

Court No. - 35

Case :- WRIT - A No. - 11984 of 2023

Petitioner :- Karuna Shankar

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

Counsel for Petitioner :- Shailesh Upadhyay, Akhilesh Kumar Singh, Jai Vardhan Tripathi

Counsel for Respondent :- C.S.C., A.K.S. Parihar, Sanjay Kumar Singh

Hon'ble Vikas Budhwar, J.

On the oral request of learned counsel for the writ petitioner, he is permitted to implead Director of Education (Secondary) U.P., Lucknow as seventh respondent.

In Re: Amendment Application No. 2 of 2023

Since there is no objection to the amendment application, the same is allowed.

Let the amendment be carried out during the course of the day.

Order on Petition

1. Heard Sri Akhilesh Kumar Singh along with Sri Shailesh Upadhyay, learned counsels for the writ petitioner, Sri Shailendra Singh, learned Standing Counsel who appears for respondents No. 1, 3 and 4, Sri A.K.S. Parihar, learned counsel who appears for respondent No. 2 and Sri Sanjay Kumar, learned counsel who appears for respondent No. 6.

2. In view of the order which is being proposed to be passed today, notice is not being issued to fifth respondent.

3. The case of the writ petitioner is that the fifth respondent, C/M Gandhi Inter College, Patel Nagar, Jhusi, District Prayagraj 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 as then it was stood applicable.

4. The petitioner claims to have been appointed as a Lecturer (Economics) pursuant to the selection conducted by the U.P. Secondary Education Service Selection Board, 1982 and the Rules

framed thereunder. A placement order is stated to have been issued by the District Inspector of Schools, Prayagraj on 08.09.2023. As per the writ petitioner on 31.03.2017 the post of regular Principal stood vacant consequent to retirement of Dr. Radheshyam and the writ petitioner claims to have been made Officiating Principal of the institution in question. The writ petitioner further asserts that the District Inspector of Schools, Prayagraj attested the signature as Officiating Principal on 11.01.2018, however, the writ petitioner was placed under suspension on 14.05.2018 by the fifth respondent, C/M Gandhi Inter College, Patel Nagar, Jhusi, District Prayagraj and the said suspension order was disapproved by the District Inspector of Schools, Prayagraj on 14.07.2018 which led to filing of a Writ Petition No. 19738 of 2018 (C/M Gandhi Inter College, Patel Nagar, Jhusi, Prayagraj Vs. State of U.P.) which came to be disposed of on 17.09.2018 while setting aside the order dated 07.08.2018 directing the District Inspector of Schools, Prayagraj to hear the parties in question and to pass an order. The District Inspector of Schools, Prayagraj thereafter proceeded to disapprove the suspension of the writ petitioner on 10.12.2018 which was subject matter of challenge in Writ Petition No. 1 of 2019 (C/M Gandhi Inter College, Patel Nagar, Jhusi, Prayagraj Vs. State of U.P.) which came to be dismissed on 03.01.2019 whereby the Committee of Management was not precluded from conducting disciplinary proceedings. As per the writ petitioner, the said order is subject matter of challenge in Special Appeal No. 47 of 2019 but no interim orders have been passed. It is further the case of the writ petitioner that on 12.10.2020 again the writ petitioner was suspended, however, the said suspension order was disapproved by the District Inspector of Schools, Prayagraj. Learned counsel for the writ petitioner submits that as a substantive vacancy arose on the post of Principal on 31.03.2017 due to retirement of Dr. Radheshyam so an exercise was undertaken pursuant to sending a requisition notifying the vacancy for filling up the post through transfer. According to the writ petitioner, while inviting the attention of the Court towards paragraph No. 21(e) is being sought to be submitted that though Dr. Awadhesh Kumar Singh was joined the post in question, however, he did not turn up. It is further the case of the writ petitioner that a requisition was again sent on 20.12.2021 for filling up the post in question which came to be canceled on 16.01.2023 by the District Inspector of Schools, Prayagraj as according to the writ petitioner an attempt has been sought to be made so as to give accommodation to the sixth respondent to be transferred to the institution in question. Now, according to the writ petitioner, the sixth respondent has been transferred to the fifth respondent-institution on 30.06.2023 and

thereafter, a communication has been issued under Right to Information Act by the RTI Officer U.P. Madhyamik Shiksha Chayan Board, Prayagraj mentioning therein that the requisition dated 20.12.2021 has been canceled on 16.01.2023.

4. By means of the amendment application the decision of the District Inspector of Schools, Prayagraj, fourth respondent dated 16.01.2023 has also been challenged.

