

Court No. - 38

Case :- WRIT - A No. - 6994 of 2020

Petitioner :- Vijay Narayan Tripathi

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

Counsel for Petitioner :- Yogesh Kumar Saxena

Counsel for Respondent :- C.S.C., S.K. Pandey

Hon'ble Pankaj Bhatia,J.

Supplementary affidavit filed today is taken on record.

The present petition has been filed for the following reliefs:-

"a) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 16.5.2020 passed by respondent no. 2."

The contention of the counsel for the petitioner is that the petitioner had passed the B.Ed. examination in the session 2004-05 from Dr. Bhimrao Ambedkar University, Agra and joined the services on the basis of the said degree and was appointed on 31.12.2010 and since then he is working. It is alleged that on the directions given in PIL, this Court had directed that an investigation be conducted with regard to the alleged fake degrees. In pursuance to the said, an S.I.T. was constituted and several FIRs were also lodged. On the basis of the said S.I.T., a show cause notice was issued to the petitioner and now his services have been terminated by means of an order dated 16.5.2020 only on the ground that the mark-sheet and the degree issued is fake and void.

Counsel for the petitioner has drawn my attention to an order passed in Special Appeal arising out of an order of the learned Single Judge dated 29.4.2020 passed in Writ-A No. 190 of 2020, wherein a similar question was involved. The learned Single Judge in Writ-A No. 190 of 2020 repelled the challenge and dismissed the writ petition, against which the Special Appeal No. 240 of 2020 was filed. The said Special Appeal was heard and an interim order dated 31.7.2020 was passed, whereby the operation and effect of the order of learned Single Judge was stayed. Similar order has also been passed in Special Appeal Defective No. 401 of 2020.

As the matter is engaging the attention of Special Appeal court, I respectfully follow the interim order passed by the Special Appeal Court.

Sri Shrawan Kumar Pandey appearing on behalf of respondent nos. 2 and 4 and Standing Counsel appearing on behalf of respondent no. 1 pray for and are granted four weeks' time to file counter affidavit. Two weeks' time thereafter is granted for filing rejoinder affidavit.

As an interim measure, the operation and effect of the order dated 16.5.2020 shall remain stayed and the petitioner shall continue to serve and shall be paid the salary on the post on which the petitioner was appointed during the pendency of the present writ petition.

The writ petition is directed to be listed after the decision of Special Appeal No. 240 of 2020.

Copy of the order downloaded from the official website of this Court shall be treated as certified copy of this order.

Order Date :- 8.9.2020

SR

ORDER PASSED IN SPECIAL APPEAL

Court No. - 29

Case :- SPECIAL APPEAL DEFECTIVE No. - 240 of 2020

Appellant :- Kiran Lata Singh

Respondent :- State Of U.P. Through Secretary,
Department of Basic Education And 5 others

Counsel for Appellant :- Siddharth Khare, Ashok Khare (Sr. Advocate)

Counsel for Respondent :- C.S.C., Avneesh Tripathi,
Gagan Mehta, Nisheeth Yadav

Hon'ble Pankaj Mithal,J.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

This Special Appeal and the connected appeals have been filed by the petitioner(s)/appellants against a common judgment and order of a learned Single Judge of this Court dated 29.04.2020 passed in Writ-A No.190 of 2020 (Smt. Neelam Chauhan Vs. State of U.P. and 4 others) and connected writ petitions (a total of 608 writ petitions).

The petitioner(s)/appellants are all Assistant Teachers in Junior Basic Schools who claim to have been appointed during the period 2008-11 after obtaining their B.Ed. degrees during the session 2004-05 from Dr. B.R. Ambedkar University, Agra (hereinafter referred to as "the University") and completing special B.T.C. Training thereafter.

A controversy with regard to B.Ed. mark-sheets of the year 2004-05 of the University came up for consideration in a writ petition before this Court which was converted into a Public Interest Litigation No.2906 of 2013 (Sunil Kumar Vs. Dr. Bhimrao Ambedkar University and another). On a direction of this Court, the matter regarding irregularities in issuing B.Ed. mark-sheets to students of the University, was

directed to be investigated by the Special Investigation Team (SIT). The SIT submitted its report on 14.08.2017 holding that there were more than 3500 fake mark-sheets and about 1000 tampered mark-sheets.

Against the report of the SIT which was submitted before this Court in the above referred PIL, objections were filed by many of the affected candidates but neither the objections nor the SIT report ever came up for consideration.

On the basis of the report of the SIT, the District Basic Education Officers issued notices to the petitioner(s)/appellants for cancellation of their appointments as they were alleged to be obtained on the basis of fake/tampered mark-sheets. The appointments of the petitioner(s)/appellants were thereafter cancelled by orders passed by the District Basic Education Officers.

