

Court No. - 35

Case :- WRIT - A No. - 4726 of 2020

Petitioner :- Dr. Santosh Kumar Mishra

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Vijay Kumar Ojha, Subhash Chandra Mishra

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - A No. - 19051 of 2023

Petitioner :- Dr Santosh Kumar Mishra

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Vijay Kumar Ojha

Counsel for Respondent :- C.S.C

Hon'ble Vikas Budhwar, J.

In Re: Civil Misc. Delay Condonation Application No. 3 of 2022

Since there is no objection to the delay condonation application for recalling the order and the reasons so recited therein are to the satisfaction of the Court.

The delay condonation application is allowed.

The delay in filing the petition is condoned.

In Re: Civil Misc. Restoration/Recall Application No. 4 of 2023

The reasons accorded for non-presence on the date when the writ petition was dismissed is to the satisfaction of the Court.

Recall/Restoration Application is allowed.

The order dated 04.08.2022 is recalled and the writ petition is restored with its original number.

Order on Petition

1. Since common question of laws and facts are involved in both the writ petitions, thus, they are being decided by a common/composite order, for the sake of brevity, the Writ

Petition No. 4726 of 2020 (Dr. Santosh Kumar Mishra Vs. State of U.P. & 7 Others) is treated as leading writ petition and Writ Petition No. 19051 of 2023 (Dr. Santosh Kumar Mishra Vs. State of U.P. & 6 Others) is treated as connected writ petition. Learned Counsel for the rival parties have made a statement at Bar that they do not propose to file any response, thus, the writ petition be decided on the basis of the pleadings available on record.

2. The writ petitioner herein had filed the leading writ petition questioning the suspension order dated 27.08.2019 whereby the writ petitioner who was working on the post of principal in Government Inter College, Kachhapura Bah, Agra was placed under suspension.

3. The Court entertained the leading writ petition and proceeded to pass the following orders.-

"Heard learned counsel for the petitioner, Sri V.K. Ojha and learned Standing Counsel appearing on behalf of the State.

The impugned order of suspension, amongst others, indicates charges of financial irregularities relating to misappropriation through spurious vouchers from the boys fund and other funds, on the basis of which the petitioner has been ordered to be suspended pending inquiry. Learned counsel for the petitioner has invited the attention of the Court to the chargesheet dated 14.10.2019 which carries five charges against the petitioner. None of these charges mention any of the financial irregularities referred to in the order of suspension or any kind of financial irregularity whatsoever. The charges culled out in the chargesheet relate to absence of the petitioner on a certain day, short attendance of students below the minimum prescribed, the poor result of the school during the year 2019 in comparison to the year 2018. There is not a hint about any charge relating to defalcation or financial irregularity, across the length and breadth of chargesheet. There is, thus, prima facie incongruance between the charges indicated in the suspension order and the chargesheet issued pursuant thereto. The charges carried in the chargesheet, even if found to be true at the inquiry, do not appear to be serious enough to invite imposition of a major penalty.

Considering the aforesaid fact, this Court finds that a prima facie case is made out.

Admit.

Issue notice.

Steps be taken to serve respondent no.8 on or before 08.07.2020.

Notice is made returnable on 28.07.2020.

Learned Standing Counsel is granted four weeks time to file a counter

affidavit on behalf of respondent nos. 1 to 7.

List for orders on 28.07.2020 along with a report regarding service and status of pleadings.

Order on Civil Misc. Stay Application No. 1 of 2020

Issue notice returnable on 28.07.2020.

Until further orders, operation of the impugned suspension order dated 27.08.2019 passed by the Additional Director of Education, Madhyamik, Prayagraj, shall remain suspended and the petitioner shall be permitted to discharge his duties and paid salary regularly. It is made clear that the inquiry proceedings will go on and shall be brought to their logical conclusion."

4. However, the said writ petition came to be dismissed for non-prosecution on 04.08.2022 and the interim order was vacated. Since interim protection which was accorded earlier stood vacated so thereafter, the Additional Director of Education (Rajkiya), Prayagraj U.P., third respondent in the connected writ petition proceeded to pass an order dated 08.02.2023 again placing the writ petitioner under suspension and for a direction to conduct the inquiry against the writ petitioner. The said order is subject matter of challenge in the connected writ petition. When the connected writ petition came up for consideration then this Court by virtue of the order dated 16.11.2023 tagged the connected writ petition with the leading writ petition. Since there was a restoration application in the leading writ petition so this Court by virtue of an order dated 10.07.2023 required the office to submit a resort as to which of the Bench will hear the matter thereafter there is an office report dated 13.07.2023 whereby it has been recited that this Court is to hear both the writ petitions by a separate order passed today, the leading writ petition has been restored. Learned counsel for the writ petitioner submits that since at the time of passing of the interim order in the leading writ petition on 25.06.2020 already a charge sheet had been served upon the writ petitioner on 14.10.2019 and after considering the same, interim protection was accorded to the writ petitioner and till date inquiry proceedings have not concluded, thus, according to the writ petitioner, the writ petitioner be reinstated in the service and the inquiry be directed to be concluded within the time bound period.

5. Sri Shailendra Singh, learned Standing Counsel who appears for the State official respondents in both the writ petitions

submits that though there happens to be an interim order passed in favour of the writ petitioner in the leading writ petition but the order dated 25.06.2020 in the leading writ petition did not preclude the respondents from giving a logical end to the inquiry proceedings, thus, according to him, let the inquiry be conducted and concluded within a period of six weeks from the date of production of certified copy of the order.

6. Considering the submission of the rival parties as well as the stand taken by them, the writ petition stands decided in the following terms: the order dated 27.08.2019, 08.02.2023 passed by the Additional Director of Education, Madhyamic, Prayagraj, U.P. insofar as it suspends the writ petitioner is set aside, however, the inquiry proceedings initiated against the writ petitioner post issuance of the charge sheet dated 14.10.2019 shall be concluded within a period of six weeks from the date of production of certified copy of the order by either of the parties. The Counsel for the writ petitioners in both the writ petitions as per the instructions received by him submits that the writ petitioner shall not take unnecessary adjournments. It is further provided that, in case, the writ petitioner seeks to prolong the inquiry without there being any justification then it is open for the Disciplinary Authority/Inquiry Authority to conclude the inquiry as per the rules within the time bound period.

7. In case, the writ petitioner has not been paid subsistence allowance for the period when he was suspended then the writ petitioner has liberty to move before the disciplinary authority for payment of subsistence allowance which shall be paid in accordance with the rules.

8. With the aforesaid observations, both the writ petitions stand disposed of.

Order Date :- 1.12.2023

Rajesh