

Court No. - 35

Case :- WRIT - A No. - 13119 of 2023

Petitioner :- Niraj Mani Tripathi

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- V.R. Tiwari

Counsel for Respondent :- CSC,Manoj Kumar Mishra

Hon'ble Vikas Budhwar,J.

1. Heard Sri V.R. Tiwari, learned counsel for the petitioner, Sri P.K. Shahi, the learned Addl. Chief Standing Counsel, who appears for Respondents 1 to 4 and Ms. Sunita Chauhan (AOR No.A/S 0401/2021) holding brief of Sri Manoj Kumar Mishra, learned counsel for the fifth respondent.

2. Since counter and rejoinder affidavits have been exchanged between the parties and they do not propose to file any further response, thus with the consent of the parties, the writ petition is being decided at the fresh stage.

3. The case of the writ petitioner is that there happens to be an institution, fifth respondent, Sri Neharu Inter College, Pataherwa, District Kushinagar, which is recognized under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No.5 of 1982 and U.P. Act No.24 of 1971 stand applicable. It is further the case of the writ petitioner that he was appointed as an Assistant Teacher in Primary Section against a substantive vacancy, which has arisen on account of promotion of one of the candidates on 30.06.1999 and he joined the Institution in question on 01.07.1999. The writ petitioner further claims that approval to the appointment of the writ petitioner was accorded by the fourth respondent, District Inspector of Schools, Kushinagar on 30.09.2000. Since the writ petitioner was not paid salary, which was admissible to him, so he approached the respondents for grant of salary. The matter travelled to the Director of Education, U.P. Allahabad/ Prayagraj, who proceeded to issue a communication dated 12.07.2006 requiring the fourth respondent, District Inspector of Schools, Kushinagar to produce the relevant records. Though the documents were transmitted by the fourth respondent, District Inspector of Schools, Kushinagar before the Director of Education, U.P. at Prayagraj, but no follow up action was taken, which compelled the writ petitioner to file a writ petition, being Writ-A No. 23411 of 2008, Neeraj Mani Tripathi Vs. State of U.P. and others, which came to be disposed of on 12.05.2008 requiring the third respondent in the said writ petition to take appropriate action regarding the payment of salary of the writ petitioner. It is also the case of the writ petitioner that consequent to the direction of the Writ Court as referred to above, a Three Member Committee comprising of the Chairman of

the Divisional Committee / Joint Director of Education, Gorakhpur Region, Gorakhpur, Member, Divisional Committee, Deputy Director of Education, Gorakhpur and District Inspector of Schools, Kushinagar proceeded to grant approval of the payment of salary to the salary on 31.07.2008. Consequently, on 05.06.2009, an order is stated to have been passed by the then District Inspector of Schools, Kushinagar, fourth respondent granting payment of salary and approval to the writ petitioner. The writ petitioner thereafter was paid salary. However, in the meantime, according to the writ petitioner, as asserted in paragraph-15 of the writ petition, a complaint was lodged by a stranger, Sri Awadhesh Pandey, which culminated into an order dated 31.07.2009 issued under the signature of the Tehsildar, Tamkuhiraj, Kushinagar requiring the investigation and inquiry with regard to appointment of writ petitioner as the Assistant Teacher. The same was followed by a direction of the Addl. Commissioner-Ist, Gorakhpur Region, Gorakhpur dated 28.08.2009 requiring the District Inspector of Schools, Kushinagar to produce the entire documents for conducting the enquiry.

4. Being aggrieved against the communications dated 31.07.2009 of the Tehsildar Tamkuhiraj, Kushi Nagar and the communication dated 03.10.2009 of District Inspector of Schools, Kushinagar, the writ petitioner preferred Writ Petition No.10728 of 2010, which came to be disposed of on 31.08.2022 while passing the following orders:

“1. Heard Shri V.R. Tiwari, learned counsel for the petitioner; Shri Manoj Kumar Mishra, learned counsel for respondent Committee of Management and; learned Standing Counsel.

2. Present petition has been filed to challenge the communication dated 31.7.2009 issued by respondent no.6/Tehsildar, Tamkuhiraj, Kushinagar, communication dated 3.10.2009 issued by respondent no.3/District Inspector of Schools, Kushinagar and notice dated 13.11.2009 issued by respondent no.5/Additional Commissioner (I), Gorakhpur Region, Gorakhpur. All three communications have arisen on certain complaint received against appointment of the petitioner on the post of Assistant Teacher at the primary school attached with Nehru Inter College, Patherwan, District - Kushinagar.

3. Submission of learned counsel for the petitioner is, such appointment was made on 1.7.1999. The issue was examined by the three Member Divisional Committee comprising of District Inspector of Schools, Deputy Director of Education and Joint Director of Education.

