

**Court No. - 36**

**Case :-** WRIT - A No. - 16849 of 2019

**Petitioner :-** Smt. Kavita Singh

**Respondent :-** State Of U.P. And 5 Others

**Counsel for Petitioner :-** Ashish Agrawal

**Counsel for Respondent :-** C.S.C., Siddharth Khare

**HON'BLE PIYUSH AGRAWAL, J.**

1. Heard Mr. Ashish Agrawal, learned counsel for the petitioner, Mr. Siddharth Khare, learned counsel for the respondent nos. 5 & 6 and Ms. Shruti Malviya, learned Brief Holder for the State-respondents.
2. By means of this writ petition, the following prayer has been made:-

*“(i) Issue a writ or direction or pass an order in the nature of Certiorari quashing the impugned order dated 04.07.2019 passed by District Basic Education Officer, Prayagraj (Annexure No.2 to this writ petition).*

*(ii) Issue a writ or direction or pass an order in the nature of mandamus commanding the respondents not to re-advertise the post of Principal (Headmistress), Ram Kali Balika Purva Madhyamik Vidyalaya, Sonai, Karchhana, Allahabad pursuant to the impugned order dated 04.07.2019;*

*(iii) Issue a writ or direction or pass an order in the nature of Mandamus commanding the respondents not to cause any interference in the petitioner's working on the post of Principal (Headmistress) in Ram Kali Balika Purva Madhyamik Vidyalaya, Sonai, Karchhana, Allahabad;*

*(iv) Issue a writ or direction or pass an order in the nature of Mandamus commanding the respondents to pay and*

*continue to pay salary and its arrears, month to month, to the petitioner for the post of Principal (Headmistress) of Ram Kali Balika Purva Madhyamik Vidyalaya, Sonai, Karchhana, Allahabad*

(v) .....

(vi) ..... ”

3. Brief facts of the case are that counsel for the petitioner submits that the petitioner was duly appointed as Assistant Teacher in Dr. Ambedkar Junior High School, Nevada, Kaushambi (hereinafter referred to as “the institution”), whose appointment was duly approved by District Basic Education Officer vide order dated 17.10.1995. Since 1995 to 13.05.2014, the petitioner continuously discharged her services as an Assistant Teacher i.e. about 19 years.

4. In the year 2016, in Ram Kali Balika Purva Madhyamik Vidyalaya, Sonai, Karchhana, Allahabad, four posts of Assistant Teachers and one post of Principal (Headmistress) fell vacant. In pursuance thereof, an advertisement was issued in the daily newspapers and the petitioner, who possesses the requisite qualification for the post of Principal (Headmistress), applied for the same.

5. Vide its letter dated 28.07.2016, the District Basic Education Officer, nominated the departmental representative and the selection process were completed. The list of selected candidates for the post of Headmistress were prepared in which three candidates were selected including the petitioner, who achieved the highest marks.

6. The management forwarded the letter on 02.06.2017 for grant of approval. Since the matter was pending, in spite of elapse of one month, but in view of the Rule 10 of U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Services of Teachers) Rules, 1978, deemed approval to the appointment of the petitioner was given. On 18.07.2017, an appointment letter was issued to the petitioner with the direction to join within 15 days from the date of issuance of joining letter. Thereafter, the petitioner joined the post of Headmistress on 25.07.2017 and discharged her duties continuously, but the salary for the post of Principal was not disbursed.

7. Being aggrieved from the same, the petitioner filed Writ-A No.1411/2019,

which was disposed of vide order dated 31.01.2019, directing the petitioner to make a representation ventilating all her grievance before the District Basic Education Officer within a period of three weeks from date of order along with the certified copy of the order, on which a fresh order shall be passed. In pursuance thereof, the petitioner submitted a detailed representation on 14.12.2019. Thereafter, the impugned order has been passed non-suiting the petitioner on the ground of experience certificate and approval by BSA not an record, as per Rule 10 of Rules, 1978. Hence the present petition.

**8.** Learned counsel for the petitioner has submitted that the petitioner submitted all requisite documents along with experience certificate of 19 years i.e. from 21.07.1995 to 31.05.2014 worked as Assistant Teacher in the institution, photocopy of the same is annexed as **Annexure No.4** to the present writ petition, but the experience certificate of the petitioner appears to have been manipulated by the present Manager, Akash Singh. On the basis of which, the petitioner has been non-suited by the impugned order. He further submits that it is not the case of the respondents that the petitioner do not possess requisite qualification for the post of Headmistress. He next submits that all the certificates, which have been submitted by the petitioner bears her signatures, but the experience certificate, which has not been submitted by the petitioner, does not bear any signature of her. He further points out that the alleged experience certificate bears the signature of one Shakuntala Gupta bearing at Serial No.2 in the selected list of Headmistress. He prays for allowing the present writ petition.

**9.** *Per contra*, learned Standing Counsel supports the impugned order by submitting that there is no approval order on record of the appointment of the petitioner, hence the claim of the petitioner for appointment on the post of Headmistress in the institution has been rejected. It is further submitted that since the experience certificate as Assistant Teacher was not found to be correct, hence the claim has rightly been rejected.

