

Court No. - 36

Case :- WRIT - A No. - 11455 of 2023

Petitioner :- Mohammad Asif Ansari

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

Counsel for Petitioner :- Pradeep Kumar Upadhyay

Counsel for Respondent :- C.S.C.,Bhanu Pratap Singh
Kachhawah,Navin Kumar Sharma

Hon'ble Manjive Shukla,J.

1. Heard Sri Anurag Srivastava, learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No. 1 to 4 and Sri Bhanu Pratap Singh Kachhawah, learned counsel appearing for the Respondents No. 5 and 6.

2. Mr. Sami Anwar has filed an application for his impleadment as Respondent No. 7 in this writ petition through his counsel, Mr. Navin Kumar Sharma. Learned counsel appearing for the petitioner does not have any objection if the impleadment application is allowed.

3. Impleadment application is allowed.

4. Since the application for impleadment has been allowed, therefore, this court has heard the arguments advanced by Sri Navin Kumar Sharma, learned counsel appearing for the Respondent No. 7.

5. Petitioner through this writ petition has challenged the order dated 30.6.2023 passed by the District Basic Education Officer, Etah, whereby services of the petitioner have been terminated with immediate effect.

6. Facts of the case, in brief, are that an advertisement was published for making appointments against 60 posts of Assistant Teacher (Urdu). Petitioner on the basis of his eligibility submitted application for his appointment on the post of Assistant Teacher (Urdu) in the primary schools run by the U.P. Basic Education Board, Prayagraj.

7. Later on, a Committee under the Chairmanship of Principal, District Institute of Education and Training, Etawah considered the matter and held that since petitioner has obtained certificate of Moallim-e-Urdu after year 1998, therefore he is not eligible for appointment on the post of Assistant Teacher (Urdu). Petitioner challenged the aforesaid decision of the Committee dated 22.7.2019 by filing Writ-A No.15412 of 2019 and the said writ petition was allowed by this court vide judgment and order dated 14.11.2019, whereby decision of the Committee dated 22.7.2019 was quashed and a direction was issued to District Basic Education Officer, Etah to pass fresh order in the light of observations made by this court in the decision rendered in **Writ-A No. 6004 of 2016 (Sartaj Ahmad and 5 others Vs. State of U.P. and 3 others)**. The judgment and order dated 14.11.2019 passed in Writ-A No.15412 of 2019 is extracted as under:-

“Heard learned counsel for the parties.

On 5.11.2019, the Court had passed the following order:-

"Heard learned counsel for the petitioners, learned standing counsel for respondent Nos. 1 & 2 and Sri S.K. Srivastava, learned counsel for respondent Nos. 3 & 4.

Learned counsel for the petitioners submitted that earlier petitioner No. 3 has filed Writ-A No. 10187 of 2016 (Tahzeeb Fatma vs. State of U.P. and 3 others) which was disposed of by this Court vide order dated 30.01.2018 in terms of order dated 30.01.2018 passed in Writ-A No. 6004 of 2016 (Sartaj Ahmad and 5 others Vs. State of U.P. and 3 others) along with other connected petitions.

As per paragraph 11(i) of the judgment of Sartaj Ahmad (Supra), petitioners are fully eligible for appointment. Relevant paragraph 11(i) of the judgment of Sartaj Ahmad (Supra) is quoted below:-

"(i) All the petitioners who had taken admission prior to 11.8.1997 in the Moallim-E-Urdu training course and have cleared it during academic session 1997-98 would be entitled to be considered for appointment to the post of Assistant Teacher in Urdu in the primary institutions run by the Department of Basic Education, Uttar Pradesh, for which process had been initiated vide Government Order dated 5.1.2016."

It is further submitted that in the impugned order, it is admitted that petitioners have taken admission in Moallim-E-Urdu training course prior to the cut-off date fixed by the Court i.e. 11.08.1997, but considering this fact that mark sheet was issued on 22.10.1998, his candidature was rejected which is absolutely contrary to the direction issued by the Court in the matter of Sartaj Ahmad (Supra).