4. Relying on the report of the three Member Committee dated 31.7.2008, it has been submitted, Committee had found the petitioner to have been appointed against the vacancy created upon permission granted.

5. Then, reliance has been placed on a recent decision of this Court in Poonam Sharma v. State of U.P. & 3 Ors., 2019 (1) UPLBEC 756 wherein it has been observed, the District Magistrate had no authority to doubt the selection of a teacher. At most, he could have referred the matter to the competent authority for enquiry. Relying on that, it has been submitted, the Tehsildar and the Commissioner have no jurisdiction to examine the legality or otherwise of the appointment of the petitioner. As to the enquiry attempted by the DIOS, it has been submitted, the same has been conducted solely on the dictates of the superior administrative authorities namely the Commissioner. In any case, the issue had already been examined by the three Member Committee

headed by the Joint Director of Education. Therefore, there is no illegality in the appointment of the petitioner.

6. In such facts, the petitioner is being deprived of due salary payment from 10.6.2009 onwards.

7. Learned counsel for respondent Committee of Management states, the Committee is supporting the claim made by the petitioner. Learned Standing Counsel would submit, the matter has to be examined by the competent authority. Only then, the salary payment may be released.

8. Having heard learned counsel for the parties and having perused the record, in the first place, it has to be noted, neither Tehsildar nor Commissioner had any jurisdiction to conduct enquiry as to the validity of the appointment of the petitioner. The jurisdiction to conduct such enquiry vested with the DIOS.

9. In that view of the matter, the communication dated 31.7.2009 issued by the Tehsildar, Tamkuhiraj, Kushinagar, and further communication dated 13.11.2009 issued by Additional Commissioner (I), Gorakhpur Region, Gorakhpur, are of no avail. In any case, no proceedings appear to have conducted pursuant to those communications, despite lapse of almost 13 years. Therefore, I find myself in agreement with the view taken by learned single Judge in Poonam Sharma (supra).

10. Accordingly, the impugned communications dated 31.7.2009 and 13.11.2009 are quashed. Insofar as the notice dated 3.10.2009 issued by the DIOS is concerned, the same had been issued by the competent authority. However, at present, it is not clear, what doubt had been entertained by DIOS with respect to appointment of the petitioner. Inasmuch as, by earlier communication dated 30.9.2000 (annexed as Annexure no.1 to the writ petition), approval had been granted by the DIOS to the appointment claimed by the petitioner and that appointment appears to have been found in order by the three Member Committee vide communication dated 31.7.2008.

11. In view of the above, present petition is disposed of with the direction that respondent no.3-District Inspector of Schools, Kushinagar/competent educational authority may examine the records pertaining to the appointment of the petitioner. In the event of the approval order dated 30.9.2000 and the order the three Member Committee dated 31.7.2008 is found existing on record, prima facie, burden would stand discharged in favour of the petitioner. It would stand established that the petitioner was duly appointed. In the event, any other material is found existing to raise a reasonable doubt as to the genuineness of the claim made by the petitioner, proper enquiry would be made by the DIOS//competent educational authority, after hearing the petitioner upon a proper notice to confront the petitioner with that adverse material, within a period of two months from today.

12. In case, the claim of the petitioner is accepted, full salary payment may be released in favour of the petitioner within the same time. If however the claim may be rejected, the communication of the same may be issued to the petitioner, containing adequate reasons, within that time.”

5. However, now the District Inspector of Schools, Kushinagar, fourth respondent had proceeded to negate the claim of the writ petitioner for the payment of salary in that regard by order dated 21.06.2023.

6. Questioning the order dated 21.06.2023 passed by the fourth respondent, District Inspector of Schools, Kushinagar the writ petitioner has filed the present writ petition. This Court entertained the writ petition on 10.08.2023 while passing the

following orders:-

“1. Vakalatnama filed on behalf of Shri Manoj Kumar Mishra, learned counsel for the respondent no.5, is taken on record.

2. Submission of Mr. V.R. Tiwari, learned counsel for the writ petitioner is that even in fact, the appointment of the writ petitioner stood approved by the order of the District Inspector of Schools, Kushi Nagar on 30.09.2000. However, when by virtue of the communication dated 31.07.2009, 13.11.2009 the salary was being withheld and interference was being made so then writ petitioner preferred Writ-A No. 10728 of 2010 (Neeraj Mani Tripathi vs. State of U.P. & Others), which came to be disposed of on 31.08.2022 wherein in the operative portion of the order, it was observed that in the event the approval order dated 30.09.2000 and the order of the three Member Committee dated 31.07.2008 is still existing on record prima facie, burden would stand discharge in favour of the petitioner. However, according to the learned counsel for the writ petitioner now by virtue of the order impugned dated 21.06.2023, the claim of the writ petitioner for being accorded approval and payment of salary has been rejected.

