

Neutral Citation No. - 2023:AHC:206192

Reserved on: 16.10.2023
Delivered on: 30.10.2023

Court No. - 35

Case :- WRIT - A No. - 12789 of 2023 (Leading Writ Petition)

Petitioner :- Bal Prasad Tiwari

Respondent :- The State Of U.P. And 2 Others

Counsel for Petitioner :- Ratnakar Upadhyay, Sr. Advocate

Counsel for Respondent :- C.S.C., Uma Nath Pandey

With

Neutral Citation No. - 2023:AHC:203628

Case :- WRIT - A No. - 13044 of 2023 (Connected Writ Petition)

Petitioner :- Hari Shankar Dubey

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ratnakar Upadhyay, Sr. Advocate

Counsel for Respondent :- C.S.C., Uma Nath Pandey

Hon'ble Vikas Budhwar, J.

1. Writ Petition No. 12789 of 2023 (Bal Prasad Tiwari Vs. State of U.P.) is treated as leading writ petition and Writ Petition No. 13044 of 2023 (Hari Shankar Dubey Vs. State of U.P. & 3 Others) is treated as connected writ petition.

2. Heard Sri R.K. Ojha, learned Senior Counsel assisted by Sri Ratnakar Upadhyay, learned counsel for the writ petitioner in the leading and connected writ petitions, Sri Shailendra Singh, learned Standing Counsel who appears for respondents No. 1 and 2 in leading and connected writ petition, Sri Pradeep Kumar, learned Senior Counsel assisted by Sri Uma Nath Pandey, learned counsel for respondent No. 3 in leading writ petition and respondents No. 3 and 4 in connected writ petition.

3. Since common questions are involved in both the writ petitions, thus, they are being decided by a common order with the consent of the parties at the fresh stage.

4. The case of the writ petitioner in the leading writ petition is that there happens to be an institution by the name of Sri Gyan Chandra Jain Vaidya Inter College, Ekdil, District Etawah which is recognized under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No. 24 of 1971 are applicable.

5. As per the writ petitioner his father namely, Late Rama Kant Tiwari who was working as a Peon in the institution died-in-harness and the writ petitioner was accorded compassionate appointment as a Peon on 29.11.2011. It is also the case of the writ petitioner that one post of Clerk which stood sanctioned in the institution was manned by Sri Dinesh Kumar Tomar who was subjected to disciplinary proceedings consequent thereto, he was placed under suspension and superannuated on 30.06.2017 giving a room to one post of Clerk.

6. In para 7 of the writ petition, it is asserted that the present Committee of Management of the institution headed by Sri Prem Shankar Sharma got interested to induct his brother-in-law by way of direct recruitment which was subject matter of challenge in Writ Petition No. 15979 of 2005 which came to be disposed of on 10.03.2005.

7. In para 9 of the writ petition, assertions have been made that Committee of Management of the institution was superseded and authorized controller was appointed which considered the promotion of the writ petitioner from class IV post to class III post which came to be approved by the second respondent, District Inspector of Schools, Etawah on 21.09.2017 and the petitioner started working as a Clerk since 22.09.2017. The order dated 21.09.2017 of the District Inspector of Schools, Etawah was subject matter of challenge at the instance of Sri Santi Swaroop Bidhulia while filing Writ Petition No. 6273 of 2017 which happens to be pending.

