

Court No. - 35

Case :- WRIT - A No. - 12431 of 2023

Petitioner :- Akhilesh Kumar Mishra And 3 Others

Respondent :- State Of U.P. And 10 Others

Counsel for Petitioner :- P.K. Upadhyay, Sr. Advocate

Counsel for Respondent :- C.S.C.

with

Case :- WRIT - A No. - 17724 of 2021

Petitioner :- Akhilesh Kumar Mishra And 3 Others

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- P.K. Upadhyay

Counsel for Respondent :- C.S.C., Alok Krishan Tripathi

Hon'ble Vikas Budhwar, J.

1. Heard Shri R.K. Ojha, learned senior counsel assisted by Shri P.K. Upadhyay, learned counsel for the writ petitioners in the leading and the connected writ petition, Shri Shailendra Singh, learned Standing Counsel who appears for respondent Nos. 1 to 10 in the leading writ petition and respondent Nos. 1 to 7 in the connected with petition and Shri G.K. Singh, learned senior counsel assisted by Shri Alok Krishan Tripathi for respondent No. 1, in the leading writ petition and respondent No. 8 in the connected with petition.

2. Since common question of facts and law are involved in Writ A No. 12431 of 2023 Akhilesh Kumar Mishra And 3 Others Vs. State Of U.P. And 10 Others (in short 'leading writ petition') and Writ A No. 17724 of 2021 Akhilesh Kumar Mishra And 3 Others Vs. State Of U.P. And 7 Others (in short 'connected writ petition'), thus, with the consent of the parties the writ petition is being consolidated

and decided by a composite order.

3. The case of the writ petitioners is that there happens to be an institution by the name of Saraswati Inter College, Sudiya, district Varanasi which is recognised under the provisions of U.P. Intermediate Education Act, 1921 and also receives grant-in-aid upto the level of intermediate and so far as primary section is concerned, the same imparts education upto first to fifth class and the provisions of U.P. Act No. 24 of 1971 stands applicable. The writ petitioners' claims to have been appointed on 19.08.2017 as assistant teachers in primary section of the institution and assumed charge on 25.08.2017. It is further claimed that approval had been accorded on 10.08.2017 by the Regional Joint Director of Education, Vth Region, Varanasi pursuant where to on 16.08.2017, the District Inspector of Schools, Varanasi proceeded to pass consequential orders. In para 10 of the leading writ petition, it is further asserted that the writ petitioners services stands to be confirmed, however, owing to the complaint of one Milind Srivastava, Advocate and enquiry is stated to have been conducted by Additional City Magistrate-II Varanasi wherein according to the writ petitioners, an enquiry report was submitted on 08.11.2017 finding everything proper in place at the end of the writ petition.

4. It is the further case of the writ petitioners that subsequently, the original complainant, Milind Srivastava along with retired principal Mahesh Tiwari preferred complaint before the Commissioner, Varanasi Region, Varanasi in pursuance thereof the Additional District Magistrate City, Varanasi directed the Additional City Magistrate-II, Varanasi to get an enquiry conducted wherein again everything was found to be proper. In para 13 of the writ petition, it is further asserted that the

Commissioner, Varanasi Region, Varanasi directed the Additional Commissioner-I, Varanasi Region, Varanasi to get an enquiry conducted and to submit a report by virtue of the order dated 06.09.2017 pursuant whereunto enquiry was conducted by Additional Commissioner-I, Varanasi who tendered his report on 18.08.2018. As per the writ petitioners on 28.08.2018, the Commissioner, Varanasi Region, Varanasi transmitted the report to the first respondent, Principal Secretary (Secondary Education) U.P. Lucknow accompanying enquiry report dated 18.08.2018. In para 15 of the writ petition, it is further asserted that the salary of the writ petitioners was withheld without their being any basis. It is the further case of the writ petitioners that the first respondent, Principal Secretary (Secondary Education) U.P. Lucknow issued a communication to the Director of Education to get an enquiry conducted and to submit a report pursuant whereof an enquiry was conducted by the latter who submitted a report on 21.02.2019, holding that the appointment of the writ petitioners were perfectly justified and legal and they were entitled to salary. On 23.01.2020, the first respondent, Principal Secretary (Secondary Education) U.P. Lucknow directed the Regional Joint Director of Education, fifth Region, Varanasi to get an enquiry conducted and in pursuance whereof the latter conducted an enquiry and submitted a report on 20.03.2020 again holding that the appointment of the writ petitioners was legal. Consequent whereunto the first respondent, Principal Secretary (Secondary Education) U.P. Lucknow issued an order dated 12.11.2020 addressed to the Regional Joint Director of Education, Vth Region, Varanasi to get an enquiry conducted and submit a report in pursuance whereof again an enquiry report dated 19.11.2020 was submitted by the latter to the former holding that the appointment of the writ