**10.** Counsel appearing for the respondents no. 5 & 6 submits that the petitioner has submitted the experience certificate of Assistant Teacher is of Smt.

Savitri Devi Balika Junior High School, Allahpur, Allahabad, which has been forwarded by the Manager of the institution. Therefore, it is incorrect on the part of the petitioner to submit that the experience certificate of 19 years of working as Assistant Teacher issued by Dr. Ambedkar Junior High School, Nevada, Kaushambi. He further submits that no such experience certificate issued from the institution as claimed by the petitioner. He further submits that the attendance register also shows that the petitioner worked as Assistant Teacher in the institution. He prays for dismissal of the writ petition.

11. After hearing the parties, the Court has perused the records.

12. The record reveals that the petitioner was appointed as an Assistant Teacher in the institution namely; Dr. Ambedkar Junior High School, Nevada, Kaushambi. Since the institution was aided and duly recognized, the salary has been paid from the Government Exchequer. Thereafter, in the year 2015, the petitioner started working as an Assistant Teacher at Ramkali Balika Purva Madhyamik Vidyalaya, Karchhana, Prayagraj on ad-hoc basis and honorarium was paid monthly to her. On 17.07.2016, advertisement was published for the post of Principal (Headmistress) and since the petitioner possess the requisite qualification, applied for the same and after due process, the list of selected candidates were prepared in which the petitioner was declared as selected candidate and the selected list was submitted on 02.06.2017 for approval as per Rule 10 of Rules, 1978.

13. In terms of Rule 10 of *U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Teachers) Rules, 1978*, the BSA was required either to pass an appropriate order within the period of 30 days granting approval or return the papers for removing the defects, if any, but failed to do so. After a lapse of 30 days, the appointment letter was issued on 18.07.2017 to the petitioner and petitioner joined her services on 25.07.2017 and since then, she was discharging her services diligently.

14. It has not been disputed that the documents were sent for approval and after a lapse of 30 days, if no communication has been received, then as per the Rule 10 (5) (iii) of Rules, 1978, it will be deemed that the approval has been

granted.

15. This Court in the case of *Satendra Mani Dubey Vs. District Basic Shiksha Adhikari, Basti and 3 others (Writ-A No. 16783 of 2019)* has observed that after lapse of 30 days from the date of submission of documents for grant of approval, deemed approval shall be made. In view of the said judgment, the first ground goes against the respondent and on the said ground, the petitioner cannot non-suited.

16. Regarding second ground, which has seriously been contested by the respondent about the correctness and genuineness of the experience certificate filed in support of the claim of the petitioner, this Court by order dated 1.5.2024, summoned the original record and with the permission of the Court, the counsel for the parties were permitted to look into it.

17. On perusal of the original record, it shows that the documents (photocopies of Mark-sheet and experience certificate), which were filed by the petitioner in support of her claim, runs from page nos. 32 to 41, were duly signed except the experience certificate (annexed at page no.41 of the original record, the said fact creates doubts about the genuineness of the same as to whether the same was submitted by the petitioner or some malpractices have been undertaken.

18. On perusal of the original record, it shows that all the documents filed by the petitioner in support of her candidature, which were duly been countersigned as well as self-attested except the Experience Certificate. The original record was shown to the counsel for the petitioner as well as counsel for the respondents. Counsel for the petitioner, on instructions, submits that the Experience Certificate (at Page No.41 of the original record) was never filed by the petitioner, the documents, which were filed by the petitioner, all were duly signed and self-attested, therefore, there is no occasion for not signing the Experience Certificate (at Page No.41 of the original record). The counsel for the State-respondents could not rebut the said submission. They only argued that the documents forwarded by the Manager of the institution has been produced before the Court.

19. The said fact surprised the Court also as to why and under what circumstances, the documents were accepted by the respondent without verifying the signature on the same. Once the documents have been submitted by the petitioner in support of her candidature, which were duly signed except the Experience Certificate (at Page No.41 of the original record), why have the respondents accepted the same, which shows the mala-fide intention of the respondents. Even in the counter affidavit filed by the respondents, not a word has been whispered about the same

20. In view of the facts and circumstance of case, the impugned order dated 04.07.2019 cannot sustain in the eye of law and the same is hereby quashed.

21. Accordingly, the writ petition is *allowed*. The matter is **remanded** to the authority concerned only to verify as under.

22. A mandamus is issued to the respondent no.3 to verify the Experience Certificate, copy of which has been annexed as *Annexure No.4*, at Page Nos. 51 & 52 of the present writ petition from the institution of its issuance within one month from today. If it is found to be correct/genuine, the petitioner shall be permitted to discharge her duty as Headmistress.

23. Further, Mandamus is issued to respondent no.4 to pay all arrears of salary and to pay month to month salary to the petitioner within 30 days, thereafter.

24. The original record has been returned to the learned ACSC in the Court itself.

**Order Date :- 31.05.2024**

Pravesh Mishra/-