8. In para 12 of the writ petition, it is also asserted that the present

Committee of Management came into power on 30.05.2022 and the signatures of one Sri Prem Shankar Sharma was attested. It is the allegation of the writ petitioner that the present Committee of Management started creating obstacles and hindrances in the working of the writ petitioner which resulted in passing of an order dated 01.07.2022 whereby the writ petitioner was directed to handover charge to another incumbent and a committee was constituted to conduct inquiry, the writ petitioner claims to have handed over the charge on 02.07.2022 and 18.07.2022 in the presence of the Officiating Principal/Headmaster of the institution. A charge sheet is stated to have been issued to the writ petitioner on 25.06.2022 containing as many as 10 charges. The writ petitioner further claims to have submitted his reply to the charge sheet on 10.07.2022. It is the case of the writ petitioner that on 13.07.2022 the writ petitioner was informed by the Principal of the institution that the writ petitioner had only sent a simple plain paper. Thereafter, the writ petitioner submitted his objection on 20.07.2022. On 13.06.2022, the writ petitioner was suspended and the same came to be approved by the District Inspector of Schools, Etawah, second respondent on 26.08.2022. Thereafter, the writ petitioner claims that a supplementary charge sheet was also issued to him, the petitioner tendered his reply to it.

9. In para 23 of the writ petition, the writ petitioner further states that the writ petitioner was not paid the 75% of the subsistence allowance which even in fact prejudiced his case. On 15.06.2023, according to the writ petitioner, the District Inspector of Schools, Etawah, second respondent issued a communication requiring the writ petitioner to be present in its office on 19.06.2023 for hearing.

10. In para 25 of the writ petition, the writ petitioner further states that on account of illness of his mother he could not attend but by virtue of a letter dated 24.06.2023 a date was sought. As per the writ

petitioner, a resolution is stated to have been passed by the Committee of Management on 05.06.2023 basis recommendation of the Inquiry Committee report dated 24.02.2023 proposing to terminate the services of the writ petitioner and the papers along with the recommendation was transmitted to the second respondent by the institution on 09.06.2023.

11. In para 28 of the writ petition, it is further stated that the District Inspector of Schools, Etawah issued a communication fixing 19.06.2023, however, no document was served upon the writ petitioner and ultimately on 28.06.2023 the second respondent, District Inspector of Schools, Etawah proceeded to pass an order reverting the writ petitioner from the class III post to class IV post.

12. Questioning the order dated 28.06.2023, the writ petitioner has filed the leading writ petition.

13. On being noticed, a counter affidavit has been filed by the learned Standing Counsel sworn by Associate District Inspector of Schools, Etawah dated 26.09.2023 and a counter affidavit on behalf of third respondent is also on record to which the writ petitioner has filed a rejoinder affidavit.

14. Insofar as the connected writ petition is concerned, the same has been preferred by Sri Hari Shanker Dubey son of Sri Kripa Shanker Dubey which also relates to the same institution wherein the writ petitioner claims to have been appointed as a class IV employee on 11.08.2008 and his services were confirmed on 03.06.2010. It is asserted that on 08.08.2022 the fourth respondent, the Principal of the institution has issued a notice and alleging financial misappropriation committed by the writ petitioner to which a reply has been submitted on 17.08.2022 which was followed by another notice dated 29.08.2022. The writ petitioner in the said case has been placed under suspension on 30.09.2022 followed by serving of a charge sheet dated

14.10.2022 containing as many as four charges. The writ petitioner in the connected writ petition submitted his objection/reply to the charge on 29.10.2022 denying the said charges and thereafter according to the writ petitioner on 10.11.2022 the inquiry committee issued a notice to the writ petitioner to appear for inquiry on 14.11.2022 and the writ petitioner appeared on 14.11.2022 which further entailed issuance of a notice on 18.11.2022 to which the writ petitioner claims to have submitted his reply on 22.11.2022 and thereafter on 30.11.2022 the Principal of the institution is stated to have dispensed with the services of the writ petitioner against which the writ petitioner preferred appeal before the District Inspector of Schools, Etawah as well as the Committee of Management of the institution on 06.12.2022 followed by reminder on 20.02.2023.

15. In para 20 of the writ petition it is further stated that the writ petitioner also preferred another appeal on 03.04.2023 before the Manager of the Committee of Management.

