

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 5552 of 2023

Applicant :- Rakesh Kumar

Opposite Party :- Pratap Singh Baghel, Secretary, Board Of Basic Education And Another

Counsel for Applicant :- Siddharth Khare, Sr. Advocate

Hon'ble Rohit Ranjan Agarwal, J.

1. Sri Sanjay Singh, District Basic Education Officer, Bareilly is present in the Court today who is identified by Sri Yatindra, learned counsel for the opposite party.

2. The writ Court on 18.05.2022 while allowing the Writ-A No. 3552 of 2022 passed the following order;

"Heard learned counsel for the parties.

This writ petition has been filed praying for quashing of the order dated 25.9.2021 passed by respondent no.4, Basic Shiksha Adhikari, Bareilly, which was passed in pursuance of the order of this Court in Writ-A No. 3561 of 2021. Further prayer has been made for the direction to the respondent to release the petitioner for joining at District Bijnor within the time fixed by this court.

The contention of the learned counsel for the petitioner is that petitioner was transferred from District Bareilly to District Bijnor by the transfer order dated 29.1.2021. Thereafter he was not relieved for joining at Bijnor from Bareilly. Therefore he approached this court by way of Writ -A No. 3561 of 2021, which was disposed of directing the Basic Shiksha Adhikari, Bareilly to decide the representation of the petitioner. In the representation decided by the Basic Shiksha Adhikari, Bareilly he has stated that case of the petitioner is pending consideration before the Secretary Basic Education Board and inquiry is pending against him.

Learned counsel for the petitioner has submitted that no departmental inquiry is pending against the petitioner and only show cause notice dated 23.2.2019 was issued to him to which petitioner replied on 22.3.2019. Notice was regarding unauthorised absence from the duty at Bareilly since 2019 till the date of issuance of notice. Till date neither inquiry has been conducted against the petitioner nor any order was passed against him. On the false pretext of inquiry pending, petitioner is not being relieved.

Counter affidavit has been filed on behalf of respondent nos. 3 and 4 wherein again another show cause notice has been brought on record which is dated 11.4.2022 issued during the pendency of this petition alleging that petitioner

is unauthorisedly absent from duty since 14.8.2017 without any information.

Learned counsel for the petitioner has submitted that after the show cause notice issued to the petitioner in the year 2019 he replied to the same. Another show cause notice dated 11.4.2022 has been issued to the petitioner during the pendency of this writ petition only to make false ground to prevent the petitioner to join at Bijnor.

After considering the rival contentions it is clear that no departmental inquiry is initiated against the petitioner. Only to prevent the petitioner to join the Bijnor, the false allegations are being made in the impugned order passed by the respondent no.4, Basic Shiksha Adhikari, Bareilly.

The order dated 25.9.2021 passed by respondent no.4, Basic Shiksha Adhikari, Bareilly is hereby quashed. He is directed to release the petitioner from Bareilly to join at Bijnor within seven days from today.

The writ petition stands allowed."

3. From perusal of the order of writ Court it is clear that the order passed by the District Basic Education Officer, Bareilly dated 25.09.2021 was quashed and he was directed to release the applicant from Bareilly to join at Bijnor within seven days. It seems that against the order of writ Court a special appeal has been preferred by the Board of Basic Education, U.P. being Special Appeal No. 480 of 2022 which was dismissed on 12.07.2022 and following order was passed;

"Ms. Archana Singh, learned counsel for the appellants and Sri Ashok Khare, learned Senior Advocate, assisted by Sri Siddharth Khare, learned counsel for the respondent no.1.

The writ petitioner (respondent no.1 herein) is an employee of the School Education Department and is presently working as an Assistant Teacher. Vide order dated 21.1.2021, the petitioner was transferred from Bareilly to Bijnor. However, this order was not given effect and the petitioner was not relieved. He filed Writ-A No. 3561 of 2021 before this Court and directions were issued by this Court to consider the case of the petitioner for relieving him. When vide order dated 25.9.2021 passed by the District Basic Education Officer, the request of the petitioner for relieving him was turned down, he challenged this order in Writ-A No. 3552 of 2022.

By the order impugned in this appeal dated 18.5.2022, the writ Court has quashed the order dated 25.9.2021 passed by the Basic Shiksha Adhikari and directed the authorities to relieve the petitioner for his joining at Bijnor.

Counsel for the appellants submits that the petitioner remained absent from 14.8.2017 till the passing of the transfer order and suppressing this material fact, he filed the writ petition before this Court and obtained the order for consideration of his case. She submits that as the petitioner was unauthorizedly absent, his salary also has not been paid to him. Lastly, it has

been argued that the departmental inquiry has also been initiated against the petitioner and there is every possibility that he may not cooperate in the departmental inquiry and, therefore, at least for a limited purpose, operation and effect of the order impugned be directed to be stayed.

Sri Khare, learned Senior Advocate, appearing for the petitioner-respondent no.1 submits that the petitioner has no intention to avoid the departmental inquiry and he undertakes that even after joining at the transferred place, he would cooperate in the departmental inquiry on each and every date. He further submits that salary of the petitioner for the alleged period of absence may be subjected to the consequence of the departmental inquiry.

In view of the above, we are not inclined to entertain this appeal. The special appeal is, accordingly, dismissed. It is expected from the writ petitioner to cooperate in the departmental inquiry and not to take unnecessary adjournment."

4. It appears that despite the dismissal of special appeal and the order of writ Court having been confirmed, the District Basic Education Officer, Bareilly did not comply the order of writ Court and did not relieve the applicant to join at Bijnor. This led to filing of present contempt application wherein the opposite party was summoned by this Court but he did not appear on the date fixed by this Court, thus, a bailable warrant was issued against the officer concerned and on 04.12.2023 the officer concerned put his presence before this Court and assured that he will be revisiting the termination order passed by him on 13.10.2023 and complying the order passed by the writ Court.

5. Pursuant to the statement made by the District Basic Education Officer, Bareilly in the open Court, the matter was posted for today.

6. Today when the case was taken up, Sri Yatindra, learned counsel for the opposite party, has placed before the Court two orders passed by the opposite party no. 2. The first order is letter No. 9842-47 which states that the order dated 13.10.2023 terminating the services of the applicant has been cancelled. Further letter No. 9864-70 dated 05.12.2023 is a reliving order of the applicant reliving him from Bareilly to join at Bijnor.

7. In view of the said fact, as the order of writ Court has been complied by the opposite party, contempt application is rendered infructuous and same stands disposed off.

8. However, this Court directs Sri Yatindra, learned counsel who represents the District Basic Education Officer and also the Secretary, Board of Basic Education, U.P. to see and ensure that no

obstructions are created in the joining of the applicant at Bijnor.

9. Bailable warrant stands discharged.

10. File consign to record.

Order Date :- 5.12.2023

Shekhar