

Court No. - 35

Case :- WRIT - A No. - 11024 of 2023

Petitioner :- Smt. Gunjan Arya

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

Counsel for Petitioner :- Samarath Singh, Hritudhwaj Pratap Sahi, Sankalp Narain

Counsel for Respondent :- C.S.C., Sandeep Kumar

Hon'ble Vikas Budhwar, J.

1. Heard Sri V.K. Singh, learned Senior Counsel, assisted by Sri Samarth Singh, learned counsel for the writ petitioner, Sri Shailendra Singh, learned Standing Counsel, who appears for the respondent nos.1 to 6 and Sri R.K. Ojha, learned Senior Counsel, assisted by Sri Ratnakar Upadhyay, learned counsel, who appears for the eighth respondent.

2. In view of the order, which is being proposed to be passed, notices are not being issued to the seventh respondent.

3. A statement has been made by Sri V.K. Singh, learned Senior Counsel, assisted by Sri Samarth Singh, learned counsel for the writ petitioner that he does not propose to file any rejoinder affidavit to the counter affidavit filed on behalf of the respondent nos.1, 2 and 3 and a statement made by Sri R.K. Ojha, learned Senior Counsel, assisted by Sri Ratnakar Upadhyay, learned counsel for the eighth respondent that he does not propose to file any response to the writ petition on behalf of the eighth respondent, thus with the consent of the parties, the writ petition is being decided at the fresh stage.

4. The case of the writ petitioner is that there happens to be an institution, seventh respondent, Committee of Management, Shri

D.C. Vaidik Inter College, Bhogipura, Shahganj, Agra, which is an institution recognized under the provisions of U.P. Intermediate Education Act, 1921, the provisions of U.P. Act No.24 of 1971 and the provisions of U.P. Act No. 5 of 1982, stands applicable.

6. It is the case of the writ petitioner that he was initially appointed as a L.T. Grade Teacher in Sersa Inter College, Sersa, Mathura on 12.09.2006 and he assumed the charge on 27.09.2006 and he was made permanent on 01.10.2007 and on 13.02.2009, he got transferred to the seventh respondent-institution, where at he joined on 28.02.2009 and consequent to retirement of one Sri Shilendra Sharma as an officiating Principal on 31.03.2016, a resolution was passed on 29.03.2016 handing over the charge of officiating Principal to the writ petitioner and the signatures of the writ petitioner was attested by the District Inspector of Schools, Agra on 11.07.2016.

7. It is the further case of the writ petitioner as asserted in paragraph nos.14 and 15 that one Sri Suraj Pal Singh staked his claim for seniority *vis-a-vis* the writ petitioner. However, the writ petitioner is officiating in the post in question. It is the further case of the writ petitioner that on 08.11.2019, the post of the Principal was requisitioned and notified by the seventh respondent institution. However, it is the further case of the writ petitioner that now by virtue of an order dated 30.06.2023, passed by the third respondent, Additional Director of Education (Madhyamik), U.P. at Prayagraj, the eighth respondent, Dr. Vimal Prakash, Principal, Adarsh Krishak Inter College, Karab, District - Mathura has been sought to be transferred in the seventh respondent-institution.

8. Questioning the order dated 30.06.2023, passed by the third respondent, the writ petitioner has filed the present writ petition.

9. This Court entertained the writ petition, while passing the following orders :-

"Instructions have been filed today which are taken on record.

Today when the matter has been taken up though Sri V.K. Singh, learned Senior Counsel assisted by Sri Sankalp Narain has sought to canvas that the order dated 30.6.2023 passed by the Additional Director of Education (Madhyamik) proceeds on misconception of facts and law particularly in view of the fact that once vacancy has been notified then there is no occasion to accord transfer of the eighth respondent in the institution in question he relies upon the Full Bench of this Court.

On the other hand Sri Radha Kant Ojha, Senior Counsel assisted by Sri Upadhyay argued that the eighth respondent has already joined the institution in question. He seeks short time to file his response. According to him he shall be filed the response by Monday i.e. 17.7.2023.

Put up this case on 18.7.2023.

Counsel for the parties have also canvassed that a new Act has come into existence however a specific stand is to be taken by the learned Standing Counsel as to whether the same has been notified so as to exclude the application of the Full Bench."