petitioners was valid. An order which is stated to have been passed by the Regional Joint Director of Education, Vth Region, Varanasi addressed the Director of Secondary Education, U.P. Board, Allahabad whereby certain advisories were issued and thereafter on 24.03.2021, the Regional Joint Director of Education, Vth Region, Varanasi submitted his report to the fifth respondent, Director of Secondary Education, U.P. Board at Allahabad. In para 21 of the writ petition, the writ petitioners further asserts that by virtue of the recommendation dated 28.08.2018 submitted by the Commissioner, Varanasi Region, Varanasi for taking suitable action, the salary of the writ petitioners was withheld by the District Inspector of Schools, Varanasi with effect from November, 2018 which lets to filling of Writ A No. 17724 of 2021 wherein a writ of certiorari was sought for quashing the report/recommendation dated 28.08.2018 submitted by the Commissioner, Varanasi Region, Varanasi, the respondent therein with a mandamus to grant salary to the writ petitioners current amount as well as arrears. In the said writ petition on 10.01.2022, an interim order was passed which reads as under:

"No written instruction has been filed by the learned Standing Counsel. However, it has been stated by the learned Standing Counsel that they have received instructions that as and when the Committee of Management submits the salary bills, the salary shall be cleared.

Under such circumstances, the Committee of Management of the Institution namely the Committee of Management, Saraswati Inter College, Sudiya, District Varanasi may submit the salary bills to the District Inspector of Schools which shall be cleared as per the statement made by the learned Standing Counsel who has appeared through Video Conferencing.

Place this petition on 14.2.2022 as fresh.

In the meantime, if the salary bills are submitted the salary shall be cleared. In the event of failure on the part of the Committee of Management to submit the salary bills, it shall be open for the District Inspector of Schools to take action under the various provisions of Payment of Salaries Act against the Management."

5. It is further the case of the writ petitioners that a recall application was also filed in Civil Misc. Recall Application No. 02 of 2022 which came to be rejected on 05.05.2013, wherein the following orders were passed:

"Civil Misc. Recall Application No.2. of 2022 :

An order dated 10.1.2022 was passed by this Court on the basis of the statement made by learned Standing Counsel on instructions that as and when the Committee of Management submits the salary bills, the salary shall be cleared. The instructions which the learned Standing Counsel had on that date i.e. the instructions dated 5.1.2022 have been appended with the Recall Application.

If paragraph 5 of the instructions which have been appended to the Recall Application is perused, it would become clear that the State was time and again asking the Management to send the salary bills but the salary bills were not being sent by the Committee of Management. For better understanding, paragraph 5 of the instructions dated 5.1.2022 is being reproduced here as under :-

" याचीगणों के वेतन भुगतान हेतु वेतन बिल प्रस्तुत करने के लिए संस्थाधिकारियों को बार-बार निर्देश दिए गए हैं किन्तु आयुक्त, वाराणसी मंडल वाराणसी की जांच आख्या दिनांक: 28.08.2018 को आधार बनाकर संस्थाधिकारियों द्वारा याचीगणों का वेतन देयक प्रस्तुत नहीं किया जा रहा है।"

Under such circumstances, there is no substance in the Recall Application. It is, accordingly, rejected.

Order on the Petition :

List this case before appropriate Court."

6. It is further the case of the writ petitioners that they were being paid salary in that regard. In the said writ petition, counter and rejoinder affidavits have been exchanged between the parties and the said writ petition is pending consideration and it has been connected with the present petition. In the meantime, according to the writ petitioners, the Special Secretary, U.P., Shashan issued a communication to the Director of Police Special Investigation Team, SIT at Lucknow on 04.07.2023 whereby pursuance to certain an enquiry and the investigation conducted with respect to the institution in question, further action has been sought to be taken in that regard and the said order also recites that there happens to be a first information report for proprietary to be under Sections 419, 420, 465, 468, 471, 201 and 120 IPC and direction has been issued by the former to the latter to take appropriate action in that regard. It is further the case of the writ petitioners that on the basis of the said communication dated 04.07.2023 now the salary of the writ petitioners has been stopped and withheld from July 2023 and onwards. Questioning the said act and omission on the part of the respondent, the leading writ petition has been preferred wherein the following orders have been passed:

"Instructions filed today are taken on record.

