

A.F.R.

Neutral Citation No.-2023:AHC:222974
Judgment Reserved on 6.11.2023
Judgment Delivered on 24.11.2023

Court No.- 35

Case:- WRIT - A No. - 11493 of 2023

Petitioner :- Dr. Dhananjay Singh

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

Counsel for Petitioner :- Girdhar Prasad Tripathi, Sr. Advocate

Counsel for Respondent :- C.S.C., Siddharth Khare

Hon'ble Vikas Budhwar, J.

1. Heard Sri H.N. Singh, learned Senior Counsel assisted by Sri Girdhar Prasad Tripathi, learned counsel for the writ petitioner, Sri Saurabh, learned Standing Counsel who appears for respondents No. 1 to 5 and Sri Ashok Khare, learned Senior Counsel assisted by Sri Jigar Khare, learned counsel for the respondents.

2. Since affidavits have been exchanged between the parties and they do not propose to file any further affidavits thus with their consent the writ petition is being decided at the fresh stage.

3. The facts of the case as worded in the writ petition are that there is an institution by the name of Mathura P.G. College, Rasra, District Ballia which is affiliated to Jannayak Chandrashekhar University, Ballia (In short respondent University) and the first statute of Mahatama Ganhi Kashi Vidyapeeth (First amendment) Statue 2011 are applicable.

4. Since the fourth respondent institution is affiliated to the respondent University thus the payment of salaries of the teaching and non teaching staff of the institution is being made under the provisions of Section 60B of the U.P. State Universities Act, 1973.

5. The writ petitioner claims to be appointed as a Lecturer/Associate Professor on 19.2.1991 in the subject Geography and was promoted in the grade of Associate Professor on 1.1.2006. A substantive post of Principal fell vacant on 12.8.2016. As per the seniority list one Dr. Smt. Urmila Singh was the senior most Lecturer/Associate Professor followed by the sixth respondent Dr. Dharmatmanand Gupta and then the writ petitioner, Dr. Dhananjay Singh.

6. Since Dr. Smt. Urmila Singh and sixth respondent Dr. Dharmatmanand Gupta, Associate Professor (Economics) refused to officiate as a Principal of the fourth respondent Institution on 11.6.2018 so the writ petitioner who was next in the league was allowed to Officiate as a Principal of the institution in question by virtue of an order passed by the Authorised Controller/District Magistrate, Ballia on 12.6.2008 who was manning the institution in question. The signature of the writ petitioner as an Officiating Principal was also attested and he assumed the charge as an Officiating Principal on 14.6.2018.

7. According to the writ petitioner complaints were lodged by a Local M.L.A. and Sri Anil Kumar Singh, Accountant Mathura, P.G. College Rasra, Ballia regarding the working of the writ petitioner as an Officiating Principal institution in question pursuant where to an order is stated to have been

passed by Commissioner Azamgarh Division, Azamgarh on 24.9.2020 for holding of inquiry against the writ petitioner.

8. A Committee is stated to have been constituted headed by Chief Development Officer, Ballia along with the Senior Treasury Officer and District Inspector of Schools, Ballia, which conducted the inquiry while submitting the inquiry report that the works relating to accounts in the institution in question was not being conducted properly as despite the fact that there happened to be an authorised accountant the writ petitioner in the capacity of an officiating Principal was getting the accounts work done through private persons. Apart from the same the vouchers were also issued in the name of employees who were presenting the said vouchers creating a situation whereby the regularly appointed and authorised accountant was being deprived of work and financial irregularities were being committed which was against the Government Orders.

9. A communication noticing the aforesaid irregularities was issued under the signature of the Chief Development Officer, Ballia to the Commissioner Azamgarh Division, Azamgarh on 13/17.11.2020

10. After the receipt of the communication dated 13/17.11.2020 of the Chief Development Officer, Ballia addressed to Commissioner Azamgarh Division, Azamgarh another communication was issued on 30.7.2021 under the signatures of Joint Director Higher Education on behalf of the Director of Higher Education addressed to the Administrator, Mathura P.G. College, Rasra, District Ballia wherein it was recited that inquiry was conducted in the light of the communication of the Additional Chief Secretary, U.P. Government vide letter dated 15.2.2021 and after noticing the

said irregularity so pointed out against the writ petitioner the matter was referred for taking follow up action.

11. Consequently, on 6.8.2021 Administrator, Mathura P.G. College, Rasra, District Ballia fourth respondent proceeded to issue an office order whereby owing to the irregularities as referred to above the writ petitioner was directed to handover the charge of the Officiating Principal to the sixth respondent, Dr. Dharmatmanand Gupta.

