicability of the circular dated 12 October 2012 is not disputed. We find that the District Basic Education Officer has proceeded to bring the contractual engagement to an end consequent to the recommendations of an Evaluation Committee and the powers stated to have been exercised in light of the Government Order dated 29 July 2013. The order of 06 July 2015 was preceded by the issuance of show cause notices by the District Basic Education Officer. However, the said order neither recites nor is it submitted before us that the same came to be issued consequent to the approval having been granted to the proposed action by the State Project Director in accordance with the provisions of the circular dated 12 October 2012.

Accordingly and in light of the above, we proceed to modify the judgment and order passed by the learned Single Judge to the extent that the appellants shall be entitled to represent and place their claims with respect to the validity of the order dated 06 July 2015 passed by the District Basic Education Officer, Bulandshahar before the State Project Director who shall proceed to consider the same pursuant to the provisions of the circular dated 12 October 2012 and pass appropriate orders in accordance with law. The order of the District Basic Education Officer impugned in the writ petition shall abide by the decision that the State Project Director may ultimately take pursuant to the completion of the exercise as mandated above.

*Subject to the above observations, this Special Appeal shall stand **disposed of**."*

4. It is admitted by the counsel for the parties that the controversy involved in the present petition is absolutely identical as in Case of *Nem Kumari (Supra)*, hence the present case be also disposed of in terms of aforesaid judgment.

5. Heard counsel for the parties and perused the record.

6. In the facts and circumstances of the case, the present writ petition is **disposed of finally**, permitting the petitioner to represent her case and place her claims with respect to the validity of the order dated 27.08.2014 passed by the District Basic Education Officer, Agra, District Agra before the State Project Director, U.P Education for all project Board, Nishatganj, Lucknow who shall proceed to consider the same pursuant to the provisions of the circular dated 12 October 2012 and pass appropriate orders in accordance with law. The order of the District Basic Education Officer impugned in the writ petition shall abide by the decision that the State Project Director may ultimately take pursuant to the completion of the exercise as mandated above.

Order Date :- 18.2.2025

Arti