I have perused the impugned order dated 22.07.2019. By the perusal of impugned order, it is apparent that there is no dispute on the point that petitioner had taken admission in course in question prior to the cut-off date fixed by the Court i.e. 11.08.1997 and also there is no dispute raised in the impugned that this admission was not taken in Session 1997-98 and only on the ground of declaration of result on 22.10.1998, their candidatures have been rejected which prima facie appears not in consonance with the direction issued by this Court in the matter of Sartaj Ahmad (Supra).

Sri S.K. Srivastava, learned counsel for respondent Nos. 3 & 4 prays for and is granted a week time to seek instruction in the matter.

Put up this case on 14.11.2019 in the additional cause list."

*Pursuant to the order dated 5.11.2019, Sri Sanjay Kumar Srivastava, learned counsel for the respondent nos. 3 and 4 has produced written instruction, which is taken on record. In the written instruction, there is no denial of any fact which was observed by this Court in the order dated 5.11.2019 and only ground has been taken that result was declared on 22.10.1998 after cut-off of date fixed by this Court in **Writ-A No. 6004 of 2016** in the matter of **Sartaj Ahmad and 5 others Vs. State of U.P. and 3 others**, therefore, selection was denied by Committee vide order dated 8.7.2019.*

*Learned counsel for the petitioner submitted that in the matter of **Sartaj Ahmad (supra)** this Court has only held that admission should have been taken prior to 11.8.1997 in Session 1997-98 and this fact is not disputed, but merely on the ground of date of declaration of result on 22.10.1998, candidature of the petitioners has not been considered and impugned order dated 22.7.2019 has been passed.*

I have perused the impugned order as well as relevant record and judgment of this Court in the matter of Sartaj Ahmad (supra). Relevant paragraphs 10 and 11 of the said judgment are quoted below:-

"10. Once an application for grant of recognition under section 14 of the Act could be moved uptill 31.3.1999, the training certificate issued prior to it cannot be discarded merely for the reason that institution which granted such certificate has not applied for recognition till the academic session 1997-98. The objection of respondents in that regard cannot be sustained. Petitioners' training certificate of Moallim-E-Urdu is thus a valid training certificate when admission had been secured for training programme prior to 11.8.1997.

11. For the reasons recorded above, this bunch of writ petitions is disposed of by providing as under:-

(i) All the petitioners who had taken admission prior to 11.8.1997 in the Moallim-E-Urdu training course and have cleared it during academic

session 1997-98 would be entitled to be considered for appointment to the post of Assistant Teacher in Urdu in the primary institutions run by the Department of Basic Education, Uttar Pradesh, for which process had been initiated vide Government Order dated 5.1.2016.

(ii) Petitioners alongwith certified copy of this order would also submit proof of their admission in the course concerned prior to 11.8.1997 within a period of three weeks from today. It would be open for the concerned District Basic Education Officers to examine the question as to whether admission had in fact been obtained by the petitioners prior to 11.8.1997, as is asserted by them. It goes without saying that other educational certificates etc. would also be open to be examined in accordance with law.

(iii) Petitioners who have already participated in the counselling pursuant to interim orders passed in this bunch of writ petitions and have been selected would be considered for appointment and appropriate orders in that regard would be issued within a period of three months from the date of presentation of certified copy of this order.

(iv) In respect of those petitioners who have not participated in the counselling, it would be open for them to approach the District Basic Education Officer concerned and in case there are posts still lying vacant and the respondents are proposing to conduct further counselling, their claim shall also be considered in accordance with law."

*By perusal of the said judgment, it is clear that admission is required to be taken prior to 11.8.1997 in Session 1997-98 and there is no dispute on the point that the petitioners had taken admission in Moallim-E-Urdu course prior to cut-off date i.e. 11.8.1997. Once this Court in the matter of **Sartaj Ahmad (supra)** has not made any observation with regard to issuance of result and it is not disputed that the petitioners had taken admission in the year 1997, date of declaration of result cannot be a ground for rejection of candidature of petitioners. It is also necessary to point out that there is no inordinate delay in date of declaration of result of Session 1997-98 and session would have been completed in June, 1998 and mark sheet was issued on 22.10.1998, therefore, impugned order is bad and liable to be quashed.*

*Accordingly, writ petition is **allowed**. The impugned order dated 22.7.2019 passed by respondent no. 4-District Basic Education Officer, Etah is hereby quashed. The respondent no. 4-District Basic Education Officer, Etah is directed to pass fresh order in light of observation made by this Court in the matter of **Sartaj Ahmad (supra)** within four weeks from the date of production of certified copy of this order."*

8. The aforesaid judgment and order dated 14.11.2019 passed in Writ-A No.15412 of 2019 was complied with by the District Basic Education Officer, Etah and petitioner was issued appointment order on 18.1.2020, whereby petitioner was appointed as Assistant Teacher (Urdu) in Primary School Dhaninga Nidhauri Kalan, District Etah. Petitioner since 18.1.2020 started discharging duties attached to his post and he has been paid salary from the State exchequer.