12. Challenging the order dated 6.8.2021 passed by the fourth respondent, Administrator, Mathura P.G. College, Rasra, District Ballia the writ petitioner preferred Writ-A No.10764 of 2021, Dr. Dhananjay Singh vs. State of U.P. which came to be allowed on 13.9.2021. Order whereof is being quoted herein under:-

Heard Sri H.N.Singh, learned Senior Counsel, assisted by Sri Girdhar Prasad Tripathi, learned counsel for the petitioner and Sri Ratan Deep Mishra, learned Standing Counsel for the respondents.

The petitioner, by means of the present writ petition, has assailed the order dated 06.08.2021 passed by the respondent no.6-Administrator, P.G. College Rasra, District Ballia/ Regional Higher Education Officer, Varanasi, by which the petitioner has been removed from the post of Officiating Principal of the College.

The Mathura P.G. College (hereinafter referred to as "the College") is an Educational Institution affiliated with Jannayak Chandrashekhar University, Ballia (hereinafter referred to as "the University"). The first statute of Mahatma Gandhi Kashi Vidyapeeth (First Amendment) Statute, 2011 is adopted by the University.

The vacancy of Principal in the College came in existence in the year 2018. As the senior most Associate Professor of the College, namely, Dr. Smt. Urmila Singh and the second senior most Associate Professor Dr. Dharmatma Nand refused to accept the charge of Officiating Principal. The petitioner being at Sl. No.3 in the seniority list, was offered the charge of Officiating Principal. Subsequently, the petitioner was appointed as Officiating Principal on 12.06.2018. The signature of the petitioner has been

attested by the respondent no.7-Regional Higher Education Officer, Varanasi Region, Varanasi and the petitioner since then has been continuously working as Officiating Principal of the College. However, by the order dated 06.08.2021, the petitioner has been removed from the Post of Officiating Principal of the College on several charges.

Challenging the said order, learned counsel for the petitioner has contended that the order being punitive and stigmatic in nature, therefore, an opportunity of hearing ought to have been afforded to the petitioner before passing the impugned order. He further submits that neither any notice or opportunity of hearing was afforded to the petitioner by the respondents, hence, the order impugned cannot sustain. In this respect, necessary averments has been made in paragraph no.21 of the writ petition.

This Court on earlier occasion, i.e., on 27.08.2021 has passed the following order:-

"Orders of Director of Education as also the Administrator is assailed primarily on the ground that though petitioner is continuing as Officiating Principal for the last three years but without putting him to any notice the order has been passed for dislodging him from the office of Officiating Principal. It is stated that Accountant, who has since retired, has otherwise been found guilty of various irregularities by the Joint Director vide order dated 6.8.2021, and therefore the charge that work was not taken from him is otherwise not sustainable.

Learned Standing Counsel may obtain instructions. Post as fresh, once again, on 10.9.2021.

Status quo with regard to working in the office of Officiating Principal, till then, shall be maintained."

Pursuant to the order of this Court dated 27.08.2021, learned Standing Counsel on the instructions, which is taken on record, states that the charge of the petitioner has been taken on the ground that the petitioner is not the senior most Associate Professor in the College.

Be that as it may, the order impugned discloses that certain charges have been levelled against the petitioner, on the basis of which, the charge of Officiating Principal has been withdrawn from him. A reading of the impugned order discloses that the order is punitive and stigmatic in nature, thus, the order impugned could not have been passed without giving any notice or reasonable opportunity of hearing to the petitioner.

Learned Standing Counsel submits that the instructions with regard to the averments made in paragraph no.21 of the writ petition are silent, even otherwise perusal of the impugned order does not indicate that any notice or

opportunity of hearing has been afforded to the petitioner by the respondent no.6 before passing the impugned order. In this view of the fact, the order impugned is not sustainable, hence, is hereby set aside.

As in the present case, respondent no.6-Regional Higher Education Officer, Varanasi Region, Varanasi is also the Administrator of the College, therefore, in the facts of the present case, this Court is of the opinion that in the interest of justice it would be appropriate to refer the matter to the respondent no.2-Director, Higher Education, U.P. Degree (Earth-I) Anubhag, Prayagraj to take a decision with reference to the continuance of the petitioner as Officiating Principal of the College within a period of two months from today, after giving due notice and opportunity of hearing to the petitioner as well as other interested parties.

The writ petition is allowed subject to the observations made above.“

“Order on Civil Misc. Impleadment Application

The present impleadment application has been filed by one Anil Kumar Singh for being impleaded as respondent no.8 in the array of parties.

