

Court No. - 39

Case :- SPECIAL APPEAL No. - 480 of 2018

Appellant :- C/M Babu Singh Vidyalaya Mahmoodpur Kash Chibramau

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Ram Autar Verma

Counsel for Respondent :- C.S.C.,J.P. Singh,Sanjay Kumar Singh

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Sri Ram Autar Verma, learned counsel for the petitioner, Sri J.P. Singh, learned counsel appearing for the respondent.
2. Present intra court appeal has been filed against the order of learned single judge dated 18.4.2018 passed in writ petition No. 29855 of 2013 (Shailendra Kumar Yadav Vs. State of U.P. and three others). By that order the learned single judge has allowed the writ petition and issued a writ of mandamus to the District Basic Education Officer to ensure payment of salary to the petitioner-respondent on month to month basis together with arrears with effect from October, 2012.
3. Briefly, the facts of the case are that the petitioner-respondent was appointed on the post of assistant teacher at Babu Singh, Vidhyalaya, Mahamoodpur, Chibaramau, district-Kannauj (hereinafter referred to as 'the institution'). The said institution was covered under the grant-in-aid of the State Government vide order dated 2.12.2006.
4. The Regional Assistant Director (Basic), Kanpur Region, Kanpur vide his order dated 28.3.2008 granted concurrence to the payment of salary to the teachers and other employees of

the said institution, w.e.f. 1.11.2006.

5. While the above facts are not being disputed, it is also not in dispute that the petitioner-respondent was being paid due salary against the grant-in-aid being received by the institution. On 10.10.2012 the Head Master of the institution called for an explanation from the petitioner-respondent why only seven students of class-6 studying in that school had been declared successful in the 3rd monthly examination.

6. Pending that explanation, the petitioner-respondent was prevented from signing his attendance on the attendance register. While the petitioner/respondent claims to have furnished his explanation, the respondent-appellant denies the same. In any case, a newspaper publication was published on 11.11.2012 by the respondent-appellant requiring the petitioner-respondent to submit his reply. The petitioner-respondent claims to have furnished his reply on 17.11.2012 by post, however, the same was returned with the postal remark "mauke par nahi mile. Suchana Di". Yet another newspaper publication was published thereafter to which the petitioner-respondent submitted reply through post. That reply was dispatched through registered post dated 1.12.2012. The same was returned with the postal remark "the manager did not reside at the institution".

7. It is in such facts that the District Basic Education Officer appears to have intervened. He first passed the order dated 9.11.2012 and directed the Head Master of the institution to allow the petitioner-respondent to mark his attendance. When that direction was not complied with by the respondent/appellant, the District Basic Education Officer made a personal visit to the institution on 10.12.2012 and provided for a separate register to maintain the record of the attendance

of the petitioner-respondent.

8. Not seeking to correct itself, the management of the institution then proceeded to suspend the petitioner-respondent on 27.11.2012. That suspension order became subject matter of challenge in writ petition No. 1661 of 2013 (Shailendra Kumar Yadav Vs. State of U.P. and others). The suspension order was stayed vide order dated 11.1.2013, yet, the petitioner-respondent was not reinstated.

9. Further, the inquiry committee submitted its report dated 24.2.2013 and on 3.3.2013 the Committee of the Management of institution resolved to terminate the services of the petitioner-respondent. That proposal of the Committee of Management of the institution was rejected by the District Basic Education Officer vide his order dated 3.3.2013.

10. The Committee of Management of the institution assailed the order dated 3.4.2013 passed by the District Basic Education Officer in Writ Petition No. 26782 of 2013 (Committee of Management, Babu Singh Vidhyalaya and another Vs. State of U.P. and others). The said writ petition came to be dismissed for want of prosecution on 8.4.2018.

11. Presently, it has been submitted by learned counsel for the respondent/appellant that the said writ petition has been restored to its original number and status. However, it is the admitted case of the respondent-appellant that there is no interim order operating in the said writ petition.

12. In the above fact background, learned counsel for the respondent-appellant states mere dismissal of the writ petition filed by the Committee of Management against the order dated 3.4.2013 could not lead to writ of mandamus being granted in favour of the petitioner-respondent regarding payment of salary. According to him, the matter of dismissal from service is sub

judice, therefore, no salary payment may arise in the meanwhile. Alternatively, it has been submitted, the present intra court appeal proceedings that are a continuation of the writ proceedings be placed in abeyance till disposal of the writ petition filed by the Committee of Management.