16. In para 21 of the writ petition, it is asserted that the District Inspector of Schools, Etawah issued a communication on 03.06.2023 to the Manager of the Committee of Management directing him to pass appropriate orders on the appeal of the writ petitioner dated 06.12.2022 (wrongly typed as 06.12.2023). As per the writ petitioner, on 05.06.2023 the Committee of Management of the institution rejected the appeal of the writ petitioner and affirmed the order dated 30.11.2022 of the Principal. It is further the case of the writ petitioner that on 15.06.2023 the District Inspector of Schools, Etawah fixed 19.06.2023 as the date for hearing and the writ petitioner herein on 19.06.2023 took 15 days further time and the District Inspector of Schools, Etawah fixed 28.06.2023 wherein the appeal preferred by the writ petitioner has been rejected.

17. Questioning the order dated 28.06.2023 of the District Inspector

of Schools, Etawah, 05.06.2023 of the Committee of Management and 30.11.2022 of the Principal, the writ petitioner has filed the connected writ petition. A counter affidavit has been filed on behalf of third and the fourth respondents to which the writ petitioner has filed his reply and a counter affidavit of the Associate District Inspector of Schools, Etawah dated 26.09.2023 is on record.

18. Assailing the orders passed in the leading writ petition Sri R.K. Ojha, learned Senior Counsel submits that the orders in question are patently illegal contrary to law besides being in violations of principles of natural justice and also the provisions of Regulations 36 and 37 of Chapter III of the U.P. Intermediate Education Act, 1921. He while inviting the attention of the Court towards paragraph No. 27 of the leading writ petition submits that the copy of the inquiry report of the inquiry committee dated 04.02.2023 resolution dated 05.06.2023 and the letter of the Manager dated 09.06.2023 was not at any point of time served upon the writ petitioner which prejudiced the case of the writ petitioner, he further submits that relevant assertions have been in para 30 of the writ petition so as to contend that no date, time and venue was fixed for holding inquiry against the writ petitioner which is mandatory under the said Regulations. According to him, the Inquiry Officer in the zeal of holding the charges against the writ petitioner held an ex parte inquiry without even giving any opportunity to the writ petitioner to cross examine the authors of the documents sought to be relied upon in order to prove the charges. According to him, the said issues were specifically raised before the District Inspector of Schools, Etawah but the same has not been considered. He further seeks to invite the attention of the Court towards the order dated 28.06.2023 of the District Inspector of Schools, Etawah while contending that though the order is being shown to be a longish and lengthy but only in one paragraph discussion has been recited and a final order has been passed reverting

the writ petitioner from class III post to class II post. He submits that proprietary demanded that each and every contention raised by the writ petitioner ought to have been considered and discussed and finding be accorded regarding the validity of the inquiry proceedings as per the Regulations in question.

19. In the connected writ petition, the learned Senior Counsel submits that here the order which is challenged is an order of the District Inspector of Schools, Etawah dated 28.06.2023 wherein also there is virtually no discussion regarding the validity and the propriety of the inquiry proceedings as the said order though is stated to be lengthy but only in one paragraph discussion has been made without adverting to the core issues with regard to the inquiry proceedings being in conformity with statutes. Learned Senior Counsel for the writ petitioner in the said case has invited the attention towards paragraph No. 28 so as to contend that there has been violation of principles of natural justice as the same is in direct teeth of Regulations 35 to 39 of Chapter III of the U.P. Intermediate Education Act, 1921. According to Sri Ojha, learned Senior Counsel in both the writ petitions the order of the District Inspector of Schools, Etawah be set aside and the matter be remitted back for deciding the issue afresh considering all the contentions raised herein.

20. Countering the submission of the learned Senior Counsel for the writ petitioner Sri Pradeep Kumar, learned Senior Counsel assisted by Sri Uma Nath Pandey, learned counsel who appears for the Committee of Management and the Principal of the institution in question submits that it is the writ petitioners who have committed misconduct warranting passing of the orders in question particularly in view of the fact that the charges sought to be levelled in the charge sheet are not only grave and serious but they tantamount to grave illegality, he submits that not only it is a case of financial misappropriation but manipulations and tampering with the records of