The applicant has filed the present impleadment application contending inter-alia that he applicant was working on the post of Accountant in the College and he has retired on 30.06.2021. The petitioner was appointed as Officiating Principal in the College on 12.06.2021 but after some time without any reason he restrained the applicant to work in the College and thereafter the applicant informed about the conduct of the petitioner to the higher authority as well as on the portal of the Hon'ble Chief Minister on 18.02.2020 about the embezzlement of fund of the said College as well as verification of false document of the petitioner. Thereafter, the authority has considered the complaint of the applicant and on an inquiry being instituted, the petitioner was removed from the post of Officiating Principal on 03.08.2021 and senior most teacher Dr. Dharmatma Nand Associate Professor (Economics) has been appointed as Principal in the College. The applicant was being mentally harassed by the petitioner without there being any complaint or reason, and therefore any passed in favour of the petitioner would seriously prejudice the applicant.

In the opinion of the Court, since the applicant has already retired from the service, hence, the impleadment application is misconceived. Accordingly, the present impleadment application being misconceived, is hereby rejected.”

13. Pursuant to the order dated 13.9.2021 passed in Writ-A No.10764 of 2021, the third respondent, Joint Director of Higher Education U.P. at Prayagraj issued a communication dated 27.9.2021 to the writ petitioner herein, Sri Anil Kumar Singh, Accountant as well as to Regional Higher Education Officer, Varanasi Region, Varanasi fifth respondent requiring them to the present along with their versions on 5.10.2021 for hearing.

14. The writ petitioner claims to have tendered its version on 5.10.2021. Thereafter on 27.5.2022 the Joint Director of Higher Education on behalf of Director of Higher Education U.P. at Prayagraj proceeded to pass an order whereby it held that in view of the irregularities found against the writ petitioner as an Officiating Principal the sixth respondent being the senior most was entitled to officiate as Principal.

15. This led to filing of **Writ-A No.9761 of 2022** by the writ petitioner which came to be decided on 19.10.2022 order whereof is being quoted here under:-

“Heard Sri H.N. Singh learned Senior Counsel assisted by Sri Girdhar Prasad Tripathi learned counsel for the petitioner, the learned Standing Counsel for the State respondents and Sri Prabhakar Awasthi learned counsel for the private respondent.

Challenge has been raised to the order dated 27.5.2022 passed by the Joint Director Education. By that order, the claim of the petitioner to be reinstated as officiating Principal of Mathura P.G. College, Rasra, District Ballia, has been rejected.

Having heard learned counsel for parties and having perused the record, it transpires, claim of the petitioner stems from the earlier order passed by the Administrator of the institution making over officiating charge of Principal to the petitioner. Petitioner claims that the said order would operate till a regularly selected candidate joins the institution.

On the other hand, Sri Awasthi would claim that the petitioner is next in seniority to the private respondent No. 6. He could only claim continuance of officiating charge of Principal for three months from the date of issuance of the order 06.8.2021. Since the respondent No. 6 had expressed his inability to function as the Principal for some time, the said respondent did not waive off his right to be considered to discharge officiating charge of Principal of the above named institution after the initial period of three months.

That objection raised by learned counsel for the private respondent has been met with a further submission advanced by learned Senior Counsel for the petitioner, who would contend that the language of the order dated 12.6.2018 is clear. In any case, the vacancy had arisen on 12.8.2016 and therefore, the situation contemplated by the statute 20-A(12) cannot be relied upon against the petitioner.

While such and other submissions are being pressed by learned counsel for parties, impugned order indicates complete non application of mind. Besides making a bald recital of the claim made by the parties and quoting the provisions of law, no consideration of facts has been made and no reasoning is contained in the order before reaching the conclusion that the petitioner is not entitled to restoration of officiating charge of Principal. The approach of the Joint Director is not appreciated. Quasi judicial authorities are vested with important function to decide the claims involving civil rights of citizens. Once the Court requires such authorities to pass an order in accordance with law, it entails the responsibility to afford reasons for the conclusions to be recorded by such authorities.

In absence of any reasoning given, the impugned order cannot be sustained. It is set aside. Matter is remitted to respondent No. 3 to pass a fresh order strictly in accordance with law after affording due opportunity of hearing to the parties and giving adequate reasons to meet their submissions. Such exercise may be completed within a period of two months from today.

Till the decision to be taken by the respondent No. 3, pursuant to this order, status quo as on date may prevail.

With the above directions, writ petition stands disposed of.”

16. The writ petitioner thereafter preferred an application setting out the facts that he was entitled to officiate as the Principal in question. However, now the order impugned has been passed by the third respondent, Joint Director of Higher Education U.P. at Prayagraj on behalf of the Director of

Education Prayagraj dated 12.1.2023 whereby the claims set up by the writ petitioner has been negated.

