

Court No. - 35

Case :- WRIT - A No. - 13561 of 2023

Petitioner :- Ganga Ram

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

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Jigar Khare, learned counsel for the writ petitioner and Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel who appears for respondents No. 1 to 3.

2. In view of the order which is being proposed to be passed today, notices are not being issued to the fourth and fifth respondents.

3. The case of the writ petitioner is that pursuant to the selection undertaken by the respondents for making appointment against five vacant posts of class IV in the institution in question the writ petitioner applied in pursuance of the same and thereafter on 20.07.1999 the writ petitioner was issued appointment order. The approval of the appointment of the writ petitioner was accorded by the District Inspector of Schools, Jalaun at Orai, second respondent on 09.12.2019 the writ petitioner claims that he was paid salary till June, 2012, however, with effect from July, 2012 his salary was withheld.

4. In paras 9 and 10 of the writ petition, it has been further asserted that with relation to the allegations of appointment granted to the writ petitioner as class IV employee terming in to be irregular Joint Director of Education Jhansi Region Jhansi passed an order dated 08.02.2012 superseded the Committee of Management and appointing an Authorized Controller which was subject matter of challenge in Writ C No. 17240 of 2012 in which an interim order was accorded on 06.04.2012 by this Court, the said writ petition came to be decided on 13.09.2013. That in pursuance of the judgment of the Writ Court dated 13.09.2013 the District Inspector of Schools, Jalaun passed an order dated 15.02.2014 rejecting the claim of the writ petitioner and declined to resume payment of salary against which the writ petitioner preferred Writ Petition No. 16046 of 2014 in which this Court proceeded to pass the following order.-

"Petitioner who was appointed as Class IV employee on 29.07.1999 was granted approval by District Inspector of Schools, Jalaun on 09.12.1999. He started regularly working and getting his salary. Surprisingly, in June, 2012 his salary was stopped. Hence, the petitioner has approached this Court. This Court required him to make representation to District Inspector of Schools to decide the matter finally. District Inspector of Schools by impugned order dated 15.02.2014 has rejected the representation of petitioner on the ground that there was only one vacant post of Class IV employee and management wrongly appointed five persons. It also referred to certain other illegalities in the appointment procedure.

Learned counsel for petitioner submits that after a gap of fourteen years, it is not open for authorities concerned to exercise its power of review with regard to selection process which stood approved by the then District Inspector of Schools. Since the year 1999 to 2012, petitioner was regularly paid his salary along with the remaining staff of the Institution. Even in the garb of deciding representation of petitioner under the order of this Court, power of review cannot be exercised. He further submits that once an employee is regularly appointed, his removal can only take place as per the prescribed procedure after giving him charge sheet and holding due inquiry proceeding. In the present case, none of the procedure is followed and in fact approval order dated 09.12.1999 stands intact till date.

Learned Standing Counsel submits that there are sufficient illegalities pointed out in the impugned order and, hence, impugned order dated 15.02.2014 should not be sustained.

Heard counsel for parties and after perusal of material available on record.

It is not in the dispute that the appointment of petitioner was duly approved on 09.12.1999 by the competent authorities. The said approval is in force till date and is not disturbed. It is also not disputed that no charge sheet is served upon the petitioner and no proper inquiry proceeding is conducted. The State authorities cannot arbitrarily stop salary of an employee who is duly appointed in accordance with law. In case of any illegality is found, only option available for State is to serve charge sheet and hold a proper inquiry. In absence of the same, the State is stopped from arbitrarily picking up a case and adopting whimsical approach in the same.

Hence, the impugned order dated 15.02.2014 cannot stand and is hereby set aside.

Writ petition is allowed. Consequences to follow."

