

Court No. - 35

Case :- WRIT - A No. - 3222 of 2022

Petitioner :- Yogendra Kumar Yadav

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

Counsel for Petitioner :- Janardan,Ashok Kumar
Yadava,Janardan,Sr. Advocate

Counsel for Respondent :- C.S.C.,Amresh Tripathi,Arvind
Srivastava,Ramesh Kumar Shukla

Hon'ble Vikas Budhwar,J.

On the oral request of Sri R.K. Ojha, learned Senior Counsel assisted by Sri Janardan Yadav,the learned counsel for the writ petitioner he is permitted to implead sixth respondent, Committee of Management,Lal Bahadur Shastri Inter College, Pipara Madan Gopal District Deoria and seventh respondent, Director Education Secondary, U.P. Prayagraj.

Heard Sri R.K. Ojha, learned Senior Counsel assisted by Sri Janardan Yadav, for the writ petitioner, Sri Shailendra learned Standing Counsel, who appears for the respondents no.1,2,3 & 5, Sri Ramesh Kumar Shukla who appears for the respondent no.4 and Sri Arvind Srivastava, learned counsel for the respondent no.6.

The case of the writ petitioner is that he after passing the High School Examination in the year 1993, Intermediate in the year 1985, B.A. in the year 1990, B.Ed. in the year 1992, Post Graduation in the subject of Social Science in the year 2011 from Deen Dayal Upadhyay Gorakhpur University was appointed as an Assistant Teacher in the sixth respondent institution on 15.8.1998. Certain complaints were sought to be lodged with respect to the genuineness of the B.Ed. Degree so possessed by the writ petitioner. According to the writ petitioner the matter travelled to the District Inspector of Schools, Deoria who by virtue of a communication dated 12.3.2020 found the said complaint to be not substantiated, thereafter again complaint was sought to be lodged and when the same was not given a logical end so the fourth respondent who happens to be the real brother of the writ petitioner, complainant preferred Writ-A No.3832 of 2021 which came to be disposed of in the light of the communications of the Joint Director of Education, 7th Region, Gorakhpur on 23.3.2021 pursuant where to the Joint Director of Education, 7th Region, Gorakhpur proceeded to pass an order dated 12.7.2021 holding the complaint not to be substantiated. Against which a writ petition is

stated to have been preferred by the fourth respondent, Writ-A No.16603 of 2021 which came to be dismissed on 7.12.2021 however it is also the case of the writ petitioner that the Special Task Force conducted an inquiry and tendered its report on 9.2.2022 on the basis whereof the District Inspector of Schools, Deoria, third respondent had issued a notice dated 19.2.2022 to the writ petitioner requiring him to show cause as to why the adverse orders be not passed in the wake of the fact that the B.Ed. Degree was found to be non-verifiable.

Questioning the orders dated 9.2.2022 of the fifth respondent and 19.2.2022 of the third respondent the writ petitioner has filed the present writ petition.

Counter and rejoinder affidavits have been exchanged between the parties. However, since the Committee of Management of the institution in question whereat the writ petitioner claims to have been working was not impleaded as a party so this Court vide order dated 19.9.2023 impleaded the sixth respondent as a party and notices were issued. Now post service of the notice upon the sixth respondent, Sri Arvind Srivastava has filed a counter affidavit to which a rejoinder affidavit has been filed.

Sri R.K. Ojha, learned Senior Counsel submits that once on 12.3.2020, District Inspector of Schools, Deoria, followed by the order dated 12.7.2021 passed by the Joint Director of Education, 7th Region, Gorakhpur had found that the B.Ed. Degree possessed by the writ petitioner with a valid degree then the fifth respondent, Senior Superintendent of Police, Special Task Force had no authority under law to have conducted an inquiry and to have poke its nose which entailed passing of the order dated 19.2.2022 show-causing the writ petitioner and he submits that the District Inspector of Schools, Deoria has no authority under law to question the appointment of the writ petitioner as the right if any as per the statute vest with the Director of Secondary Education in terms of Section 16-E(10) of the U.P. Intermediate Education Act, 1921.