17. Questioning the order dated 12.1.2023 passed by the third respondent, Joint Director of Higher Education U.P. at Prayagraj on behalf of the Director of Education Prayagraj the present petition has been preferred.

18. This Court entertained the writ petition on 19.7.2023 wherein the following order was passed:-

“Vakalatnama filed by Sri Siddharth Khare on behalf of respondent no.6 is taken on record.

Sri H.N. Singh, learned Senior Counsel assisted by Sri Girdhar Prasad Tripathi, for the petitioner has sought to argue that the order dated 12.1.2023 passed on behalf of the second respondent, Director Higher Education U.P. Degree (Earth-I) Anubhag, Prayagraj by Joint Director Higher Education, U.P. Prayagraj proceeds on misconception of fact. Though two grounds have been taken in the order impugned firstly, that as per the seniority list dated 11.9.2020 and 30.9.2021 the sixth respondent is senior to the writ petitioner and secondly in view of the allegations of financial misappropriation, irregularities the writ petitioner cannot be allowed to function of the post of Officiating Principal in the fourth respondent institution.

Sri H.N. Singh, learned Senior Counsel has argued that he does not dispute the seniority position of the writ petitioner vis-a-vis the sixth respondent, however according to him pursuant to the own sweet-will of the sixth respondent he showed its inability to officiate on the said post due to the medical ailments and the writ petitioner was allowed to officiate since 12.6.2018 however in the garb of allegations pertaining to financial irregularity he had been sought to be ousted. He has further argued that the first attempt was made on 6.8.2021 wherein certain allegations relating to financial irregularities were sought to be slapped upon the writ petitioner which was subject matter of challenge in Writ-A No.10764 of 2021, Dr. Dhananjay Singh vs. State of U.P. and 6 others which came to be allowed on 13.9.2021 wherein this Court opined that the order was punitive and was passed in violation of principle of natural justice, the matter was remitted to the second respondent to pass an order and thereafter consequent to the notice another order was passed on 27.5.2022 whereby a ground was taken that the writ petitioner was junior to the sixth respondent, thus the writ petitioner had no claim about the same which even

in fact was also subject matter of challenge by the writ petitioner in Writ-A No.9761 of 2022 (Dr. Dhananjay Singh vs. State of U.P. & five others wherein the order was set aside and the matter was remitted back though status quo as on date was directed to be maintained. Learned counsel for the writ petitioner submits that now the impugned order has been passed again negating the claim of the writ petitioner on the said two grounds and discussed above. He further submits that by virtue of a communication dated 17.11.2020 at page 67 of the paper book and it has been recommended to hold inquiry against the writ petitioner with regard to the certain allegations and on 4th December, 2020 the Commissioner in question while corresponding with the State Government and also recommended for holding of inquiry but post the said two documents on 6.8.2021 the second respondent has issued a communication to the fourth respondent wherein after taking the version of the writ petitioner, it has been mentioned that Sri Anil Kumar Singh, the Accountant was responsible for the financial irregularities. According to Mr. Singh the said entire exercise is just in order to dislodge the writ petitioner and to continue the sixth respondent to function as the Officiating Principal in the fourth respondent institution.

Sri Ashok Khare, learned Senior Advocate on the other hand submits that the interpretation which is being sought to be shown by the learned counsel for the petitioner that the refusal is for a time immemorial is not sustainable particularly for the fact that it was due to the medical reasons limited to one year and further the writ petitioner does not possess any legal enforceable right to be posted as Officiating Principal.

Parties are also in agreement that the sixth respondent is still holding the charge as an Officiating Principal of the institution in question or order which is being sought to be quashed is dated 12.1.2023.

Sri Awadhesh Kumar Mishra, learned Standing Counsel who appears for the respondent no. 1 to 5 shall seek instructions and file their response within a period of two weeks. Sri Khare may also file their response within aforesaid period.

Put up this case on 10.8.2023 as fresh.”

19. A counter affidavit has been filed on behalf of respondents no. 2, 3 & 5 of the Assistant Director in the office of the Director, Higher Education U.P. at Prayagraj dated

11.10.2023 followed by a counter affidavit on behalf of the sixth respondent to which rejoinder affidavits have been filed.

20. A statement has been made by Sri Saurabh, learned Standing Counsel that an Administrator has been appointed in the Mathura P.G. College, Rasra, District Ballia who is the District Magistrate, Ballia thus he also represents the fourth respondent and he does not propose to file any response further.