In the meantime, on the intervention of the Court, University also proceeded to take action in respect of the aforesaid fake and tampered mark-sheets. It issued a public notice on 28.12.2019 requiring all concerned persons to show cause why their degrees may not be cancelled. Many of the candidates submitted reply to the aforesaid show cause notice.

Against the show-cause notice issued by the University on 28.12.2019 about 496 persons filed Writ Petition No.468 of 2020 (Tilak Singh and 495 others Vs. State of U.P. and 4 others). This writ petition was dismissed on 20.01.2020 with a direction to the University to take appropriate decision in the matter of fake/tampered mark-sheets of B.Ed. of the year

2004-05.

Finally, the University vide order dated 07.02.2000 declared the mark-sheets/degrees of 2823 candidates to be fake and those of 814 remained under consideration. This order of the University was brought on record by a supplementary affidavit filed on 10.02.2020 in one of the writ petitions i.e. Writ Petition No.190 of 2020 at the time of hearing of the above bunch of petitions.

The writ petitions challenging the orders passed by the District Basic Education Officers cancelling the appointment of the petitioner(s)/appellants came up for consideration before the Writ Court and were decided by the judgment impugned with certain directions.

Aggrieved by the above decision, this appeal as well as connected appeals have been preferred wherein Special Appeal Defective No.240 of 2020 has been made the leading case with the consent of the parties.

Some of the appeals are reported to be defective on account of technicalities as certain pages are not legible or the affidavits are not in the proper form. Thus, with the consent of the parties, the said defects which are of technical nature have been ignored and we proceed with the hearing of the appeals.

It was stated that hearing of the appeals had been adjourned on several occasions on the request of the State-respondents. It was further pointed out that in terms of the judgment under appeal the orders of cancellation of the appointments of the petitioner(s)/appellants have been

confirmed and directions have been issued to the authorities to take consequential action including recovery, and in view thereof the applications for interim relief were required to be considered urgently. With the consent of the parties the appeals have been taken up for admission and for passing of orders on the applications for interim relief.

Heard Sri Ashok Khare, Senior Counsel for the petitioner(s)/appellants, Sri J.N. Maurya, Chief Standing Counsel – I, Sri Bipin Bihari Pandey, Chief Standing Counsel – V, Sri R.N. Pandey, Additional Chief Standing Counsel and Sri Sanjay Kumar Singh, Additional Chief Standing Counsel for the State, Sri Arun Kumar for the District Basic Education Officers and Sri Gagan Mehta, Sri M.N. Singh and Sri Avneesh Tripathi appearing for the University.

It has been pointed out that the writ Court had non suited the petitioner(s)/appellants basically on the following counts:

- (1) The petitioner(s)/appellants had not challenged the SIT report;
- (2) The University has declared the mark-sheets of the petitioner(s)/appellants to be fake vide order dated 17.2.2020 and the same has remained unchallenged;
- (3) One of the writ petitions had been dismissed by a Single Judge and as no appeal was preferred the judgment had attained finality.

Sri Khare argued that the inquiry report submitted by

the SIT is not a piece of evidence and it cannot form the sole basis either for cancelling the appointments of the petitioner(s)/appellants or for declaring their mark-sheets fake and tampered until and unless the said report is confirmed after considering the objections of the parties preferred against it. It was also pointed out that the SIT report did not have the approval of the Court. The objections of the petitioner(s)/appellants against the said report remain pending consideration before the Writ Court in PIL No.2906 of 2019 (Sunil Kumar Vs. Dr. B.R. Ambedkar University and another), wherein the direction for investigation was issued and the SIT report was submitted.

His other submission is that there are no fake or tampered mark-sheets rather the SIT has reported it without considering the fact that earlier there was a dispute regarding the admissions to the B.Ed. course in the affiliated colleges of the University. Initially the admission quota in the affiliated colleges and the University used to be 50:50 i.e. 50% on the recommendation of the University and 50% from the management quota but University used to recommend 85% students for admission. This controversy was set at rest by a Division Bench of this Court in Writ Petition No.399(MB) of 2007 (Shri Puran Prasad Gupta Memorial Degree College Vs. State of U.P. and others) vide decision dated 6.4.2007 and it was held that the quota is 50:50 and that the University had been sending 35% extra students. In order to protect the interest of these 35% extra students who had been admitted on the recommendation of the University, the Court directed declaration of their results. It is for this reason that there were certain extra students in each of the affiliated

colleges as against the sanctioned strength, and on account of this, the SIT is not justified in observing that the mark-sheets or degrees of large number of candidates are fake/tampered.