9. The District Basic Education Officer, Etah vide order dated 10.5.2022 stopped payment of salary to the petitioner for the reason that inquiry regarding petitioner's appointment is being done by the Chief Development Officer, Etah on the basis of some complaints.

10. The District Basic Education Officer, Etah issued a show cause notice to the petitioner on 31.5.2023, wherein it was mentioned that inquiry report in respect of petitioner's appointment has been submitted by the Chief Development Officer, Etah to District Magistrate, Etah and thereby District Magistrate, Etah has directed the District Basic Education Officer, Etah to take action in the matter on the basis of the findings recorded in the inquiry report. Vide aforesaid notice dated 31.5.2023, petitioner was required to submit his response within a period of one week with further rider that if petitioner fails to submit reply to the show cause notice, petitioner's appointment shall be cancelled.

11. Petitioner in response to the aforesaid show cause notice dated 31.5.2023 submitted his reply on 3.6.2023 to District Basic Education Officer, Etah. Petitioner in his reply has categorically pointed out that petitioner's certificate of Moallim-e-Urdu course is a valid certificate in view of the judgment rendered by this court in **Writ-A No.6004 of 2016, Sartaj Ahmad and others vs. State of U.P. and others**. Petitioner in his reply dated 3.6.2023 also took categorical grounds to show that petitioner's appointment has been made on the basis of valid certificate of Moallim-e-Urdu course. Petitioner along with his reply dated 3.6.2023 also annexed various documents to show that his appointment is valid and has been made in compliance of the directions issued by the High Court. Thereafter, District Basic

Education Officer, Etah has passed order on 30.6.2023, whereby petitioner's services have been terminated with immediate effect.

12. Learned counsel appearing for the petitioner has argued that from bare perusal of the order dated 30.6.2023, which is impugned in this writ petition, it becomes crystal clear that reply submitted by the petitioner to the show cause notice has not been considered at all, therefore the impugned order dated 30.6.2023 cannot sustain in the eyes of law. Learned counsel appearing for the petitioner has also vehemently argued that it is well settled proposition of law through catena of judgments of the Hon'ble Supreme Court that once prior to termination of services, show cause notice has been issued to the employee and he has submitted his reply, then it is obligatory on the competent authority to consider each and every point of reply while passing the final order, whereas in the present case, it is patently manifest that reply submitted by the petitioner has not been considered at all, therefore the order dated 30.6.2023, impugned in this writ petition, can not sustain in the eyes of law.

13. Learned counsel appearing for the petitioner has concluded his arguments by saying that since reply submitted by the petitioner to the show cause notice dated 31.5.2023 has not been considered at all, therefore the order dated 30.6.2023 which is impugned in this writ petition, is liable to be quashed by this court and the matter is liable to be remanded to the competent authority to pass a fresh order after considering each and every point of reply submitted by the petitioner.

14. Sri Bhanu Pratap Singh Kachhawah, learned counsel appearing for the District Basic Education Officer, Etah has submitted that since in the inquiry conducted by the Chief Development Officer, Etah, petitioner's certificate of Moallim-e-

Urdu course has not been found to be a valid certificate, therefore petitioner's services from the post of Assistant Teacher (Urdu) have been terminated vide order dated 30.6.2023. Sri Bhanu Pratap Singh Kachhawah, learned counsel appearing for the Respondents No.5 and 6 has admitted that reply submitted by the petitioner against the show cause notice dated 31.5.2023 has not been considered, therefore the order dated 30.6.2023 impugned in this writ petition, may be quashed and the matter may be remanded to District Basic Education Officer, Etah to pass fresh order after considering the reply submitted by the petitioner.

