

Court No. - 35

Case :- WRIT - A No. - 13615 of 2023

Petitioner :- Jagveer Singh

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

Counsel for Petitioner :- Avadh Pratap Singh Shishodia

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri Awadhesh Pratap Singh Shishodia, learned counsel for the petitioner and Sri H.K. Shukla, the learned Standing Counsel, who appears for State official Respondents.

Though this Court while entertaining this writ petition had issued notices to the fourth respondent, but there is an office report dated 04.11.2023 that the delivery of the notice is confirmed upon the respondent no.4. This Court thus deems sufficiency of service of the notice upon the respondents.

The case of the writ petitioner is that the fourth respondent, Neta Ji Subhas Smarak Inter College, Budhsaini, District Baghpat is an institution recognized under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No.24 of 1971 stand applicable. It is further the case of the writ petitioner that one Sri Vijay Pal Singh, who was working as an Assistant Clerk had proceeded on leave on 01.08.1984, however, subsequently, he was appointed on the post of Assistant Teacher on ad hoc basis. It is the further case of the writ petitioner that consequent to the occurring of the short term vacancy on the post of Assistant Clerk, the writ petitioner was appointed on 16.08.1984 and subsequently, Sri Vijay Pal Singh resigned on 01.07.1991. As per the writ petitioner, on 06.02.2002, the services of the writ petitioner were terminated. On 30.03.2002, the second respondent, District Inspector of Schools, Baghpat set aside the order dated 06.02.2002. An application is stated to have been filed by the Committee of Management of the Institution in question, which resulted in passing of the order dated 15.04.2022 staying the effect and operation of the order dated 30.03.2002. Subsequently, on the intervention of the writ petitioner on 28.10.2002, an order was passed whereby an order dated 15.04.2002 was recalled and the Committee of Management was directed to comply the order dated 30.03.2002 that led to filing of Writ-A No.47727 of 2002 by the Committee of Management of the Institution in question, in which

an order dated 11.11.2002 was passed directing the status quo. It is the further case of the writ petitioner that the said writ petition came to be dismissed as withdrawn by the Committee of Management of the Institution in question on 19.11.2014. In paragraph-26 of the writ petition, the writ petitioner has come up with the stand that he has been accorded joining on 19.12.2014 and in support thereof, he seeks to rely upon Annexure-16 at page-96 of the Paper-Book being a communication of the Committee of Management according joining to the writ petitioner. However, the writ petitioner being aggrieved against the non-payment of salary from the date, he was entitled, preferred an application before the second respondent, District Inspector of Schools, Baghpat, which came to be negated on 27.02.2020.

Questioning the said order, the writ petitioner has filed the present writ petition.

This Court entertained the writ petition on 25.08.2023 while passing the following order:-

"Learned counsel for the petitioner has argued that the order of the District Inspector of Schools, Baghpat dated 27.02.2020 proceeds on misconception of facts and law particularly in view of the fact that the writ petitioner was restrained to function in the post in question consequent to the litigation so instituted by the fourth respondent while filing the writ petition no. 47727 of 2002 in which an order of status quo was passed on 11.11.2002 which ultimately resulted in withdrawal of the writ petition on 19.11.2014. According to the writ petitioner, he was not allowed to function from the period from November, 2001 to March, 2015 and, thus, the principle of no work no pay would not apply particularly when on account of the existence of an interim order passed in the writ petition which stood dismissed as withdrawn the writ petitioner is entitled to the said benefit.

Reliance has been placed upon the judgment in the case of Kanoria Chemicals and Industries Vs. U.P. State Electricity Board 1997 (5) SCC 752 in that regard. In order to buttress the submission that once an interim order merges with the final order of dismissal and it is to be presumed in the eyes of law that there is no interim order in operation.

Matter requires consideration.

Sri Ajit Kumar Singh, learned Additional Chief Standing Counsel has put in appearance on behalf of respondents No. 1, 2 and 3.

Issue notice to the fourth respondent.

Steps be taken by 30.08.2023.

All the respondents shall file counter affidavit within a period of three weeks, rejoinder affidavit, if any, may be filed within a period of two weeks,

thereafter.

Put up this case as fresh on 13.10.2023."