10. A counter affidavit has been filed by the Associate District Inspector of Schools, Agra sworn on 27.08.2023. As already noticed, Sri R.K. Ojha, learned Senior Counsel, assisted by Sri Ratnakar Upadhyay, learned counsel, who appears for the eighth respondent does not propose to file any response to the writ petition and the writ petitioner also does not propose to file any rejoinder affidavit, thus the matter has been taken on board and is being decided.

11. Sri V.K. Singh, learned Senior Counsel, assisted by Sri Samarth Singh, learned counsel for the writ petitioner, while assailing the transfer order dated 30.06.2023, transferring the eighth respondent to the seventh respondent institution has sought to argue that now as per the stand taken in paragraph no.7 of the counter affidavit filed by the Associate District Inspector of Schools, Agra, dated 27.08.2023, it has come on record that the

first requisition was sent on 08.11.2019 through online mode. However, thereafter the transfer letter of the eighth respondent was forwarded by the then District Inspector of Schools, Agra by virtue of the letter dated 20.04.2023 to the Joint Director of Education (Secondary), Agra Mangal, Agra with remark (post is online requisite). On the said remark of the requisition, the Joint Director of Education (Secondary), Agra Mandal, Agra returned the file with the aforesaid observation *vide* letter dated 27.04.2023 and thereafter again the issue with regard to the transfer of the eighth respondent was forwarded by the District Inspector of Schools on 06.05.2023 in terms of the paragraph no.2 (12) of the Government Order dated 27.01.2023. In paragraph no.8, it has been further stated that the Joint Director of Education (Secondary), Agra Mandal, Agra on the basis of the Government Order dated 13.08.2021 returned back the matter quoting the relevant provisions of the point number 7 of the Government Order dated 27.01.2020 and 13.08.2021. In paragraph no.9 of the counter affidavit, it is further asserted that a second requisition was sent by the Management on 11.12.2021 for appointment of teacher/Principal/ Head of the institution and after due verification, it was rejected on 24.04.2022 by the District Inspector of Schools, Agra on the ground / reason "post is already sent for requisition in the year 2019-2020".

12. In paragraph no.10 of the writ petition, it has been further asserted that the transfer order of the eight respondent could not have been passed in that regard. In paragraph no.23 of the counter affidavit filed by the Associate District Inspector of Schools, Agra, it is stated that since the requisition dated 08.11.2019 still exist and as per the Government Order dated 13.08.2021, if the transfer is made against requisition, then it will be void abinitio.

13. Sri V.K. Singh, learned Senior Counsel for the writ petitioner thus seeks to argue that once the requisition dated 08.11.2019 still exist, as per the Government Order dated 13.08.2021 and it is the stand of the official respondents that the transfer made against the requisition was void ab-initio and the Office of the Associate District Inspector of Schools, Agra by virtue of the letter dated 26.08.2023 informed the authorities to pass appropriate orders, then according to him, the continuance of the eighth respondent in the institution in question is *per se* illegal.

14. Sri R.K. Ojha, learned Senior Counsel, assisted by Sri Ratnakar Upadhyay, learned counsel, who appears for the eighth respondent could not dispute the said fact, however according to him, though liberty be accorded to them to challenge the ultimate orders, if they are passed, while drawing appropriate proceedings.

15. Sri Shailendra Singh, learned Standing Counsel, who appears for the respondent nos.1 to 6 on the other hand submits that once it is the stand of the official respondents that there exist a requisition on book dated 08.11.2019, then in these circumstances, the continuance of the eighth respondent cannot be said to be as per law. He submits that consequential orders as encapsulated in paragraph no.23 of the counter affidavit filed by the Associate District Inspector of Schools, Agra, dated 27.08.2023 would be passed within the shortest time.

16. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed of with a direction to the concerned authority to take appropriate action expeditiously as per the averments contained in paragraph nos.7, 8, 9, 10, 11, 12, 18 and 23 of the writ petition within the shortest time with most expedition.

17. With the aforesaid observations, the writ petition stands ***disposed of***.

18. The passing of this order may not be construed to be an expression that this Court has gone into the merits of the matter, as the passing of the order may not come in the way of the eight respondent to challenge the ultimate orders, if any passed.

Order Date :- 30.10.2023

S Rawat