

Court No. - 7

Case :- WRIT - A No. - 45502 of 2016

Petitioner :- Manju Kumari & 5 Others

Respondent :- State Of U.P. & 18 Others

Counsel for Petitioner :- Siddharth Khare, Ashok Khare

Counsel for Respondent :- C.S.C., Ashok Kumar Yadav

Hon'ble Manoj Misra, J.

Heard Sri Ashok Khare, learned senior counsel, assisted by Sri Siddharth Khare for the petitioners; learned Standing Counsel for respondent nos.1, 3, 4, 5, 6 and 7; Sri A.K. Yadav for respondent no.2; Sri Seemant Singh, who has filed impleadment application seeking impleadment of one Kanhaiya Lal as respondent no.20; and perused the record.

The case of the petitioners is that pursuant to an advertisement no.1 of 2010, issued by U.P. Secondary Education Services Selection Board, Allahabad for filling up large number of posts of Assistant Teacher in L.T. grade in various districts, they had applied and after appearing in written examination they were placed in the select list, which was declared on 17th February, 2012. Thereafter, according to the petitioners, they were issued letters of appointment. The details of the appointment letters issued to the petitioners have been given in paragraph 13 of the writ petition.

The grievance of the petitioners is that several writ petitions were filed challenging the select list/result declaration by the Board, in reference to the advertisement no.1 of 2010, on ground that the answer key provided by the Board in respect of certain questions was incorrect and the same required revision. It appears that in those pending writ petitions, from time to time, various interim orders were passed and it also appears that on the basis of interim orders, the Board proceeded to get the answers reevaluated and, on the basis of such reevaluation exercise, it appears, in one Writ A No.12605 of 2012, a statement was made by counsel appearing on behalf of the Board that two sets of reevaluation has been done. On the basis of the statement made by counsel for the Board, on 1st August, 2014 (as corrected vide order dated 7th August, 2014), in Writ A No.12605 of 2012, an interim order was passed that the result be declared on the basis of advice given by the expert appointed by the Board. It appears that, subsequently, those several writ petitions were connected with each other and were decided as a bunch of writ petitions, leading petition being Writ A No.12605 of 2012, vide order dated 9th December, 2015, which reads as under :

"Heard Sri Seemant Singh, learned counsel for the petitioners, Sri H.C. Pathak, learned Standing counsel for the respondent no.1 and

Sri A.K. Yadav, learned counsel for the rest of the respondents. No other counsel appears on behalf of the petitioners in the rest of the writ petitions.

The only prayer in this writ petition is that the result of L.T. Grade Teachers subject Art 2010 may be declared at an early date.

Learned Standing counsel as well as Sri A.K. Yadav submits that the result may be declared in accordance with law within two months.

In view of the submissions as noted above, all the writ petitions are disposed of with a direction to the respondent no.2 i.e. Secretary/Chairman, U.P. Secondary Education Services Selection Board Alenganj, Allahabad to declare the result of L.T. Grade Teachers 2010 in accordance with law, as expeditiously as possible, preferably within a period of six weeks from the date of presentation of certified copy of this order, provided there is no legal impediment.

All the writ petitions are disposed of."

Pursuant to the interim order dated 1st August, 2014 (as corrected vide order dated 7th August, 2014) and the final order dated 9th December, 2015 passed in Writ A No.12605 of 2012 as well as other connected writ petitions, the impugned order dated 16th September, 2016 was passed thereby revising the earlier result and the petitioners, who were earlier selected and appointed, have been declared unsuccessful and in place of the petitioners other candidates have been declared successful.

The impugned order dated 16th September, 2016 has been assailed by learned counsel for the petitioners on following grounds : (a) Writ A No.12605 of 2012, which was filed before this Court in which interim order dated 1st August, 2014 (as corrected vide order dated 7th August, 2014) and final order dated 9th December, 2015 was passed, the petitioners had prayed for a writ of certiorari to quash the result dated 17th February, 2012 with a further prayer to rectify the key-answer in reference to eight questions of the written examination and thereafter to prepare another select list by taking into account the revised answers but, neither in the interim order, nor in the final order passed in the said writ petition there is any direction to set aside the previous result declared nor there is any direction that the result declared would be according to the revised answers, therefore, the Board had no authority to revise and revisit its own result which was declared four years before and pursuant to which the selected candidates had secured appointments; (b) the petitioners who had been placed in the select list and had secured appointments on the basis of the select list were necessary party in any challenge to the previous result but since they were not made party and were not heard, their interest could not be governed and made subservient to any direction that is issued in an ex-

parte challenge (in support of the said submission, reliance has been placed on a Division Bench decision of this Court in Special Appeal (Defective) No.916 of 2014 dated 10th November, 2014, which has been appended as Annexure-'12' to the writ petition); and (c) that it is well settled in law that all interim orders merge in the final order which is ultimately passed and since the final order never directed for revision of the result or for declaration of the revised select list, the revision of the result could not have been made on the basis of an interim order which was passed on 1st August, 2014 (as corrected vide order dated 7th August, 2014).

Learned counsel appearing on behalf of the respondents submitted that in previous round of litigation the exercise to revise the answer key had been taken and the Court had been informed about such revision and pursuant to the liberty given by the Court, vide interim order dated 1st August, 2014 (As corrected vide order dated 7th August, 2014), the result was revised. It has thus been submitted that under the circumstances the decision of the Board cannot be faulted.

Sri Seemant Singh, who represents a candidate who has now found place in the revised select list, submitted that since the candidates who have now been selected are more meritorious, therefore, this Court need not interfere with the revised result.

In response to the above submissions, Sri Ashok Khare, who represents the petitioners, submitted that once the result had already been declared and was given effect to, the same could only be altered if there had been a specific direction of a Court to revisit the result or revise the result but since in the present case the final order provides no such direction and, in fact, it specifies that declaration would be made only if there is no legal impediment, there was no occasion for the Board to revise the result, particularly when the result was already declared and there was no direction by this Court to declare the revised result though the direction was to declare the result, which already stood declared.

There is some substance in the submissions made by learned counsel for the petitioners but as to what interpretation is to be accorded to the order dated 9th December, 2015 passed by the Court in a bunch of writ petitions is an issue which can best be considered by the Bench that had passed the earlier order dated 9th December, 2015. Accordingly, this Court is prima facie of the view that it would be appropriate that this petition be heard by the Bench which had passed the earlier order dated 9th December, 2015 in leading Writ A No.12605 of 2012 along with other connected writ petitions.

At this stage, learned counsel for the petitioners submitted

that since the petitioners had been already appointed and working for last several years, it would not be appropriate for them to be disturbed at this stage, therefore, the petitioners are entitled for an interim relief.

In view of the above, let the record of this petition be placed before Hon'ble the Chief Justice to consider nominating this matter to be heard by a Bench presided by Hon'ble S.P, Kesarwani, J., as His Lordship had decided the previous bunch of writ petitions.

The matter shall thereafter be listed before appropriate bench by or before 6th October, 2016, as per the order of Hon'ble the Chief Justice.

Till the next date of listing, the effect and operation of the order dated 16th September, 2016, passed by Secretary, U.P. Secondary Education Services Selection Board, Allahabad (Annexure-'7' to the writ petition), shall remain stayed to the extent it affects the interest of the petitioners.

Order Date :- 21.9.2016.

Rks.

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[Signature]
26.09.2016

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