13. Third, it has been submitted that the termination order was passed against the petitioner-respondent not on the inquiry conducted by the Head Master of the institution but on the detailed domestic inquiry conducted at the instance of the Committee of Management.

14. On the other hand, learned counsel for the petitioner-respondent contends, assuming that the writ petition filed by the Committee of Management is pending, it is an admitted case between the parties that there is no interim order operating against the order dated 3.4.2013 passed by the District Basic Education Officer, Kannauj. Therefore, as on date the petitioner-respondent stands reinstated in service. Whatever consequence may arise upon final hearing in the writ petition no. 26782 of 2013 (Committee of Management, Babu Singh Vidhyalaya and another vs. State of U.P. and another) may remain to be seen at the appropriate stage.

15. Further it has been submitted that the Committee of Management and its functionaries have acted with malice towards the petitioner-respondent. The petitioner-respondent has been needlessly harassed for a long period of time, first, by being visited with unfounded allegations and then being persecuted for no fault. The Committee of Management has defied the orders passed by the District Basic Education Officer in first resisting to allow the attendance of the petitioner-respondent to be recorded and later in giving effect to the order dated 3.4.2013.

16. Having heard counsel for the parties and having perused the record, narration of the facts noted above clearly brings out that the issue of domestic inquiry and the resultant punishment awarded to the petitioner-respondent is not a matter that may detain us any further.

17. That issue is in direct contest in writ petition no. 26782 of 2013 filed by the Committee of Management. Therein the order dated 3.4.2013 passed by the District Basic Education Office, Kannauj rejecting the proposal made by the respondent-appellant/Committee of Management seeking to dispense with the services of the petitioner-respondent, is under challenge. Undeniably, that order of the District Basic Education Officer itself vests in the petitioner-respondent a right to be allowed to continue to work against payment of due salary. That right being vested by an order passed by an authority of competent jurisdiction, the mandamus prayed for by the petitioner-respondent may have been declined only if there existed a stay order in favour of the Committee of Management in writ petition no. 26782 of 2013. As noted above no such stay order was ever passed in that writ petition.

18. Seen in that light, the fact that the learned single judge also observed that the above writ petition stood dismissed for want of prosecution is incidental. Restoration of that writ petition does not have any adverse impact on the mandamus issued in view of the facts and reasons noted above.

19. The petitioner-respondent being entitled to salary payment under the orders dated 11.1.2013 passed by this Court and the order dated 3.4.2013 passed by the District Basic Education Officer, that claim may not have been resisted solely occasioned by pendency of writ petition no. 26782 of 2013.

20. As to the domestic inquiry proceedings, while it may be true

that the petitioner-respondent was suspended and later proposed to be terminated on the strength of the domestic inquiry proceedings instituted by the Committee of Management and not on the strength of the preliminary inquiry that may have been conducted by the Head Master, it is wholly inconsequential. Insofar as the respondent/appellant contends that the services of the petitioner-respondent were suspended on 27.11.2012 and later proposed to have been terminated pursuant to the inquiry report 24.2.2013 vide resolution of the Committee of Management dated 3.3.2013 which proceedings have been disapproved by the District Basic Education Officer and insofar as that order continues to hold force, the contention being advanced by the learned counsel for the respondent/appellant is misconceived.

21. The alternative submission advanced by learned counsel for the respondent-appellant is equally misconceived. The writ court was not bound to hold back the writ of mandamus merely because the respondent-appellant first chose to allow its writ petition to be dismissed for want of prosecution and has now got the said writ petition restored. To allow such consequence to arise would be a travesty of justice.

22. The respondent-appellant is further seen to have acted wholly in violation of law. Being duty bound to give effect to the order passed by the District Basic Education Officer both with respect to record the attendance and to allow the petitioner-respondent to work, it has unnecessarily obstructed and resisted that consequence in law.

23. Accordingly, the intra court appeal is dismissed with cost of Rs. 20,000/- to be paid from the own fund of the Committee of Management to the petitioner-respondent.

Order Date :- 1.11.2023

Kumar Manish.

(Shiv Shanker Prasad,J.) (Saumitra Dayal Singh,J.)