15. Sri Navin Kumar Sharma, learned counsel appearing for the Respondent No. 7 also could not satisfy the court regarding non-consideration of reply submitted by the petitioner while passing the impugned order dated 30.6.2023. Learned counsel appearing for the Respondent No. 7 has also agreed that the order dated 30.6.2023 may be quashed and the matter may be remanded to District Basic Education Officer, Etah to pass fresh order after taking into consideration the reply submitted by the petitioner to the show cause notice dated 31.5.2023.

16. I have considered the submissions advanced by the learned counsels appearing for the parties. I find that petitioner was appointed on the post of Assistant Teacher (Urdu) pursuant to the order dated 14.11.2019 passed by this court in Writ-A No.15412 of 2019. Later on, some complaints were made regarding illegalities in the petitioner's appointment and an inquiry was conducted by the Chief Development Officer, Etah and he submitted an inquiry report. District Basic Education Officer, Etah issued a show cause notice on 31.05.2023 to the petitioner, whereby he was required to submit his reply in respect of

findings recorded in the inquiry report. The relevant extract of the show cause notice dated 31.5.2023 is reproduced as under:-

"शिकायतकर्ता शमी अनवर ने चयनित तीनों शिक्षकों के प्रवेश की तिथि का अभिलेख उपलब्ध कराया गया है , जिसमें स्नातक (समकक्ष) के परिणाम की तिथि से पूर्व ही मोअल्लिम -ए उर्दू (बी०टी०सी० समकक्ष) में प्रवेश दर्शाया गया है , जबकि स्नातक परीक्षा उत्तीर्ण करने के उपरान्त ही बी०टी०सी० समकक्ष में प्रवेश लिया जा सकता है। इस प्रकार मोअल्लिम ए उर्दू वर्ष 1997 में परीक्षा आवेदन की तिथि की जानकारी के बिना चयन करना एवं मोअल्लिम ए उर्दू कोर्स को राष्ट्रीय अध्यापक शिक्षा परिषद द्वारा अमान्य घोषित करना आदि के बावजूद शिक्षकों का चयन किया गया है। उक्त के दृष्टिगत प्रथम दृष्टया मोअल्लिम ए उर्दू कोर्स धारक उर्दू शिक्षकों का चयन अमान्य प्रतीत होता है।

अतः आपको निर्देशित किया जाता है कि उक्त के सम्बन्ध में अपना स्पष्टीकरण/पक्ष लिखित अभिकथन के साथ साक्ष्यों एवं अभिलेखों सहित एक सप्ताह के अन्दर अद्योहस्ताक्षरी को उलब्ध कराना सुनिश्चित करें, अन्यथा की स्थिति में आपकी उर्दू स०अ० के पद पर नियुक्त निरस्तीकरण की कार्यवाही अमल में लायी जायेगी।"

17. Petitioner submitted his reply to the aforesaid show cause notice dated 31.5.2023, on 3.6.2023. The relevant extract of the reply submitted by the petitioner is reproduced as under:-

"आपके कार्यालय द्वारा निर्गत विषयांकित कारण बताओ नोटिस के क्रम में प्रार्थी का स्पष्टीकरण निम्नवत है।

1. माननीय उच्च न्यायालय इलाहाबाद में योजित याचिका संख्या 6004/2016 सरताज अहमद व अन्य बनाम उत्तर प्रदेश सरकार व अन्य में पारित निर्णय में बिन्दु संख्या 9 के अनुसार मोअल्लिम ए उर्दू कोर्स की मान्यता हेतु सम्बन्धित संस्था द्वारा मान्यता प्रदान किये जाने हेतु आवेदन करने की तिथि 31.03.1999 तक एन.सी.टी.ई. द्वारा दिनांक 31.03.1999 को अधिसूचना जारी की गई थी। जिसके अनुसार मान्यता प्राप्त किये जाने हेतु आवेदन की तिथि में अन्तिम दिनांक में 31.03.1999 तक वृद्धि की गई थी। (संलग्न 1)

2. शिकायतकर्ता द्वारा लगाया गया आरोप निराधार एवं असत्य है प्रार्थी द्वारा जमिया उर्दू अलीगढ़ से अदीव ए कामिल वर्ष 1995 में की गई थी।