21. Sri H.N. Singh, learned Senior Counsel for the writ petitioner submits that the order dated 12.1.2023 passed by the third respondent, Joint Director of Education, U.P. Prayagraj, on behalf of the Director of Education U.P. Prayagraj is not sustainable even for a single moment particularly in view of the fact that once the sixth respondent, Dr. Dharmatmanand Gupta who though is senior to the writ petitioner had shown its inability to perform functions as an Officiating Principal on 11.6.2018 owing to health issues and thereafter the writ petitioner who was next in the league was allowed to function as an Officiating Principal by virtue of the order dated 12.6.2018 of the fourth respondent and he was handed over the charge on 14.6.2018 then now it is not open for the sixth respondent to again claim officiation as a Principal taking a U-turn and a somersault as the vacancy which had arisen on account of superannuation of the regular Principal is still continuing without there being any change thus according to him the sixth respondent has foregone his right and his claim is barred by the doctrine of delay latches and acquiescence.

22. Learned counsel for the writ petitioner seeks to relies upon the judgement in the case of **Sundershan Kumar vs. State of U.P. & others, Special Appeal No.959 of 2006** decided on 15.9.2006, **Ashok Kumar Jain vs. State of U.P.**

2008 (1) ADJ 512, Smt. Archana Singh vs. State of U.P. 2009(6) ADJ 115 and Smt. Duleshwari Devi vs. State of U.P. and others 2012(3) ADJ 742. While drawing force from the aforesaid judgments it is being sought to be submitted on behalf of the writ petitioner that once an incumbent declines to officiate as a Principal on the very vacancy despite being senior most then he/she cannot be permitted to turn around and to claim appointment as an Officiating Principal on the said post.

23. Further reliance has been placed upon the judgement in the case of **Babulal Badriprasad Varma vs. Surat Municipal Corporation and others (2008) 12 SCC 401** and **ARCE Polymers Private Ltd. vs. Alphine Pharmaceuticals Private Ltd. and others (2022) 2 SCC 221** so as to contend that the doctrine of estoppel acquiescence and waiver will come into play with regard to the statutory right so claimed by the writ petitioner once he had declined to officiate as a Principal.

24. Learned Senior Counsel for the writ petitioner has further argued that it was not open for the sixth respondent to claim right of officiation particularly after enormous and inordinate delay in claiming its legal right after a period of seven years while relying upon the decision in the case of **Union of India and others vs. N. Murgu Ganeshan 2022 (2) SCC 25.**

25. It also argued by learned Senior Counsel for the writ petitioner that one of the ground which was made basis for passing of the order dated 12.1.2023 by the third respondent is that there happens to be an inquiry conducted at the level of the State respondents pursuant where to it was found that the writ petitioner had committed financial and procedural irregularities while functioning at the Officiating Principal of the institution

in question. According to him a departmental charge sheet was issued to the writ petitioner dated 13.8.2021 by the Inquiry Officer to which the writ petitioner tendered its reply and thereafter the Inquiry Officer tendered its inquiry report dated 25.9.2021 but till date no final action has been taken in pursuance of the inquiry report dated 25.9.2021 submitted by the Inquiry Officer before the Disciplinary Authority/Regional Higher Education Officer, Varanasi/fourth respondent. He submits that even from the perusal of the charge sheet and the findings recorded by the Inquiry Officer it is clear that the inquiry proceedings was the sham as nothing has been set out in the inquiry report so as to suggest that the writ petitioner had committed any financial or procedural irregularities so as to inflict any punishment upon him. Submission is that in order to block the chances of the writ petitioner to officiate as a Principal of the institution in question an inquiry report has been prepared and it has been kept in a drawer so as to use it as a tool whenever the occasion arises.

26. Learned Senior Counsel for the writ petitioner lastly submits that the entire dispute arose when the writ petitioner in the capacity of an Officiating Principal did not take any work from Sri Anil Kumar, who was the Accountant of the institution in question who committed financial irregularities which came to be noticed in the communication dated 6.8.2021.

27. Thus it is prays that the impugned order be set aside.

28. Countering the said submission, Sri Ashok Khare, learned Senior Counsel appearing for sixth respondent submitted that the writ petitioner is not entitled to any relief as admittedly the sixth respondent is senior to the writ petitioner. The sixth respondent owing to his medical issues had shown its

