

Court No. - 33

Case :- WRIT - A No. - 2848 of 2022

Petitioner :- Rajesh Kumar And 2 Others

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

Counsel for Petitioner :- Prabhakar Awasthi, Rohit Upadhyay

Counsel for Respondent :- C.S.C., Sanjay Kumar Singh

Hon'ble Ashutosh Srivastava, J.

Heard Sri Prabhakar Awasthi, learned counsel for the petitioners, Sri Sanjay Kr. Singh, learned counsel for respondents No.3 & 4 and learned Standing Counsel for the State-respondents.

The writ petitioners, who belong to Scheduled Caste category and claim to be the Assistant Teacher of Senior Basic School / Headmaster of Junior Basic School, have approached this Court assailing the order dated 2.12.2021, passed by the Director of Education (Basic) U.P. at Lucknow, whereby the Director has refused to interfere with the order dated 19.3.2018 passed by the District Basic Education Officer, Lalitpur, reverting the petitioners and freezing their salary by consequential order dated 5.11.2018, in terms of the order dated 27.4.2012 passed by the Apex Court in Civil Appeal No. 2606 of 2011 (*Uttar Pradesh Power Corporation Ltd. vs. Rajesh Kumar and others*) as also the Government Order dated 21.8.2015. A further prayer in the nature of mandamus, commanding the respondent No.1 to resolve the issue as to whether there exists any requirement of quantifiable data for the purposes of retaining the promotional post of the petitioners in terms of the law as clarified in the case of *Jarnail Singh and others vs. Lachhmi Narain Gupta and others*, reported in (2018) 10 SCC 396, has been prayed for.

It is contended on behalf of the petitioners that by order dated 3.5.1999, issued by the District Basic Education Officer, Lalitpur, the petitioners were appointed as Assistant Teacher in Junior Basic School in pay-scale of Rs. 3600-5350/- on probation for a period of one year. Thereafter by order dated 6.1.2003, the petitioners were granted promotion as Assistant Teacher of Senior Basic School / Headmaster of Junior Basic School in pay-scale of Rs. 5500-9000/-. Further by order dated 23.7.2010, the District Basic Education Officer, Lalitpur, granted promotion to the petitioners as Headmaster of Senior Basic School.

It is further contended that the petitioners were working on the

respective posts when the validity of Section 3(7) of U.P. Act No.4 of 1994 was struck down by the Supreme Court vide judgement and order dated 27.4.2012 passed in the case of ***Uttar Pradesh Power Corporation Ltd. vs. Rajesh Kumar and others*** reported in (2012) 7 SCC 1. Since the petitioners were given the benefit of the aforesaid provision, while promoting them the District Basic Education Officer passed an order dated 19.3.2018 reverting the petitioners w.e.f. 13.8.2004. The order dated 19.3.2018 came to be challenged in Writ-A No. 9671 of 2018 (*Rajesh Kumar and 2 others vs. State of U.P. and others*) which writ petition was dismissed vide order dated 10.4.2018 on the ground that the order dated 19.3.2018 had been passed pursuant to the directions issued by the Apex Court in ***Uttar Pradesh Power Corporation Ltd. (supra)***. In contempt proceedings arising out of the decision of the Apex Court, the Apex Court was pleased to observe that no writ petition in such matters is to be entertained by the High Court. However, while dismissing the writ petition, it was left open for the petitioners to approach the Committee, chaired by the Principal Secretary, Department of Personnel, State of U.P., who was stated to have been conferred jurisdiction to entertain such grievances under the orders of the Hon'ble Apex Court.

It is further submitted that the order dated 5.11.2018, passed by the District Basic Education Officer, whereby the salary of the petitioners was freezed, was also assailed in Writ-A No. 25098 of 2018 which writ petition was also dismissed by order dated 28.11.2018. Subsequently an order dated 13.8.2019 came to be passed by the Finance and Accounts Officer (Basic Shiksha) in pursuance of the order dated 19.3.2018 requiring the Block Education Officer, Lalitpur, to produce the original Service Book of the petitioners with intent to refix the salary of the petitioners at lower level. The said order/communication was yet again assailed in Writ-A No. 15624 of 2019 which too was dismissed by order dated 1.10.2019. In Special Appeal Defective No. 41 of 2020 as also Special Appeal Defective No. 43 of 2020, filed against the order dated 1.10.2019 passed in Writ-A No. 15624 of 2019, the Special Appellate Bench while dismissing the Special Appeals by judgement and order dated 21.1.2020 observed that it was open to the petitioners to approach the Principal Secretary or the Head of Department i.e. Director of Education (Basic). It is stated that the petitioners, in terms of the liberty so granted, filed a representation before the Director of Education (Basic) which was sent by registered post on 4.2.2020 when no action was taken pursuant to the representation the petitioners were constrained to file Writ-A No. 14519 of 2020 which was disposed of by directing the respondent No.2 to decide the case of the petitioners vide order

dated 19.1.2021. When the concerned respondents did not comply with the directions of the Writ Court dated 19.1.2021, the petitioners filed contempt which was disposed of by order dated 24.6.2021 by requiring the opposite party therein to comply with the directions of the Writ Court. It is contended that in compliance of the order dated 19.1.2021 passed in Writ-A No. 14519 of 2020 the impugned order dated 2.12.2021 has been passed.

Learned counsel for the petitioner vehemently contends that the representation of the petitioners was liable to be decided by the Principal Secretary Department of Personnel State of U.P. in terms of the direction of the Apex Court, however, the impugned order has been passed by the Director of Education (Basic) and as such according to the petitioners, the order is without jurisdiction and is liable to be set aside. He further submits that the case of the petitioners is liable to be considered in terms of subsequent decision of the Apex Court in the case of **Jarnail Singh and others vs. Lachhmi Narain Gupta and others (supra)** and rejection of the claim in terms of the decision rendered in the case of **Uttar Pradesh Power Corporation Ltd. (supra)** is unwarranted.

Sri Sanjay Kr. Singh, learned counsel representing respondent No. 3 & 4, per contra submits that the submissions advanced by learned counsel for the petitioners does not merit consideration and the writ petition is not liable to be entertained in view of the observations of the Apex Court in the contempt proceedings initiated consequent to the decision in **Uttar Pradesh Power Corporation Ltd. (supra)** wherein the Apex Court has observed that persons who were aggrieved by the reversion order could approach the Principal Secretary, Department of Personnel State of U.P. / Head of Department in respect of the employees of the State and the Managing Director of the Corporations (competent authority/appointing authority) who have been nominated for deciding the claim of such aggrieved persons.

A perusal of the order passed by the Apex Court in the contempt proceedings, which have been passed on by learned counsel representing respondents No. 3 & 4 for perusal of the Court, reveals that the Apex Court had required the grievance of the persons like the petitioners, who were reverted, to be decided by the Principal Secretary, Department of Personnel State of U.P. / Head of Department in respect of employees of the State and the Managing Director of the corporations in respect of employees of the corporations but the said order relates to the year 2015.

Learned counsel representing the respondents has not been able

to apprise the Court as to the current status of the contempt proceedings and as to whether any final orders have been passed in such proceedings.

In such circumstances, the Court is of the opinion that the respondents may file an appropriate affidavit bringing on record the orders passed by the Apex Court referred to by them in their submissions. The affidavit may also disclose the current status of the proceedings before the Apex Court.

List this case on 3.11.2022 by which time needful may be done.

Order Date :- 29.9.2022

Vandana

(Ashutosh Srivastava,J.)