According to Sri Ojha the entire exercise undertaken is vindictive and without jurisdiction and on the instance of the fourth respondent who happens to bore personal rivalry with the writ petitioner.

Sri Shailendra Singh, learned Standing Counsel on the basis of the counter affidavit filed has sought to argue that there are substantial evidences on record showing the fact that post verification it was found that the writ petitioner does not possess genuine and verifiable B.Ed. degree. He submits that might be the District

Inspector of Schools, Deoria is not vested with the authority to show cause notice but according to him under statute under Section 16-E(10) of the U.P. Intermediate Education Act, 1921, the Director can take appropriate proceedings as obviously this Court would not shut its eyes in case a person who is not meritorious or deserving is being allowed to man a post that too in teaching faculty.

Sri Ramesh Kumar Shukla, who appears for the respondent no.4 on the other hand submits that there are various documents showing that the B.Ed. of the writ petitioner is not verifiable. He seeks to rely upon the counter affidavit and he further submits that the writ petition at the instance of the writ petitioner putting to challenge the show cause notice is not maintainable in this regard.

I have heard learned counsel for the parties and perused the record.

The facts of the case are not in dispute. The court in the proceedings is to first of all accord its consideration as to whether the writ petition would lie against a show cause notice. Ordinarily the writ petition does not lie against the show cause notice as by virtue of the show cause notice no adverse order has passed but only clarification/reply is being sought. Here in the present case there is a remedying feature that the show cause notice has been issued by the District Inspector of Schools, Deoria on the basis of the report of the fifth respondent, Senior Superintendent of Police, Special Task Force.

As rightly pointed out by Sri Shailendra Singh learned Standing Counsel that there already exist a provision under Section 16-E(10) of the U.P. Intermediate Education Act, 1921 providing a forum to decide the said issues at the level of the Director, Education Secondary U.P. Prayagraj. State Government in the case of Principal and in respect of other teaching staff the Director.

According to Sri Shailendra Singh learned Standing Counsel let an exercise be undertaken by the Director of Secondary Education U.P. at Prayagraj.

Sri Ojha, submits that the writ petitioner is already working on the basis of the interim order granted by this Court and he apprehends that adverse action will be taken behind the back of the writ petitioner thus in case the Director of Secondary Education U.P. at Prayagraj sixth respondent is allowed to take decision then it should be in-conformity and consonance with the principles of natural justice.

Considering the submissions of the rival parties as well as stand taken by them, the writ petition is being disposed of in the following manners:- (a) the show cause notice dated 19.2.2022

passed by the District Inspector of Schools, Deoria is set aside (b) matter stands remitted to the Director of Secondary Education U.P. at Prayagraj, sixth respondent for deciding the educational qualifications of the writ petitioner strictly in accordance with the provisions contained under Section 16-E(10) of the U.P. Intermediate Education Act, 1921; (c) the Director, shall fix a date in the fourth week of December, 2023 on which date the Committee of Management and the writ petitioner shall be allowed to appear, (d) the versions be exchanged between the parties, (f) thereafter a date be fixed in the first week of January, 2024 (g) orders be passed by 19th January, 2023 (h) the continuance of the writ petitioner and payment of salary being made to it shall not be disturbed and shall be subject to the final orders to be passed by the Director Education Secondary U.P. at Prayagraj seventh respondent. It is open for the fourth respondent to prefer an appropriate application and in case the seventh respondent finds the say of the fourth respondent to be necessary it may take follow up action.

Needless to point out it is open for the parties to raise legal and factual submission and this Court has no reason to disbelieve that the same will be taken in to consideration while passing a final order.

With the aforesaid observation, the writ petition is **disposed of**.

Order Date :- 30.11.2023

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