inability to officiate as the Principal of the institution in question for a period of one year and in its communication dated 11.6.2018 he had specifically pointed that after a period of one year he would work as an Officiating Principal and thus according to him the said act of declining to function as an Officiating Principal was not a permanent denial to work as an Officiating Principal but for a specific reason for a limited period and once the sixth respondent became well then now he is claiming for officiation as a Principal of institution in question. He further submits that on account of inability of the sixth respondent for a particular period the writ petitioner was allowed to officiate thus he cannot resist the claim of the writ petitioner as admittedly it is the right of a senior most incumbent to officiate as the Principal of the institution in question. He seeks to rely upon the decision in the case of **Dhanesh Kumar Sharma vs. State of U.P. & others (2004) 5 AWC 4099**, **Special Appeal No.506 of 2022**, **Vikas Jain vs. State of U.P. & five others decided on 8.7.2022**, **Special Appeal No.677 of 2022**, **Ashok Kumar Pandey vs. State of U.P. & four others decided on 19.12.2022** and judgement in the case of **Dr. Jagathy Raj V.P. vs. Dr. Rajitha Kumar S. And others (2022) 6 SCC 299**.

29. Sri Ashok Khare, learned Senior Counsel has invited the attention of the court towards the communication dated 17.11.2020 of the Chief Development Officer, Ballia addressed to the Commissioner Azamgarh Region, Azamgarh, communication dated 30.7.2021 of the Joint Director of Higher Education on behalf of the Director of Higher Education to the Administrator, Mathura P.G. College, Mathura and the order dated 6.8.2021 of the Administrator, Mathura P.G. College, Rasda, District Ballia so as to contend that there were several

complaints against the writ petitioner while working as an Officiating Principal with respect to financial and technical irregularities. He submits that in the wake of said allegations rightly the order impugned has been passed whereby the writ petitioner has been divested from his right to continue as an Officiating Principal giving charge to the sixth respondent who is obviously senior to the writ petitioner. According to him the said exercise has been undertaken in the interest of the institution and it is a conscious decision.

30. Sri Saurabh, learned Standing Counsel has adopted the arguments of Sri Khare and according to him the impugned order is perfectly valid in accordance with law and no fault whatsoever can be attributed in this regard and the writ petition is liable to be dismissed.

31. I have heard learned counsel for the parties and perused the record carefully.

32. Undisputedly, the fourth respondent institution, Mathura P.G. College, Rasra, District Ballia is a Post Graduate institution affiliated with Jan Nayak Chandrashekhar University, Ballia. So far as the provisions pertaining to officiation is concerned the same is provided under Statute 12Ka.20. As per the said Statute whenever the post of Principal falls vacant then the Committee of Management of the said institution for a period of three months or till the appointment of the Regular Principal whichever is earlier can appoint an Officiating Principal, according to the choice and in case post completion of three months and non-joining of a Regular Principal the Senior Most Teacher is to be granted officiation till the joining of the regularly selected Principal. It is also not

in dispute that the sixth respondent is senior to the writ petitioner.

33. The dispute came into existence when the sixth respondent showed its inability to officiate as the Principal of the institution in question on 11.6.2018 owing to medical issues by virtue of a letter containing a recital that after the period one year and post his recovery he shall be present for officiating as the Principal in institution in question. The writ petitioner who was next in the league was accorded officiation on 12.6.2018 and he assumed charge as an Officiating Principal on 14.6.2018. Thereafter on 5.7.2021 the writ petitioner claims to have approached the respondents for permitting him to officiate.

34. The bone of contention of the rival parties is as to whether the communication dated 11.6.2018 declining to officiate as a Principal would be for all time be treated to be a refusal to officiate as a Principal or not. An additional fact also needs to be noticed at this juncture that it is the same vacancy which had arisen on 12.8.2016 consequent to the retirement of a Regular Principal, though the writ petitioner who is junior to the sixth respondent was allowed to officiate.

35. The Division Bench of this Court in the case of **Sundershan Kumar (Supra)** had the occasioned to consider the said issue and it was held as under:-

“In the present case the facts are different. The substantive vacancy had arisen on 30.6.2003 and the same vacancy is continuing. It is not a case where leave vacancy has subsequently been converted into a substantive vacancy or a fresh substantive vacancy had arisen. Therefore, respondent no.6 having refused to officiate as the Principal on the said substantive vacancy, he is not entitled to stake claim for appointment as Officiating Principal on the same very vacancy subsequently on the retirement of Officiating

Principal. Therefore, the above case law is of no help to respondent no.6 and in fact it goes against him in as much there is no fresh substantive vacancy of the post of Principal.

In our opinion, respondent no.6 in unequivocal terms had refused to officiate as Principal when the substantive vacancy of the post of Principal had occurred on 30.6.2003. The said same post continued to remain vacant as no substantive appointment on the said vacancy was made. Mere fact that an ad-hoc arrangement of Officiating Principal, which was made earlier on the said post, has come to an end, it does not mean that a fresh substantive vacancy had been created or arisen. The substantive vacancy remains the same and only Officiating arrangement has come to an end. Since respondent no.6 had declined to officiate as Principal on the said very vacancy, he cannot be permitted at this stage to turn around and to claim appointment as Officiating Principal on the same very post.