3. Matter requires consideration.

4. Sri Pradeep Kumar Sahi, learned Additional Chief Standing Counsel appearing for the respondent nos. 1 to 4 and Sri Manoj Kumar Mishra, learned counsel for the respondent no.5. Since the parties are represented in the Court through their Counsel.

5. Let a counter affidavit be filed within ten days.

6. Counter affidavit be served upon the learned counsel for the writ petitioner by 25th August, 2023. Rejoinder affidavit be filed before the next date fixed.

7. Put up this case on 30.08.2023 as fresh.”

7. A counter affidavit has been filed by the District Inspector of Schools, Kushinagar, fourth respondent dated 27.10.2023 followed by another counter affidavit dated 27.08.2023 filed by the fifth respondent Institution, sworn by the Manager of the Institution in question. A rejoinder affidavit has been filed to the counter affidavit filed by the State official respondent. Learned counsel for the writ petitioner has made a statement at Bar that he does not propose to file any rejoinder affidavit to the counter affidavit filed by the fifth respondent.

8. Sri V.R. Tiwari, learned counsel for the writ petitioner while assailing the order dated 21.06.2023 passed by the fourth respondent, District Inspector of Schools, Kushinagar has sought to argue that the order passed by the District Inspector of Schools, Kushinagar cannot be sustained for the single moment, particularly in view of the fact that firstly, the order proceeds on misconception of law and facts, as it is highly unbelievable and inconceivable that an approval order was passed by the District Inspector of Schools, Kushi Nagar, way back on 30.09.2000 post passing of the order dated 12.05.2008 in Writ-A No.23411 of 2008 preferred by the writ petitioner, the matter was placed before the Regional Level Committee, which also comprised of the District Inspector of Schools, Kushinagar and after verifying the records, it was opined that the appointment of the writ petitioner was against a

clear vacancy and he was appointed validly, which further culminated into passing of the communication dated 05.06.2009 by the District Inspector of Schools, Kushinagar, but on the pretext that certain complaints were lodged by a rank outsider, the proceedings have been drawn and secondly, once this Court in its order dated 31.08.2022 passed in Writ Petition No.10728 of 2010 preferred by the writ petitioner, crystalized the said issues and required the fourth respondent, District Inspector of Schools, Kushinagar to pass further orders and to revisit the matters bearing in mind that the burden would stand discharged from the writ petitioner, in case the approval orders dated 03.09.2000 and Three Member Committee's decision dated 31.07.2008 was intact. He submits that now, by virtue of the order impugned, the writ petition by adopting the totally foreign and a novel method, the claim of the writ petitioner was negated on the premise that there happens to be no dispatch register warranting issuance of the approval order dated 03.09.2000. Learned counsel for the writ petitioner has also invited the attention of the Court towards a counter affidavit filed by the District Inspector of Schools, Kushinagar, fourth respondent, particularly paragraph-4, so as to further contend that from the averments contained in the said counter affidavit, it is explicitly clear and apparent that it is the stand of the respondents that there happens to be a document pertaining to the approval and correspondences in the office of the Joint Director of Education. He thus submits that merely by writing a line, while transmitting the papers by a stroke of pen would not denude the claim of the writ petitioner, as obviously, the Committee of Management has taken all possible steps and there cannot be any ground available to the respondents to negate the claim, particularly after such a long time and there being no challenge to the orders approving the appointment of the writ petitioner, even by the Three Member Committee, and the said stand has come after several decades. He thus submits that the order in question be set aside.

9. Sri P.K. Shahi, the learned Addl. Chief Standing Counsel, who appears for Respondent Nos. 1 to 4 has sought to argue that merely because there happens to be the orders of approval issued by the District Inspector of Schools, Kushinagar and by a Three Member Committee, the same cannot be of any aid or assistance to the writ petitioner, particularly when the liability to pay the salary and benefits to the writ petitioner is with the State Government and it is always open for the State Government and the Education Authorities to take appropriate action on the basis of the complaints and to be satisfied as to whether the things had been proceeded legally or not. He submits that from the order impugned as well as the averments made in paragraph-2(C) of the counter affidavit, the dispatch register does not bear any recital about the fact that the order dated 30.09.2000 approving the appointment of the writ petitioner by the fourth respondent was even in fact issued. However, he submits that though the writ petitioner may be right that a Three Member Committee had taken decision on 31.07.2008 approving the appointment of the writ petitioner which was also chaired by the District Inspector of Schools, Kushinagar and mere change of an officer would not be material in that regard. He however, submits that the matter needs reconsideration and in case the Committee

of Management of the Institution in question or the writ petitioner is able to produce the document, as sought for, then in case there is any error (though disputed) then the same shall be rectified.