His another submission is that the petitioner(s)/appellants were not given time to assail the order of the University dated 07.02.2020 which had come in existence subsequently, and as such it was not correct to proceed that the order of the University declaring the mark-sheets to be fake had remained unchallenged. It has been pointed out that this order has in fact been challenged by most of the petitioner(s)/appellants by filing separate writ petitions. It was further submitted that not challenging the said order at the time of hearing of the writ petitions would not make any difference as the impugned orders cancelling appointments of the petitioner(s)/appellants have to stand on their own legs on the reasoning recorded therein.

In regard to dismissal of one of the writ petitions by the Writ Court and the said judgment and order becoming final, Sri Khare submitted that a Writ Petition No.20244 of 2018 (Santosh Kumar Sharma and another Vs. State of U.P. and 4 others) was dismissed by a learned Single Judge on 20.09.2018 despite the fact that earlier writ petitions were entertained and stay orders were granted. The order of dismissal was challenged in Special Appeal No.987 of 2018 wherein an interim order was passed on 05.10.2018 whereby the effect and operation of the order of the District Basic Education Officers was directed to remain in abeyance. It was pointed out that the aforementioned

Special Appeal remains pending and following the interim order passed therein, interim orders were passed in various writ petitions which have ultimately been decided in terms of the judgment under challenge. It is, therefore, contended that since the Special Appeal continues to remain pending, as such the order of the learned Single Judge upholding the cancellation of appointments, can neither be said to be final nor conclusive.

In response to his submission, Sri Arun Kumar, learned counsel appearing for the District Basic Education Officers submitted that the petitioner(s)/appellants are not entitled to any relief as ultimately their mark-sheets have been found to be fake by the University. In support he submits that subsequent events cannot be ignored which are sufficient to deny petitioner(s)/appellants the desired relief.

Learned counsel appearing for the University submits that the decision of the University has been taken after affording due opportunity of hearing to all the petitioner(s)/appellants and since the SIT has found the mark-sheets to be fake and tampered, there was no option but to cancel them.

Sri J.N. Maurya, Chief Standing Counsel – I appearing on behalf of the State-respondents submits that as the order of the University dated 07.02.2020 had come into existence and was not challenged, the petitioner(s)/appellants are not entitled to any relief.

Having considered the rival submissions and the impugned orders of cancellation of appointments as well as

the decision of the University dated 07.02.2020 with which we are not concerned for the time being except for taking note of it, we find that both the above orders have been passed simply and solely on the basis of the SIT report.

The moot question, therefore, which arises for consideration in this appeal and the connected appeals is whether the report of the SIT dated 14.08.2017 which has not been accepted by any Court of law nor has the approval of this Court where it was produced and objections were filed, can form the sole basis for passing the impugned order of cancellation of appointments treating it to be final and correct without support of any material thereof.

Ancillary question is as to whether it was necessary for petitioner(s)/appellants to separately challenge the SIT report submitted, when objections against the same were pending consideration in PIL No.2906 of 2013, and when the final order passed on its basis is under challenge. Also, what would be the effect of not challenging the order dated 07.02.2020 of the University declaring the mark-sheets/degrees to be fake and tampered while adjudicating upon the validity of the orders cancelling the appointments of the petitioner(s)/appellants, passed by the District Basic Education Officers, would also require consideration.

It is pertinent to notice that only the validity of the orders passed by the District Basic Education Officers cancelling the appointments of the petitioner(s)/appellants, were under challenge in the writ petitions. The correctness of these orders of cancellation of appointments was required to be decided on the basis of reasoning recorded therein and

not on the basis of any exterior material or subsequent decision of the University which otherwise may have been a material to grant or refuse relief to the petitioner(s)/appellants.

Having regard to the aforesaid, we are of the view that the Special Appeal raises arguable points. Accordingly, we **admit** this appeal and all connected appeals.

Counsel for respondents-State authorities and so the University pray for and are allowed a fortnight time to complete their instructions, and if necessary, file their affidavits.

As agreed by counsel for the parties, list the appeal for final disposal immediately upon expiry of the aforesaid time period.

Having regard to the fact that the petitioner(s)/appellants have been working as Assistant Teachers for more than a decade and that the effect and operation of the orders cancelling their appointments had been stayed by the Writ Court coupled with the fact that the tampering of the mark-sheets may not be attributed solely to the candidates without connivance of the authorities concerned, we are of the opinion that as the petitioner(s)/appellants are likely to be visited with serious civil consequences including orders of recovery which may be passed against them, it would be appropriate in the interest of justice to protect their interests by directing for maintenance of *status quo* and also directing that the effect and operation of the impugned judgment and order of the

learned Single Judge in so far as it relates to affirmation of cancellation of appointments of the petitioner(s)/appellants, would remain in abeyance in the meanwhile.

Order Date :- 31.7.2020
Brijesh/Shahroz