the institution has been made. He submits that the writ petitioner in the leading writ petition and the writ petitioner in the connected writ petition were hand in gloves and they committed an act unbecoming of class III or class IV employee. According to Sri Pradeep Kumar, learned Senior Counsel sufficient opportunity was accorded to the writ petitioner to participate in the inquiry and in this regard Sri Pradeep Kumar learned Senior Counsel has invited the attention of the Court towards paragraph 20 of the counter affidavit filed in the leading writ petition so as to contend that a copy of the charge sheet and supplementary charge sheet was served and the writ petitioner tendered his reply, however, he did not participate in the inquiry proceedings as according to him a communication was issued by the Inquiry Committee to the writ petitioner in the leading writ petition which is Annexure 4 at page 96 of the counter affidavit filed by respondent No. 3 in the leading writ petition whereby the writ petitioner was required to be present on 06.02.2023 to participate in the inquiry and the writ petitioner did not participate in the inquiry which culminated into submission of an ex parte inquiry report, he further submits that there has been sufficient compliance of principles of natural justice. According to him, the writ petitioner in both the writ petitions are not entitled to any relief as they intentionally avoided to participate in the inquiry so as to cover up their misdeeds and to take advantage in that regard.

21. Sri Shailendra Singh, learned Standing Counsel who appears for the official respondents has adopted the argument of the counsel appearing for the Committee of Management of the Principal of the institution and according to him, the order of the District Inspector of Schools, Etawah needs no interference in that regard.

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

23. Undisputedly, the institution in question recognized under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No. 24 of 1971 stand applicable.

24. It is not in dispute that the procedure envisaged under Section 16 read with Regulations 36 to 39 of Chapter III of the 1921 Act stand applicable. A complete procedure has been provided in the Regulations as to how the inquiry is to be conducted. As per the said Regulations, a charge sheet is to be served, reply is to be sought from the delinquent teacher/employee, in case, it denies the charges then post appointment of the Inquiry Officer/Inquiry Committee, inquiry is to be conducted while maintaining records of the inquiry and also date, time and venue for holding oral inquiry be fixed. The holding of oral inquiry is to be dispensed with, in case, the delinquent teacher/employee gives its consent that he does not propose to participate or waive its right for holding oral inquiry.

25. Here, in the present case the Court finds that a charge sheet and a supplementary charge sheet was issued to the writ petitioner in the leading writ petition to which a reply was submitted. In the similar manner, a charge sheet was issued to the writ petitioner in the connected writ petition to which delinquent employee submitted its reply. Though it is the stand of the Committee of Management/Principal of the institution that date, time and venue was fixed for holding inquiry but the writ petitioner in both the writ petitions did not participate in the inquiry despite due communication, thus, the inquiry report was submitted which culminated into passing of the reversion of the writ petitioner in the leading writ petition and dispensation of the services of the writ petitioner of the connected writ petition. Though counter affidavit has been filed taking their own stand but a crucial aspect which arises for determination is as to whether the District Inspector of Schools, Etawah had accorded consideration over the said issue while coming to his conclusion

justifying the action of the Committee of Management/Principal of the institution in question.

26. Perusal of the order dated 28.06.2023 of the District Inspector of Schools, Etawah in both the writ petitions reveal that there is virtually no discussion on the aforesaid crucial and core issues which are imperative for coming into conclusion as to whether the action of the Committee of Management/Principal is justified or not. Virtually, the District Inspector of Schools, Etawah has endorsed the stand of the Committee of Management/Principal without recording any reasons in coming into conclusion. Once power is vested upon the District Inspector of Schools to either approve or disapprove the resolution/proposal for imposition of punishment then the propriety demands that there should be an application of mind on the said crucial aspects regarding the legality and the validity of the inquiry proceedings conducted by the Inquiry Officer and the action of the Disciplinary Authority as per the Regulations in question. This Court finds that there is no discussion on the said aspect of the matter.

27. A further question arises as to what would be the course of action available to the Court in such a situation wherein the District Inspector of Schools has not adverted to the fundamental and core issues.