10. Ms. Sunita Chauhan, holding brief of Sri Manoj Mishra, who appears for the fifth respondent has adopted the argument of the learned counsel for the writ petitioner and according to the instructions received by her, in case same document and inputs are required, then the Committee of Management shall appear personally and try to satisfy the authorities.

11. I have heard the learned counsel for the parties and perused the records carefully.

12. It is apparent from the record that the writ petitioner was appointed on the post of Assistant Teacher in attached Primary Section in the Institution in question on 30.06.1999. His appointment was approved on 30.09.2000 by the District Inspector of Schools, Kushinagar, fourth respondent. Since he was not paid salary, so a writ petition was preferred by the writ petitioner, being Writ-A No.2241 of 2008, which came to be disposed of on 12.05.2008 requiring the competent authority to take an appropriate decision, which culminated into passing of the order by a Three Member Committee dated 31.07.2008. Thereafter, the District Inspector of Schools, Kushinagar, fourth respondent, proceeded to issue a consequential order for payment of salary on 05.06.2009 and the writ petitioner claims to have been paid salary from 10.06.2009. However, on the basis of the complaints, the matter was earlier taken cognizance by the Tehsildar, Tamkuhiraj, Kushinagar and by the Addl. Commissioner, Gorakhpur Region, Gorakhpur by issuing communications which led to filing of the writ petition before this Court at the behest of the writ petitioner, Writ Petition No.10728 of 2010, wherein specific directions were issued to the District Inspector of Schools, Kushinagar, fourth respondent, to take decision bearing in mind the existence of the approval order dated 30.09.2000 and the communication dated 31.07.2008. The Court finds that the order in question which is subject matter of challenge dated 21.06.2023 of the fourth respondent, District Inspector of Schools, Kushinagar recites that the dispatch register does not bear the endorsement of the issuance of the approval order dated 30.09.2000, but as per the averments contained in paragraph-4 of the counter affidavit, it has been sought to be shown, that the document was available in the office of Joint Director of Education. Since the crucial aspects which are fundamental and core, for deciding the issue with regard to the entitlement of payment of salary particularly in the wake of the fact that there exists an order dated 30.09.2000 of the District Inspector of Schools, Kushinagar fourth respondent and the order of the Committee dated 31.07.2008, thus according to this Court, the order in question does not appear to be in right direction and perspective. At this stage, Sri P.K. Shahi, learned Addl. Chief Standing Counsel, submits that according to him, some more spade work ought to have been done while verifying the fact as to whether there is any document available during internal departmental correspondence in the office of the Joint Director or any authority or not. He submits that let the matter be remitted

back to the fourth respondent to take a fresh decision and according to him, the writ petitioner and the fifth respondent be directed to produce the record as and when they are required to be produced in that regard.

13. To such a submission, learned counsel for the writ petitioner Sri V.R. Tiwari as well as the counsel for the respondent Ms. Sunita Chauhan, holding brief of Sri Manoj Mishra, have no objection and they gracefully accept the same.

14. Considering the submission of the rival parties as well as the stand taken by them, this Court is not delving and addressing the issue at this stage leaving it open for the fourth respondent, District Inspector of Schools, Kushi Nagar to decide the matter afresh giving a re-look to the entire matter after summoning the record and perusing the same accordingly.

15. Accordingly, the writ petition is decided in the following terms: (a) The order dated 21.06.2023, passed by the fourth respondent, District Inspector of Schools, Kushi Nagar is set aside; (b) The matter stands remitted back to the District Inspector of Schools, Kushinagar to pass fresh order; (c) Since the writ petitioner and the fifth respondent are duly represented through their counsels, before this Court, thus they shall appear before the District Inspector of Schools, Kushi Nagar, fourth respondent on 05.12.2023 along with their versions; (d) The District Inspector of Schools, Kushi Nagar, fourth respondent on the said date shall require the writ petitioner and the fifth respondent to produce the documents, which they seek to be furnished; (e) A next date shall be fixed in the week commencing 11.12.2023, on which date hearing be done; (f) Orders be passed by 22.12.2023. The fourth respondent, District Inspector of Schools, Kushi Nagar shall decide the matter strictly in accordance with law bearing in mind the crucial issues, which are core and fundamental to be decided in the facts of the matter.

16. With the aforesaid observations, the writ petition stands **partly allowed**.

Order Date :- 9.11.2023

N.S.Rathour