5. Pursuant to the order passed by the Writ Court as referred to above an order is stated to have been passed on 28.04.2014 by the District Inspector of Schools, Jalaun at Orai whereby the writ petitioner was made entitled to the payment of salary. However, according to the writ petitioner on 09.05.2023 an order has been passed whereby the order dated 28.04.2023 according salary to the writ petitioner has been withheld and the order in question dated

28.04.2023 had been stayed on the premise that in the institution in question there are five posts referable to class IV and all the five posts are manned, thus, the writ petitioner is not entitled for the payment of salary.

6. Questioning the order dated 09.05.2023 passed by the District Inspector of Schools, Jalaun the present writ petition has been filed.

7. This Court entertained the writ petition on 18.08.2023 while passing the following orders.-

"The contention of the learned Senior Counsel appearing for the petitioner is that earlier the salary of the writ petitioner as a Class-IV employee was stopped since 2012 and thereafter the matter was remitted back to the respondents to decide the same in Writ-Petition No.49852 of 2013 subsequently on 15.2.2014 an order has been passed by the D.I.O.S. Jalaun at Orai whereby the appointment of the writ petitioner was held to be illegal and not against any post acquired by fraud. The said order according to the learned counsel for the petitioner was subject matter of challenge in Writ-A No.16046 of 2014 which came to be allowed on 15.3.2023 and the D.I.O.S. by virtue of the order dated 28.4.2023 made the writ petitioner admissible for the payment of salary however now the said order has been stayed by the D.I.O.S. Jalaun at Orai on 9.5.2023 on the ground that the appointment of the writ petitioner is not against the sanctioned post.

Sri H.K. Shukla, learned Standing Counsel seeks time to obtain instructions.

Put up this case on 24.8.2023 as fresh."

8. Assailing the order dated 09.05.2023 passed by the District Inspector of Schools, Jalaun, the learned counsel for the writ petitioner submits that the said order is in violation of principles of natural justice as the writ petitioner was not put to notice he seeks to rely upon para 32, he further submits that once on 15.03.2023 Writ A No. 16046 of 2014 which came to be allowed quashing the order dated 15.02.2014 then it is not open for the respondents to take the said ground again as the appointment of the writ petitioner had been held to be legal. He further submits that proprietary demanded that the writ petitioner ought to have been put to notice.

9. Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel who appears for respondents No. 1 to 3 submits that against the judgment and order of the Writ Court dated 15.03.2023 Writ A No. 16046 of 2014 which came to be allowed, the State-respondents are in the process of preferring a special appeal as approval has been obtained in the month of July, 2023 in that regard.

10. On a pointed query being raised to Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel as to whether the writ petitioner was put to notice before passing the order or not and further what would be the legal consequences of an opinion accorded by the competent authority for filing of an appeal in the wake of the order impugned in the writ petition in question, he gracefully submits that the order of the Writ Court is in operation and in view of the challenge raised to the order dated 15.02.2014 of the District Inspector of Schools which had been set aside the writ petitioner would be at least for the time being entitled to benefits, of course, subject to the outcome of preferring of an appeal and the order to be passed therein. He submits that the order be set aside and the matter be remitted back to the authorities to pass a fresh order strictly in accordance with law, however, liberty is given to take appropriate action as and when the same occasions post passing of the proposed special appeal.

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

12. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being decided in the following manner: the order dated 09.05.2023 passed by the District Inspector of Schools, Jalaun is set aside, the matter stands remitted back to the District Inspector of Schools, Jalaun at Orai to pass fresh order after putting to notice the writ petitioner and the respondents No. 4 and 5. The said exercise shall be undertaken and concluded within a period of three weeks from the date of production of certified copy of the order.

13. Needless to point out that it is always open for the State-respondents to take appropriate action as warranted and advised under law, post order to be passed in the special appeal. It is further clarified that this Court has not adjudicated on the merits of the matter.

14. On the oral request of the learned counsel for the writ petitioner, he is permitted to correct the array of the parties insofar as the second and the third respondent are concerned.

15. Instructions filed today are taken on record and marked as Appendix 'A'.

Order Date :- 16.10.2023

Rajesh