The respondent no.6 having refused to accept Officiating appointment is estopped under Law from claiming officiating appointment on the same substantive vacancy. It would have been a different thing if a substantive vacancy which had occurred earlier, had been filled up by a regular appointment and then a fresh vacancy had been created. In that event, respondent no.6 may have become entitle for reconsideration for Officiating Principal on the fresh substantive vacancy.

The above view taken by us stands fortified by an unreported Division Bench Judgment of this Court in the case of Smt. Sudesh Kakkar Vs. The Regional Inspector of Girls Schools & Ors. passed in Special Appeal No.141 of 1993 decided on 7.4.1994, which has been relied upon in the case of Satya Vir Singh (supra)."

36. Though, Sri Khare, has relied upon the decision in the case of **Dhanesh Kumar Sharma (Supra)** that refusal at a point of time to officiate as a Principal would not be for time immemorial but the said judgement would not be of any help to the sixth respondent particularly when the said judgement stood impliedly overruled. In para 7 of the judgement in the case of **Ashok Kumar Jain (Supra)** it was held as under:-

"7. The substantive vacancy occurred on 30.6.1998 on the retirement of Rames Chandra Gupta and no fresh vacancy occurred upon the retirement of Girish Chandra Jain on 30.6.1997. It was the same vacancy which continued.

Consequently, the vacancy which occurred on 30.6.1998 continued and continued to exist 30.6.2007. The same post continued to remain vacant and no substantive appointment on the said vacancy was made. The mere fact that an adhoc arrangement of officiating Principal was made earlier on the said post which came to a end would not mean that a fresh substantive vacancy had again been created. The substantive vacancy remained the same and only an officiating arrangement had come to an end. This view was also held in the aforesaid Division Bench judgment of **Sundershan Kumar (supra)**, which is squarely applicable to the present facts and the circumstances of the case. The judgment cited by the learned counsel for the petitioner stands impliedly overruled in view of the decision of the Division Bench.”

37. Yet in the case of **Smt. Archana Singh (Supra)** while relying upon the decision in the case of **Sundershan Kumar (Supra)** and **Ashok Kumar Jain (Supra)** in para 13 it was held as under:-

"In the present case the facts are different. The substantive vacancy had arisen on 30.6.2003 and the same vacancy is continuing. It is not a case where leave vacancy has subsequently been converted into a substantive vacancy or a fresh substantive vacancy had arisen. Therefore, respondent No. 6 having refused to officiate as the Principal on the said substantive vacancy, he is not entitled to stake claim for appointment as Officiating Principal on the same very vacancy subsequently on the retirement of Officiating Principal. Therefore, the above case law is of no help to respondent No. 6 and in fact it goes against him inasmuch there is no fresh substantive vacancy of the post of Principal.

In our opinion, respondent No. 6 in unequivocal terms had refused to officiate as Principal when the substantive vacancy of the post of Principal had occurred on 30.6.2003. The said same post continued to remain vacant as no substantive appointment on the said vacancy was made. Mere fact that an ad-hoc arrangement of Officiating Principal, which was made earlier on the said post, has come to an end, it does not mean that a fresh substantive vacancy had been created or arisen. The substantive vacancy remains the same and only Officiating arrangement has come to an end. Since respondent No. 6 had declined to officiate as Principal on the said very vacancy, he cannot be permitted at this stage to turn around and to claim appointment as Officiating Principal on the same very post.

The respondent No. 6 having refused to accept Officiating appointment is estopped under Law from claiming

officiating appointment on the same substantive vacancy. It would have been a different thing if a substantive vacancy which had occurred earlier, had been filled up by a regular appointment and then a fresh vacancy had been created. In that event, respondent No. 6 may have become entitled for reconsideration for Officiating Principal on the fresh substantive vacancy.

31 The above view taken by us stands fortified by an unreported Division Bench Judgment of this Court in the case of Smt. Sudesh Kakkarv. Regional Inspector of Girls Schools and others, passed in Special Appeal No. 141 of 1993 decided on 7.4.1994, which has been relied upon in the case of Satya Vir Singh (supra).....”

38. Further in the case of **Smt. Duleshwari Devi (Supra)** this Court in para 15, 16 and 17 observed as under:-

“15. In any case, the aforesaid judgment loses its binding force in view of the Division Bench judgment in Sundarshan Kumar (supra) wherein Division Bench has said that once the senior most teacher has declined to take over charge as officiating Principal after occurrence of a substantive vacancy, such senior most teacher cannot retract subsequently to claim charge of the office of the Principal after the same having been delivered to the next senior, who is performing the duties thereafter satisfactorily so long as the same substantive vacancy continues. Senior most teacher, who has already declined, cannot claim charge on mere change of opinion and such situation would arise only when a fresh substantive vacancy occurred and not earlier thereto.