28. At this juncture, Sri Pradeep Kumar, learned Senior Counsel assisted by Sri Uma Nath Pandey, learned counsel for Committee of Management/Principal of the institution in question as well as Sri Shailendra Singh, learned Standing Counsel appearing for the official respondents submit that the order of the District Inspector of Schools, Etawah dated 28.06.2023 impugned in both the writ petitions be set aside and the matter be remitted back to the District Inspector of Schools, Etawah for deciding the matter afresh after hearing the respective parties placing their versions orally and in writing.

29. To such a submission, Sri R.K. Ojha, learned Senior Counsel assisted by Sri Ratnakar Upadhyay, learned counsel for the writ petitioner submits that they have no objection to the same and the order in question be set aside and the matter be remitted back to the District Inspector of Schools, Etawah to accord fresh consideration in that regard.

30. Considering the submission of the rival parties as well as the stand taken by them, this Court, at this stage, is not addressing upon the merits of the matter leaving it open for the parties to appear before the District Inspector of Schools, Etawah raising all the grounds which is to be decided by the District Inspector of Schools, Etawah.

31. Accordingly, the writ petition is being decided in the following terms:

(a) Orders dated 28.06.2023 passed by the District Inspector of Schools, Etawah in the leading as well as connected writ petitions are set aside;

(b) the matter stands remitted back to the District Inspector of Schools, Etawah to decide the matter afresh within a period of two months from the date of production of certified copy of the order by either of the parties;

(c) the parties are represented through their counsels before this Court, thus, they shall appear before the District Inspector of Schools, Etawah and place their submissions/versions and the same be exchanged between the parties and thereafter, the District Inspector of Schools, Etawah shall decide the issues strictly in accordance with law bearing in mind the legality and the validity of the inquiry proceedings as well as the action of the Committee of Management imposing the ultimate punishment and the other ancillary and incidental issues.

32. Since the orders dated 28.06.2023 passed by the District Inspector of Schools, Etawah in the leading and the connected writ petition has been set aside being unreasoned and non-speaking, thus, a question arises as to what would be the further course of action in that regard.

33. Sri R.K. Ojha, learned Senior Counsel assisted by Sri Ratnakar Upadhyay who appears for the writ petitioner in both the writ petitions has gracefully made a statement at Bar as per the instructions received by their client that the post setting aside of the order dated 28.06.2023 in the leading writ petition in the case of Bal Prasad Tiwari now Sri Bal Prasad Tiwari stands reverted from class III post to class IV post, thus, till passing of the fresh orders by the District Inspector of Schools, Etawah the arrangement which is existing as on today may continue but the same be subject to the final orders to be passed by the District Inspector of Schools, Etawah.

34. Sri Ojha, learned Senior Counsel assisted by Sri Ratnakar Upadhyay, further makes a statement at Bar as per the instructions received by him from his client submits that Sri Hari Shankar Dubey, writ petitioner in the connected writ petition his services stood dispensed with, thus, according to him he be treated to be under suspension and the arrangement which is existing today be continued till the passing of the fresh orders according to him Sri Hari Shankar Dubey was suspended on 30.09.2022, thus, he be paid subsistence allowance, arrears and current salary till the passing of the fresh orders and his reinstatement be made subject to the final orders passed by the District Inspector of Schools, Etawah.

35. To such a submission, Sri Pradeep Kumar, learned Senior Counsel assisted by Sri Uma Nath Pandey, learned counsel for the writ petitioner in both the writ petitions have no objection to the same.

36. Accordingly, it is provided that the arrangement which is

continuing till date post passing of the orders dated 28.06.2023 by District Inspector of Schools, Etawah with respect to Sri Bal Prasad Tiwari and Sri Hari Shankar Dubey shall continue till the passing of the fresh orders by the District Inspector of Schools, Etawah within the time stipulated by this Court and Sri Hari Shankar Dubey shall be paid arrears and month to month subsistence allowance as admissible and as per the rules and regulations governing the field.

37. With the aforesaid observations, the writ petition stands disposed of.

Order Date:- 30.10.2023

Rajesh