

Court No. - 35

Case :- WRIT - A No. - 13045 of 2023

Petitioner :- Bhola Singh

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

Counsel for Petitioner :- Ravindra Prakash Srivastava,Prabhakar Awasthi,Sheetala Prasad Pandey

Counsel for Respondent :- C.S.C.,Anand Tripathi,Nisheeth Yadav

Hon'ble Vikas Budhwar,J.

Instructions filed today is taken on record.

On the oral request of learned counsel for the writ petitioner, District Inspector of Schools, Sant Kabir Nagar is permitted to be impleaded as 7th respondent.

Heard Sri Prabhakar Awasthi along with Sri Shitla Prasad Pandey, learned counsel for the petitioner, Sri Santosh Kumar, the learned Standing Counsel, who appears for Respondent Nos. 1, 2, 3, 4 and 7 and Sri Nisheeth Yadav along with Sri Anand Tripathi, who appear for Respondent No.6.

In view of the order, which is being proposed to be passed today, notices are not being issued to Respondent No.5.

The case of the writ petitioner is that the fifth respondent, Ganna Vikas Inter College, Khalilabad, Sant Kabir Nagar is a recognized and aided institution, which was put in grant-in-aid list of the State Government on 17.11.1984 and the same had been upgraded to Junior High School in the name of Ganna Vikas Uchchar Madhyamik Vidyalay, Khalilabad, Sant Kabir Nagar and further upgraded to High School and recognition was accorded on 04.10.2000. It is the case of the writ petitioner that he was appointed on the post of peon and his appointment was approved by the District Basic Education Officer, Sant Kabir Nagar under the Dying-in-Harness Rules. Owing to certain allegations pertaining to the eligibility coupled with practicing of fraud, the writ petitioner as placed under suspension on 24.05.2023. However, the District Basic Education Officer, Sant Kabir Nagar on the papers being submitted by the 6th respondent, Principal/ Headmaster of the Institution in question sought to disapprove the suspension. Since according to the writ petitioner, the suspension of the writ petitioner has not been approved and he has not been paid salary and further not allowed to perform duties on the post in

question so he has preferred the present writ petition. This Court entertained the writ petition, pursuant where to a counter affidavit has been filed by the 6th respondent, to which a rejoinder affidavit has been filed. The submission of the learned counsel for the writ petitioner is that once the suspension of the writ petitioner has not been approved by the competent authority, then the writ petitioner is entitled to be reinstated and granted all the benefits including salary.

Sri Nisheeth Yadav along with Sri Tripathi, who appear for the 6th respondent submits that though due to inadvertence the papers pertaining to the approval of the suspension of the services of the writ petitioner were transmitted to the District Basic Education Officer, Sant Kabir Nagar, third respondent, however, in view of the status of the Institution in question, it is the District Inspector of Schools, Sant Kabir Nagar, who has to accord consideration as to whether suspension needs to be continued or not. He submits that it is always open for the institution in question to transmit the entire papers to the District Inspector of Schools, Sant Kabir Nagar, seventh respondent for consideration upon the proposal of the Institution in question placing the writ petitioner under suspension. He submits that in the wake of the pleadings set forth in the writ petition as well as the counter affidavit, now since 60 days have elapsed in view of the provisions contained in Chapter III Regulation 39 of the U.P. Intermediate Education Act, 1921, thus the writ petitioner be allowed to function, however, the right of the Institution in question for seeking approval may not be touched with in that regard. He further submits that the Institution in question, shall be transmitting the papers within a short span of period.

Sri Santosh Kumar, learned Standing Counsel who appears for the official respondents has no objection to the same. According to him, if it is the stand of the Institution in question (Principal of the Institution), then he has no objection. On a specific query, Sri Santosh Kumar, learned Standing Counsel as to whether he proposes to file any response, he submits that he is armed with the instructions, which are self-sufficient for disposal of the writ petition.

To such a submission, Sri Awasthi as well as Sri Pandey, learned counsels for the writ petitioner have no objection and they gracefully accept the same.

Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed off in the

following manner:- (a) The writ petitioner shall be reinstated in service and be made entitled to the benefits, which were existing prior to passing of the suspension order dated 24.05.2023; (b) It is open for the Institution in question (Principal/ Headmaster) to approach the seventh respondent, District Inspector of Schools, Sant Kabir Nagar as per the relevant statutes for seeking approval of the suspension of the writ petitioner; (c) In case, such an application is preferred, the District Inspector of Schools, Sant Kabir Nagar shall fix a date and after hearing the parties, and seeking their version proceed to decide the matter with most expedition.

Needless to point out that the writ petitioner has been decided without seeking any response from the respondents, thus passing of this order may not be construed to an expression that this Court has adjudicated the matter on merits.

With the aforesaid observations the writ petition stands **disposed off**.

Order Date :- 27.10.2023
N.S.Rathour