16. The decision in Dhanesh Kumar Sharma (supra) has been referred to in a subsequent Single Judge's judgment in Ashok Kumar Jain (supra) and relying on Division bench judgment in Sundarshan Kumar (supra), the Hon'ble Single Judge in Ashok Kumar Jain (supra) has clearly observed that judgment in Dhanesh Kumar Sharma (supra) stands impliedly overruled by Division Bench decision.

17. This is what has been held by another Single Judge in Archana Singh (Smt.) (supra) while relying on Division Bench judgment in Sundarshan Kumar (supra) and it says :

"if a teacher refuses to officiate as the Principal of the College then, if the same substantive vacancy continues, he cannot subsequently turn around and claim appointment as Officiating Principal."

39. Applying the above noted decisions in the facts of the present case an irresistible conclusion stands drawn that once

the sixth respondent had shown its inability to officiate as a Principal and declined the claim then it is not open for her to turn around and to claim officiation particularly against the same vacancy.

40. So far as the reliance placed by Sri Khare upon the decision in the case of **Dhanesh Kumar Sharma (Supra)** is concerned the same has already held in the case of **Ashok Kumar Jain (Supra)** and **Smt. Duleshwari Devi (Supra)** to be impliedly overruled.

41. Likewise the decision in the case of **Vikas Jain (Supra)** would also not to be of any aid and assistance to the sixth respondent particularly when in the said decision the Court in para 9 had only observed that prima facie the Court was of the view that the charge of the officiating Head Master till the appointment of a Regular Head Master takes place is to be held by senior most Assistant Teacher since the final decision regarding appointment of Officiating Head Master in the institution in question was to be taken by Assistant Director of Education (Basic) Saharanpur Division, Saharanpur.

42. The decision in the case of **Ashok Kumar Pandey (Supra)** would also not apply in the present facts of the case inasmuch as the said judgement is of a case wherein the issue before the Court was that while declining to officiate as a Principal there was a stipulation contained therein which was unqualified that the Teacher therein had specifically come up with stand that he has not in a position to accept the responsibility as a head of the institution. The said judgement nowhere deals with the issue which is being raised in the present writ petition relatable to the fact that it is the same

vacancy against which the candidate declined to officiate as a Principal.

43. The decision in the case of **Dr. Jagathy Raj V.P. (Supra)** is also not applicable as it is a case of officiation being made of Head of the Department based on seniority on rotational basis for three years.

44. The judgements relied upon in the case of **Babulal Badriprasad Varma (Supra)** and **ARCE Polymers Private Ltd (Supra)** also support the case of the writ petitioner particularly when the conduct of the sixth respondent is barred by estoppel, acquiescence and waiver.

45. Similarly the judgement in the case of **N. Murgu Ganeshan (Supra)** also applies in the case particularly when after a enormous and inordinate delay the writ petitioner is raising its claim for officiation in that regard.

46. Additionally this Court may also record that the allegations which were made basis for discharging the writ petitioner while working as an Officiating Principal was the same charges which were levelled upon the writ petitioner on the basis charge sheet dated 13.8.2021. It is come on record that an Inquiry Officer was appointed which tendered its inquiry report on 25.9.2021 however nothing has been brought on record by either of the parties showing whether the said inquiry report has been given a logical end while passing any final order closing the inquiry proceedings as per law.

47. The Hon'ble Apex Court in the case of **Yoginath D. Bhagde vs. State of Maharastra, 1999 (7) SCC 739** had the occasion to consider the issue as to what would be the import

and impact of the submission of the inquiry report without there being any final order and the Hon'ble Apex Court observed as under:

“Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent.”

48. Viewing the case from all the angles this Court is of the firm opinion that the order dated 12.1.2023 passed by the third respondent cannot be sustained and is liable to be set aside.

49. Accordingly, the writ petition is **allowed**. The order dated 12.1.2023 passed by the third respondent fully is set aside. A mandamus is issued to the respondents to accord joining to the writ petitioner as an Officiating Principal of the institution in question.

50. Passing of this order would not preclude the Disciplinary Authority/ Competent Authority to take a final decision in accordance with the statute and the regulations pursuant to the inquiry report dated 25.9.2021 submitted by the Inquiry Officer before the Disciplinary Authority/Competent Authority.

Order Date :-24.11.2023
piyush