

Court No. - 36

Case :- WRIT - A No. - 15786 of 2022

Petitioner :- Kamlesh Singh

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Birendra Singh, Hari Kant Shukla, Sr. Advocate

Counsel for Respondent :- C.S.C., A.K.S. Parihar

Hon'ble Saumitra Dayal Singh, J.

1. Heard Sri Ashok Khare, learned Senior Advocate, assisted by Sri Hari Kant Shukla, learned counsel for the petitioner; Sri A.K.S. Parihar, learned counsel appearing for the Board and learned Standing Counsel for the State-respondents.

2. Challenge has been raised to the order dated 25.08.2022 passed by the DIOS, Prayagraj, whereby he has rejected the claim of the petitioner for regularisation made under Section 33-F of the U.P. Secondary Education (Services Selection Board) Act, 1982 (hereinafter referred to as the 'Act').

3. Submission advanced by learned Senior Advocate appearing for the petitioner are three fold. In the first place, relying on Section 33-F(1)(d) read with Section 33-C(2)(a) of the Act, it has been submitted, the DIOS had no jurisdiction to pass an order. He could only have forwarded the application made by the petitioner to the appropriate Selection Committee with his note.

4. Second, on merits, it has been asserted, no legal effect may have been caused by the fact that the post on which the petitioner was appointed on *ad hoc* basis became substantive on 01.07.1997. The reasoning given in the impugned order is contrary to the statutory scheme of Section 33-F of the Act. It is therefore perverse.

5. Third, it has been submitted, the fact, the petitioner was

not terminated from service occasioned by conviction under Section 302 IPC, may not be a factor to deprive the petitioner of the fruits of regularisation. As a fact, the petitioner only remained under suspension till his sentence was remitted by the State Government, leading to revocation of suspension order and reinstatement of the petitioner.

6. On the other hand, learned Standing Counsel would submit, even if other submissions advanced by learned Senior Advocate appearing for the petitioner are accepted, in face of undisputed conviction under Section 302 IPC, the petitioner may never be entitled to regularisation.

7. Be that as it may, the Committee constituted under Section 33-C(2)(a) of the Act has not examined the matter. Therefore, no merit consideration is required.

8. Insofar as the DIOS, Prayagraj has to chosen to pass an order, rejecting the claim of the petitioner, the same is without jurisdiction.

9. Accordingly, the order dated 25.08.2022 is set aside. It is provided, the DIOS, Prayagraj may forward the matter to the appropriate Selection Committee in accordance with law alongwith his note of disapproval to the relief sought by the petitioner. Such exercise may be completed within a period of 15 days from the date of communication of this order on the DIOS, Prayagraj by the petitioner.

10. Upon such compliance, the Selection Committee may consider the claim made by the petitioner on its own merit without being prejudiced by any observation made in this order, as expeditiously as possible, preferably within a period of three months from the date of communication

received by the it from the DIOS, Prayagraj.

11. With the aforesaid observation, present writ petition is
disposed of.

Order Date :- 30.9.2022

Abhilash