5. Learned counsel for the writ petitioner has sought to argue that the entire exercise sought to be undertaken by transferring the sixth respondent to the fifth respondent-institution is per se illegal particularly in view of the fact that once it has come on record that on 20.12.2021 a requisition has been sent for filling up the post then the said requisition cannot be canceled as the only contingency wherein the requisition notifying the vacancy could be canceled is that there is no post lying vacant. Submission is that in the present case the post of Principal is lying vacant and it is not a case of the parties that the said post is not lying vacant as obviously, the writ petitioner stands to Officiate as Principal. He further submits that pursuant to the occurrence of the vacancy on 31.03.2017 on account of superannuation of Dr. Radheshyam an exercise was undertaken for transferring one Sri Awadhesh Kumar Singh, however, a resolution was also backed by no objection but he never turned up and now in the year 2021 just in order to block the chances of the writ petitioner to officiate an unsuccessful attempt has been made by the fifth respondent for placing the writ petitioner under suspension which stood revoked due to intervention of the Court order, thus, now such type of co-lateral exercise has been undertaken which is not backed by any provision, he seeks to rely upon the judgment in the case of Haripal Singh Vs. State of U.P. reported in 2016 (8) ADJ 622 lastly, the learned counsel for the writ petitioner while inviting the attention of the Court towards page 90 has sought to submit that in view of the provisions contained under Chapter III Regulations 55 to 61 of the U.P. Intermediate Education Act, 1921 once the vacancies stands notified then obviously there cannot be any transfer in this regard as he seeks to rely upon in Full Bench judgment in the case of **Prashant Kumar Katiyar Vs. State of U.P. 2013 (1) ADJ 523** followed in the case of **Haripal Singh (supra)**.

6. Sri Shailendra Singh, learned Standing Counsel as well as Sri Parihar who appear for respondents No. 1, 3 and 4 and respondent No. 2 submitted that though as per the law laid down by this Court in Haripal Singh (supra) requisition once sent cannot be canceled,

however, with a caveat that the vacancies is not lying vacant but in the present case according to him, the vacancies still exists. He, however, submits that it is the prerogative of the Committee of Management to withdraw the requisition looking into the interest of the institution in question, he, however, further submits that the issues which the writ petitioner is seeking to raise at this instance are required to be gone by the seventh respondent, Director of Education.

7. Sri Sanjay Kumar Singh, learned counsel who appears for the sixth respondent submits that whatever might be the case he has been accorded joining in the fifth respondent-institution and he is working in the post in question and the writ petitioner being an Officiating Principal has a right to resist the transfer but that too is not an unfettered right, it is subject to certain limitations and here, in the present case once the requisition dated 20.12.2021 has been canceled on 16.01.2023 then the writ petitioner has no say in the matter.

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

9. Undisputedly, the fifth respondent-institution is governed by the provisions of U.P. Intermediate Education Act, 1921 and the rules framed thereunder. It is not in dispute that the writ petitioner had Officiated as Principal of the institution consequent to the retirement of Dr. Radheshyam on 31.03.2017, earlier an exercise was undertaken pursuant to a resolution and issuance of a no objection certificate for transfer of Sri Awadhesh Kumar Singh, however, he did not turn up thereafter as apparent from page 98, the information furnished by the Information Officer to Board dated 22.03.2021 that a requisition was sent notifying the vacancies on 20.12.2021 but the same stood canceled on 16.01.2023 now, a question arises that as to whether the requisition can be canceled once the vacancies lying vacant in view of the law laid down in the case of Haripal Singh (supra). The second question which also arises is whether the transfer could have been effectuated particularly when the vacancies stood notified in that regard. As per under Chapter III Regulations 55 to 61 of the U.P. Intermediate Education Act, 1921 in view of the law laid down in Full Bench Judgment in the case of Prashant Kumar Katiyar (supra). The allegation of the writ petitioner is to the extent that the cancellation of the requisition is not bona fide as the same is just in order to give room and accommodation to the sixth respondent in fifth respondent-institution. The said stand of the writ petitioner has been disputed by the learned counsel for the writ petitioner.

10. At this stage, Sri Shailendra Singh, learned Standing Counsel, Sri Parihar, learned counsel who appears for respondent No. 2 and Sri Sanjay Kumar Singh, learned counsel who appears for sixth respondent submit that the said issues need determination at the first instance by the seventh respondent, let the writ petitioner approach the seventh respondent raising all the grievances who shall address the said issues and decide within the time bound period.

11. To such a submission, learned counsels for the writ petitioner, Sri Ashilesh Kumar Singh and Sri Shailesh Upadhyay have no objection to the same.

12. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed of in the following terms:

(a) the writ petitioner shall prefer a comprehensive representation along with the self attested copy of the writ petition setting out his claims inclusive of the factual/legal before the seventh respondent by 30.11.2023;

(b) on the receipt of the said motion at the instance of the writ petitioner, the seventh respondent shall put to notice the fifth and the sixth respondent and seek their versions;

(c) the version shall be exchanged between the parties in a date fixed;

(d) the hearing be done by 22.12.2023 after putting to notice the writ petitioner and the fifth and sixth respondents dealing with each and every issue which is being sought to be raised. Since it is not disputed by the learned counsel for the writ petitioner that the sixth respondent has already joined, thus, his joining shall be subject to the final orders passed by the seventh respondent.

13. The passing of this order may not be construed to be an expression that this Court has adjudicated on the merits of the matter as the writ petition has been decided without filing of any response, thus, the seventh respondent shall decide the matter strictly in accordance with law without being influenced or obsessed by any of the observations made hereinabove.

Order Date :- 3.11.2023/Rajesh