प्रार्थी द्वारा इसके पश्चात जामिया उर्दू अलीगढ़ मोअल्लिम ए उर्दू वर्ष 1997 में प्रवेश दिनांक 26.07.1997 में ले लिया गया था। इस प्रकार मोअल्लिम ए उर्दू कोर्स पूर्णतः मान्य एवं वैधानिक है। (संलग्न 2)

अतः प्रार्थी का चयन निर्धारित अहर्ता पूर्ण होने के आधार पर किया गया है जो पूर्णतः वैध है। (संलग्न उक्तवर्त)

18. Petitioner has submitted his detailed reply to the show cause notice dated 31.5.2023 and by giving detailed reasons, he has stated that his certificate of Moallim-e-Urdu course is perfectly valid. Petitioner along with his reply also annexed various documents to show that his certificate of Moallim-e-Urdu course is valid and there is no illegality or infirmity in his appointment on the post of Assistant Teacher (Urdu).

19. The District Basic Education Officer, Etah while passing the impugned order has only stated that petitioner pursuant to show cause notice dated 31.5.2023 has submitted his reply but he has not given any evidence/document along with his reply which can prove the findings recorded in the inquiry report to be incorrect, therefore there is no reason to allow the petitioner to continue in service and accordingly, petitioner's services have been terminated. The relevant portion of the order dated 30.6.2023 is extracted as under:-

“उक्त जाँच के क्रम में कार्यालय के पत्रांक 1499-1500/2023/24 दिनांक 31-5-2023 के द्वारा उक्त अध्यापकों को कारण बताओ नोटिस निर्गत कर अपना-अपना पक्ष प्रस्तुत किये जाने हेतु निर्देशित किया गया, इस नोटिस के क्रम में सम्बन्धित अध्यापकों द्वारा दिये गये स्पष्टीकरण के साथ कोई ऐसा साक्ष्य/अभिलेख उपलब्ध नहीं कराया गया कि जिससे जाँच आख्या

के विपरीत तथ्य प्रकाश में आ सके। ऐसे में उक्त अध्यापकों को वर्तमान में सेवा में बनाये रखने का कोई औचित्य नहीं है।

अतः उक्त जाँच आख्या के क्रम में श्रीमती तहजीब फातमा स०अ० प्रा०व मुढई प्रहलादनगर विकास क्षेत्र जलेसर, श्री मोहम्मद आसिफ अंसारी स०अ० प्रा०वि० धनिगा विकास क्षेत्र नि०कलों एवं श्री मुकीम अहमद स०अ० प्रा०वि०भोपतपुर विकास क्षेत्र नि०कलों की सेवायें तत्काल प्रभाव से समाप्त की जाती हैं।

20. It is well settled proposition of law through catena of judgments of the Hon'ble Supreme Court that when a show cause notice has been issued to an employee and he has submitted reply to the said show cause notice, then while passing the order terminating the services of the said employee, each and every point of his reply must be considered and it should not be rejected only by saying that reply submitted by the said employee is not sufficient.

21. This court finds that petitioner has submitted detailed reply to the show cause notice dated 31.05.2023 but the District Basic Education Officer, Etah while passing the order dated 30.06.2023 has not considered his reply at all.

22. Once reply submitted by the petitioner to the show cause notice dated 31.5.2023 has not been considered, the order dated 30.6.2023 cannot sustain in the eyes of law. Even otherwise, learned counsels appearing for the respondents have agreed to this extent that since reply submitted by the petitioner to the show cause notice has not been considered while passing the order dated 30.6.2023, therefore the impugned order may be quashed and the matter may be remanded to District Basic Education Officer, Etah to pass fresh order after considering the reply submitted by the petitioner.

23. In view of the aforesaid reasons, this writ petition is allowed, order dated 30.6.2023 passed by the District Basic Education

Officer, Etah, is quashed and matter is remanded to District Basic Education Officer, Etah to pass fresh order after considering the petitioner's reply dated 3.6.2023 within one month from the date of service of certified copy of this order.

24. It is made clear that this court has quashed the order dated 30.6.2023 only on account of non-consideration of reply submitted by the petitioner, therefore he shall not be reinstated in service at once and his reinstatement will depend upon the fresh order to be passed by the District Basic Education Officer, Etah.

Order Date :- 21.11.2023

Salim/A. Mandhani

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