Sri R.K. Ojha, learned Senior Advocate, who appears for the writ petitioners, who are four in number, has sought to argue that the order dated 04.07.2023 passed by the second respondent, Special Secretary (Home), Police Anubhag-3, U.P. at Lucknow proceeds on misconception of facts and law, as according to him, though as per the respondents, an enquiry was conducted by the S.I.T., wherein allegations have been leveled regarding selection to be acquitted by fraud, however, he submits that until and unless the appointment of the writ petitioner is cancelled and the approval is still intact, he cannot be denuded of the salary, which even infact has been stopped and withheld since June, 2023.

Learned counsel for the writ petitioner also submits that in the writ petition,

preferred by the writ petitioners herein in Writ-A No. 17724 of 2021 (Akhilesh Kumar Mishra and 3 others Vs. State of U.P. and others), wherein there is an interim direction to the respondents that in the meantime, if the salary bills are submitted the salary shall be cleared and in the event of failure on the part of the Committee of Management to submit the salary bills, it shall be open for the District Inspector of Schools to take action against the Management under the various provisions of Payment of Salaries Act. It is further submitted that recall application was also filed, which came to be rejected on 05.05.2023 and even in fact in the case of Neetu Singh vs. State of U.P. and others in Writ-A No. 4147 of 2022, a direction was issued to pay arrears of salary to the incumbents, who are sailing on the same boat on 01.11.2022, against which intra-court appeal was rejected. He further submits that even in fact in the case of the writ petitioner also a contempt proceedings were drawn being Contempt Petition No. 3595 of 2022 in which a compliance affidavit was filed whereby the petitioners were made admissible to pay the arrears of salary, but now on the basis of the order passed by the second respondent dated 14.07.2023 in the light of the enquiry report dated 12/23.05.2023, now the salary is being withheld without considering the report of the Joint Director of Education, which according to the writ petitioner is dated 31.03.2023, which is in favour of the writ petitioner.

Matter requires consideration.

Connect with records of Writ-A No. 17724 of 2021 (Akhilesh Kumar Mishra and 3 others Vs. State of U.P. and others).

Issue notice to Respondent no.11.

Steps to be taken by 17.8.2023.

Affidavit of service be filed before the next date fixed.

All the respondents may file their response by 30.08.2023 in the instant petition as well as in the connected petition. Rejoinder, if any, may be filed by 08.09.2023.

Put up on 11.09.2023.

When the matter is listed, particulars of parties be shown in the list."

7. In the said writ petition, notices were issued, pursuant where to a counter affidavit has been filed by the State-respondent Nos. 1, 5 to 9 sworn by associate District Inspector of Schools, Varanasi

dated 06.09.2023 and a counter affidavit has also been filed by the committee of management which is available on record. Rejoinder affidavits have been filed by the writ petitioners in that regard.

8. Shri R.K. Ojha, learned senior counsel assisted by Shri P.K. Upadhyay while assailing the orders in question seeking to stop/withhold the salary of the writ petitioners has sought to contend that the entire action is per se illegal besides being contrary to law and in violation of principles of natural justice as until and unless an appointment of the writ petitioners are set aside and put to naught in the salary of the writ petitioners cannot be withheld. He submits that such type of attempt was being taken by the respondents in the garb of order/report/communication dated 28.08.2018 of the Commissioner, Varanasi division, Varanasi addressed to Additional Chief Secretary, Madhyamik Shiksha Board, U.P. Lucknow based upon the enquiry report dated 18.08.2018 but this Court repelled the said stands of the respondents and proceeded to grant interim order.

9. It is the further submission of the learned counsel for the writ petitioners that now pursuant to the communication dated 04.07.2023, now again the salary of the writ petitioners has been withheld. He submits that if according to the respondents, there happens to be infirmity in the appointment of the writ petitioners (though disputed) but the statute itself provides for a procedure which is known to law which ought to have been resorted too in that regard. Learned counsel for the writ petitioners seeks to rely upon the decision in a bunch of cases, Writ A No. 5540 of 2020 (C/M Sri Durga Ji Purva Madhyamik Balika Jamin and Another Vs. State of U.P. and 4 others) Wherein the learned Single Judge occasioned with the situation which is akin to the present situation, wherein on the basis of the exercise undertaken pursuant to the

report of the Commissioner/State functionaries, the salary was withheld. He submits that such type of action was deprecated and the notices were also quashed, however, the said judgement was subject matter of challenge in Special Appeal No. 25 of 2021 (The State of UP through Special Secretary and 3 others Vs. The Committee of Management Sri Durga Ji Purva Madhyamik Balika Jamin and another) which came to be decided on 27.08.2021 wherein there was a slight modification of the order of the learned Single Judge to the extent that the enquiry report could not have been made a basis to stop the salary and it was not binding but according to the Division Bench of this Court an independent application of mind is to be resorted by the educational authorities in that regard, in coming to the conclusion as to why the salary to be withheld and on what reasons in that regard.

