

Court No. - 35

Case :- WRIT - A No. - 11181 of 2023

Petitioner :- Kishun Raj

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Narendra Kumar Chaturvedi

Counsel for Respondent :- C.S.C.,Rajeev Mishra,Santosh Kumar Singh,Vinod Kumar Pandey

Hon'ble Vikas Budhwar,J.

Heard Sri Narendra Kumar Chaturvedi, learned counsel for the petitioner, Sri Saurabh learned Standing Counsel, who appears for respondents 1to 4, Sri Vinod Kumar Pandey, learned counsel for the respondent no.5 and Sri Santosh Kumar Singh, learned counsel for the respondent no.6.

Since counter and rejoinder affidavits have been exchanged between the parties and they do not propose to file any further response that the writ petition be decided at the fresh stage.

The case of the writ petitioner is that he was appointed as an Assistant Teacher (Sanskrit) on 25.9.1999 in the fifth respondent institution, Baba Ram Naresh Das Ram Jaanki Sanskrit Uchchattar Madhyamik Vidhyalaya, Bheetimafi, Siswaniya, Sant Kabir Nagar. The said institution also according to the writ petitioner has been put to grant in aid list and on account of death of Regular Principal on 8.10.2014 the writ petitioner claim to be by virtue of a resolution dated 10.10.2014 given charge of an Officiating Principal. It is also the case of the writ petitioner that attestation of the signature was made in favour of one Sri Ashok Kumar Pathak which was subject matter of challenge by the writ petitioner in Writ-A No.25233 of 2018 in which an interim order has been passed and the said writ petition is pending consideration and consequently the writ petitioner's signature stated to have been attested on 12.6.2019 as an Officiating Principal. It is also the case of the writ petitioner that with the change of the guards with respect to the Committee of Management of the institution in question things became on a different edge and thereafter the writ petitioner was being harassed. The writ petitioner claims to have fell ill on 13.10.2020 and he proceeded on medical leave till 16.10.2020 while sending the required application on 14.10.2020 and thereafter from 17.10.2020 to 26.10.2020 there was Dashehra

vacations however on 27.10.2020 when the writ petitioner appeared for marking his presence, he was not allowed to function as one of the juniors to the writ petitioner being Santosh Kumar was granted charge of an Officiating Principal. The writ petitioner claims to have approached this Court while filing Contempt Petition No.4833 of 2020 in which notices were issued owing to non disposal of the claim of the writ petitioner.

According to writ petitioner he was placed under suspension on 7.8.2021 however the copy of the charge sheet was not served upon him and neither he was paid the salary before suspension nor the subsistence allowance. It is also the case of the writ petitioner that he preferred Writ-A No.12631 of 2021 being aggrieved against the order dated 3.8.2021 whereby the signature of the sixth respondents were attested which came to be disposed of requiring the competent authority to take decision and thereafter according to the writ petitioner without considering the claim of the writ petitioner after a period of more than two years the District Inspector of Schools, Sant Kabir Nagar has proceeded to pass an order dated 9.5.2023 negating the claim of the writ petitioner on being premise that the writ petitioner was absent and he did not join the post in question.

Questioning the order dated 9.5.2023, 3.8.2023 and 7.8.2021 placing the writ petitioner under suspension as well as non payment of salary for the period from March, 2021 to June 2023 as well as subsistence allowance he has filed the present writ petition. This Court entertain the writ petition on 17.7.2023 while passing the following order:-

"Heard Sri Narendra Kumar Chaturvedi, submits that the order dated 9.5.2023 passed by the third respondent, District Inspector of Schools, Sant Kabir Nagar, proceeds on misconception of facts and law but in view of the fact that the writ petitioner was appointed as Assistant Teacher (Sanskrit) on 25.9.1999 and thereafter his appointment was even approved and when the post of Principal fell vacant due to the death of Achyutanand Chaturvedi on 8.10.2014, the petitioner was made Ad hoc Principal of the institution in question. It is further the case of the writ petitioner that the management in question wanted to dislodge the writ petitioner and in this regard if sought to give charge to Sri Ashok Kumar Pathak as Officiating Principal. The order dated 12.11.2018 granting charge to Sri Ashok Kumar Pathak was challenged by the writ petitioner while filing the Writ Petition No.25233 of 2018 in which a direction was issued to maintain status quo. It is further the case of the writ petitioner that even in fact certain communications were made to the writ petitioner to dislodge him and in this regard on 28.5.2020 and by virtue of the letter to the writ petitioner was directed to even in fact correspond with the respondents. It is further the case of the writ petitioner that the writ petitioner proceeded on medical leave from 13.10.2020 till 16.10.2022 however after

the intervening the Dashehra vacations the writ petitioner with approached the institution in question for being accorded to joining on 27.10.2020 then the same was denied though the writ petition has put in the signature. Learned counsel for the writ petitioner further submits that as the writ petitioner was not being accorded joining in this regard so the writ petitioner preferred contempt proceedings.

It is further the case of the writ petitioner that for the period from October 2020 to February, 2021 there was single operation in the institution in question and while deriving benefit from page 129 of the paper book, the writ petitioner submits that he was paid salary also with the signatures of the writ petitioner were attested itself.