Since there was an office report dated 05.09.2023 that the writ petitioner has not taken steps upon the fourth respondent, this Court on 13.10.2023 required the writ petitioner to take steps and now there is an office report dated 04.11.2023 mentioning that delivery of notice is confirmed upon the fourth respondent. A counter affidavit has been filed by the District Inspector of Schools, Baghpat dated 12.10.2023 to which rejoinder affidavit has been filed. Since the counsel for the parties do not propose to file any further response, the writ petition is being decided at the fresh stage.

Sri Awadhesh Pratap Singh, learned counsel for the petitioner, while assailing the order dated 27.02.2020 passed by the District Inspector of Schools, Baghpat has sought to argue that the said order is per se illegal and cannot be sustained for a single moment, particularly, in view of the fact that once an unsuccessful attempt was made by the fourth respondent while dispensing with the services of the writ petitioner on 06.02.2002 and the said order was not approved by the District Inspector of Schools on 30.03.2002, however, the same was put in abeyance on 15.04.2002, but ultimately by virtue of the order dated 28.10.2002, the writ petitioner was allowed to perform the duties and function, and a writ petition was preferred, being Writ-A No.47727 of 2022 by the Committee of Management in which initially an interim order was passed and which came to be dismissed on 19.11.2014, then obviously the writ petitioner is entitled to the benefits, particularly, in view of the fact that an interim order once passed and the writ petition stood dismissed, then in the eyes of law, it is presumed that the writ petition was never filed and there was no interim order operating in that regard. He seeks to rely upon the judgment in the case of ***Kanoria Chemicals and Industries Vs. U.P. State Electricity Board 1997 (5) SCC 752***. He further submits that even in fact the finding recorded in the order impugned that the writ petitioner though was accorded joining on 19.11.2014, but he is not entitled to the payment of salary from November 2001 to March 2015, is per se illegal besides being out of context, particularly, when the petitioner had joined the post in question on 19.11.2014. He further submits that the principle of "no work no pay" will not apply, as the writ petitioner was prevented from working on the post in question, initially by the act of the Committee of Management and subsequently by the order of the Court. However, once the writ petition stood dismissed, the writ

petitioner is entitled to the said benefits. He seeks to rely upon the judgment in the case of ***The Commissioner, Karnataka Housing Board Vs. C. Muddaiah, Appeal (Civil) No.4108 of 2007*** decided on 07.09.2007.

Sri H.K. Shukla, learned Standing Counsel, who appears for the Respondent Nos. 1, 2 and 3 submits that though it is not in dispute in question that earlier services of writ petitioner stand dispensed with, however, once the said order has been made intact even by virtue of the order of this Court itself, then the writ petitioner is prima facie entitled to the benefit. However, according to him, since various issues, which have been raised, have not been dealt with by the second respondent, District Inspector of Schools, Baghpat, thus according to him, the order be set aside, the matter be remitted back to the second respondent to pass a fresh order.

To such a submission, learned counsel for the writ petitioner has no objection and he gracefully accepts the same.

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

Undisputedly, from the averments contained in the writ petition and the documents in support thereof suggests that the writ petitioner's services were dispensed with on 06.02.2002. However, the District Inspector of Schools, thereafter on 30.07.2002 directed for the reinstatement of the petitioner and for payment of salary and subsequently, the said order was kept in abeyance by the District Inspector of Schools, Baghpat on 15.04.2002, which eventually came to be vacated on 30.03.2002, which was subject matter of challenge in the writ proceeding by the fourth respondent, in which an interim order was passed and thereafter the said writ petitioner came to be dismissed on 19.11.2014.

The question, which arises is as to whether the writ petitioner can be denied the said benefit for payment of salary, particularly it is the case of the petitioner that he was willing to work on the post in question. However, he was deliberately restrained to function on the post in question. Since the said issues are not specifically dealt in the order in question, thus in the opinion of the Court, as rightly stated by the learned Standing Counsel, that the matter needs a re-look. The order in question cannot be sustained. Accordingly, the writ petition is decided in the following terms:- (a) Order dated 27.02.2020 passed by the District Inspector of Schools, Baghpat, second respondent set aside; (b) the matter stands remitted back to the District Inspector of Schools, Baghpat to decide the matter

afresh in the light of the discussions made hereinabove after fixing a date for hearing, putting to notice and petitioner and the fourth respondent inviting their say and thereafter pass a reasoned and speaking order within a period of three months from the date of production of certified copy of the order.

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

Order Date :- 6.11.2023

N.S.Rathour