10. The submission is that in the present case, there is no order either in black and white and even otherwise baring averments made in the counter affidavit, stand of the respondents as well as the report of the District Administration in that regard. He, thus, submits that the writ petitioners are entitled to the payment of salary.

11. Shri G.K. Singh, advocate assisted by Shri Alok Krishan Tripathi who appears for the committee of management of the institution in question submits that from the perusal of the report of the District Administration, it is clear that the appointment of the petitioners is illegal not in-consonance with the rules and the regulations and statutes occupy in the field. He, thus, submits that there is no order in black and white so as to show that there has been any consideration by the educational authorities but the writ petitioners are in writ jurisdiction thus they have to prove their case before this Court. The submission of Shri G.K. Singh, learned

Senior Counsel who appears for the committee of management is being adopted by Shri Shailendra Singh, learned Standing Counsel who appears for the official respondents, however, he submits that the writ petitioners have no right to claim salary. He seeks to rely upon the decision in the case of Manjul Kumar Vs. State of U.P. and 3 others in Writ A No. 13760 of 2020, decided on 24.08.2021

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

13. In the present case, the Court finds that withholding of payment of salary of the writ petitioners on the basis of report/recommendation dated 28.08.2018 of the Commissioner Varanasi, Region Varanasi, the writ petitioners preferred the connected writ petition in which the writ petitioners was granted interim protection against which a recall application was preferred which came to be rejected. The writ petitioners preferred the leading writ petition when the communication dated 04.07.2023 was issued which became the basis for stoppage of the salary of the writ petitioners. On one hand, the writ petitioners claim that there are various reports which are of educational authorities holding the appointment to be legal but on the other hand Shri G.K. Singh who appears for the committee of management as well as Shri Shailendra Singh for State official-respondents submits that there are certain other report which even in fact opines that the appointment of the writ petitioners is illegal on various grounds. The learned counsel for the parties has relied upon the judgement of the learned Single Judge in the case of C/M Sri Durga Ji Purva Madhyamik Balika Jamin and Another (Supra) as modified by Special Appellate Bench. Perusal of the above noted judgments suggest that it propounds the law that though the District Administration's enquiry report cannot be made the sole basis for

withholding of the salary or stoppage of the same, however, the same can be treated to be a recommendation or a report for taking independent decision at the end of the Educational authorities. Here in the present case, this Court finds that there had been no application of mind while passing an order in black and white by the educational authorities. Thus this Court is of the opinion that the matter needs to be dealt by the competent officer of the educational authorities in that regard. At this juncture, Shri R.K. Ojha, learned Senior Counsel assisted by Shri Upadhyay, Shri G.K. Singh, learned Senior Counsel assisted by Shri Alok Krishan Tripathi and Shri Shailendra Singh, learned Standing Counsel for the State official-respondents submits that let an exercise be done to be undertaken by the fifth respondent in the leading writ petition, Director of Secondary Education, U.P. Board, Allahabad under Section 16 (E) 10 of the U.P. Intermediate Education Act, 1921. They submit that the parties be granted opportunity to appear before the Director of Secondary Education, U.P. Board, Allahabad on a specific date wherein the writ petitioners as well as the committee of management of the institution in question shall submit their versions and the Director of Secondary Education, U.P. Board, Allahabad shall decide the same looking into the reports submitted from time to time as claimed by the parties in question.

14. 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 manner:

a). The writ petitioners and the committee of management shall appear before the Director of Secondary Education, U.P. Board, Allahabad in the week commencing 06.11.2023 along with their versions; (b) The versions were submitted by them shall be

exchanged between the parties. A date of hearing be fixed in the third week of November, 2023 and thereafter orders be passed within three weeks therefrom. The Director of Secondary Education, U.P. Board, Allahabad shall pass orders strictly in accordance with law in the light of the mandate in the case of the State of UP through Special Secretary and 3 others Vs. The Committee of Management Sri Durga Ji Purva Madhyamik Balika Jamin and another.

15. The issue of payment of salary of the writ petitioners shall be considered by the Director of Secondary Education, U.P. Board, Allahabad.

Order Date :- 18.10.2023

A. Prajapati