It is further the case of the writ petitioner that institution in question wanted to grant charge of Officiating Principal to the sixth respondent and in this regard entire exercise was undertaken as he refers to page 140 being a letter dated 2.12.2020. It is further the case of the writ petitioner that the writ petitioner represented the matter on 2.12.2020 itself and thereafter on 17.6.2021 again such type of activity was also being resorted to which the tendered is replied on 30.6.2021. It is further the case of the writ petitioner that as the writ petitioner was not being permitted to join the post in question so the writ petitioner preferred Writ-A No. 8419 of 2021, Kishun Raj vs. State of U.P. and 3 others which was connected to earlier Writ Petition No.25233 of 2018. According to the writ petitioner he was placed under suspension on 7.8.2021 and the writ petitioner thereafter challenged the order dated 3.8.2021 whereby he was not accorded joining in Writ-A No.12631 of 2021 which came to be disposed of on 21.10.2021 requiring the official respondent to conduct the inquiry into the factual aspect of the matters regarding the presence of the writ petitioner in the institution in question. According to the learned counsel for the writ petitioner though the writ petitioner kept on representing the respondents pursuant to the notices issued however by virtue of the order dated 9.5.2023 the writ petitioner has been denied joining and he has not been paid salary for the period in question. Learned counsel for the writ petitioner while inviting the attention towards para 33 of the writ petition has sought to contend that neither his suspension order can be said to be in operation nor there is any charge sheet being filed against the writ petitioner and thus in view of the statutory provisions he is entitled to be paid salary.

Matter requires consideration.

Sri Pradeep Kumar Shahi learned Standing Counsel who appears for the respondent no. 1 to 4.
Issue notice to respondent no. 5 and 6.

Steps to be taken within three days by both ways.

All the respondents shall file counter affidavits within three weeks.
Put up this case as a fresh case on 21.8.2023.

Affidavit of compliance be filed before the next date.
It is further the submission of learned counsel for the writ petitioner that in case the respondents are treating the same to be within a period of under suspension then the claim should be considered for payment of subsistence allowance."

A counter affidavit has been filed by the State respondents as well as the fifth and sixth respondents. According to the learned counsel for the fifth respondent post issuance of the suspension on 7.8.2021 a charge sheet has been issued late on 18.8.2021 but despite the fact that the writ petitioner was given umpteen number of opportunities they did not respond to the same however of late on 28.8.2023 a reply has been submitted to the charge sheet. According to the learned counsel for the fifth respondent the charge sheet also contains besides the other allegations the charges regarding unauthorised absence. He further submits that since the Inquiry Committee has been constituted it shall conclude the inquiry within a period of two months from the date of the production of the certified copy of the order subject to cooperation of the writ petitioner.

At this stage, learned counsel for the writ petitioner submits that though the writ petitioner has been placed under suspension w.e.f.7.8.2021 but he has not been paid subsistence allowance, however pursuant to the order of the writ court dated 17.7.2023 in the present petition he has not been paid till subsistence allowance.

Sri Vinod Kumar Pandey, learned counsel for the fifth respondent submits that there happens to be the communication of the Educational Authorities regarding payment of the subsistence allowance subject to submission of a certificate by the writ petitioner that he is not gainfully employed anywhere. He further submits that in case the writ petitioner fulfills the said requirements then the subsistence allowance shall be processed in that regard.

Learned counsel for the writ petitioner submits that he shall be furnishing the certificate within a period of one week from today and the writ petitioner be paid the subsistence allowance and the writ petitioner will cooperate with the inquiry proceedings. He however submits that the issue relatable to the officiation of the writ petitioner which has been negated by virtue of the order impugned in the writ petition dated 9.5.2023 and 3.8.2021 on the ground that the writ petitioner was not absent may not come into the way as the said allegations also find part and the parcel of charge sheet and in case the inquiry proceedings concludes in favour of the writ petitioner then the order passed by the District Inspector of Schools, Sant Kabir Nagar may not come in the way.

Having heard the learned counsel for the parties and after perusing the record in question the writ petition is being disposed of in the following manner:-(a) the writ petitioner shall cooperate in the

inquiry proceedings to be conducted by an Inquiry Officer appointed by the fifth respondent, Committee of Management, Baba Ram Naresh Das Ram Jaanki Sanskrit Uchchattar Madhyamik Vidhyalaya, Bheetimafi, Siswaniya, Sant Kabir Nagar within a period of two months of the date of the production of the certified copy of this order strictly in accordance with the regulations in-conformity and in consonance with the principles of natural justice subject to cooperation of writ petitioner; (b) the writ petitioner shall produce before the fifth respondent, Committee of Management, Baba Ram Naresh Das Ram Jaanki Sanskrit Uchchattar Madhyamik Vidhyalaya, Bheetimafi, Siswaniya, Sant Kabir Nagar necessary certificates for getting subsistence allowance in that regard and on the receipt of the same within a period of one week the Disciplinary Authority/Committee of Management shall proceed to examine the same and pay the same as per the rules (c) the payment of the salary for the period which has been denied and unpaid shall be subject to the final orders to be passed in the disciplinary proceedings; and (d) the orders dated 9.5.2023 and 3.8.2023 shall be subject to the final orders to be passed in the disciplinary proceedings post completion of the inquiry proceedings. The challenge to the order dated 7.8.2021 at this stage is declined.

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

Order Date :- 17.11.2023
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