

Court No. - 35

Case :- WRIT - A No. - 13940 of 2023

Petitioner :- Pradeep Kumar Tripathi

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

Counsel for Petitioner :- Indresh Dubey, Sr. Advocate

Counsel for Respondent :- C.S.C., Yogesh Kumar Saxena

Hon'ble Vikas Budhwar, J.

Counter Affidavit filed on behalf of the third respondent is taken on record.

Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Indresh Dubey, learned counsel for the petitioner, Sri P.K. Shahi, the learned Addl. Chief Standing Counsel, who appears for Respondent Nos. 1 to 2 and Sri Yogesh Kumar Saxena, who appears for the third respondent.

Though a counter affidavit has been filed by Sri Yogesh Kumar Saxena on behalf of the third respondent, the Committee of Management, P.N.V. Inter College, Chilli (Muskara), District Hamirpur sworn by the Manager of the Institution in question dated 26.10.2023, but Sri Ashok Khare learned Senior Counsel for the writ petitioner has made a statement at Bar that he does not propose to file any response to it. Sri P.K. Shahi, learned Addl. Chief Standing Counsel has also made a statement at Bar that he also does not propose to file any response to the writ petition and on the basis of the pleadings the writ petition be decided.

With the consent of the parties, the writ petition is being decided at the fresh stage.

The case of the writ petitioner is that the third respondent, P.N.V. Inter College, Chilli (Muskara), District Hamirpur 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 he was appointed as a Lecturer (Hindi) in the Institution in question on 01.07.2017 pursuant to the recommendation of the U.P. Secondary Education Service Selection Board. As per the writ petitioner, he was earlier placed under suspension on 23.03.2020. However, the said suspension order was disapproved by the second respondent,

District Inspector of Schools, Hamirpur on 05.10.2020 against which the third respondent, the Committee of Management preferred Writ-A No. 11719 of 2020, Committee of Management P.N.V. Inter College Vs. District Inspector of Schools and others, in which an interim order was granted. Subsequently, the writ petitioner preferred an intra-court appeal, Special Appeal (Defective) No. 78 of 2021, Pradeep Kumar Tripathi Vs. State of U.P. and others, which came to be disposed of on 01.02.2021. It is the further case of the writ petitioner that the suspension of the writ petitioner became inoperative and the said writ petition is pending consideration.

Pleadings further reveal that pursuant to the drawing of disciplinary proceedings by the third respondent, Committee of Management against one Sri Rakesh Kumar, who happened to be the senior most teacher of the Institution in question, a vacancy arose for officiation as Principal in the Institution and on 20.10.2022, an order is stated to have been passed by the District Inspector of Schools, Hamirpur, authorizing one Ram Pravesh Ram to function as an Officiating Principal, against which the writ petitioner preferred Writ-A No.18675 of 2022, Pradeep Kumar Tripathi Vs. D.I.O.S., Hamirpur and others, however, the said writ petition came to be dismissed by the learned Single Judge of this Court on 18.11.2022. Aggrieved against the same, the writ petitioner has preferred a Special Appeal No. 802 of 2022, Pradeep Kumar Tripathi Vs. DIOS, which according to the learned counsels for the parties, is pending before this Court.

As per the writ petitioner, by virtue of a resolution of the Committee of Management of the Institution in question, the writ petitioner was placed under suspension on 01.05.2023 and departmental proceedings were proposed to be drawn against the writ petitioner. A charge sheet is also stated to have been served upon the writ petitioner on 13.05.2023, against which the writ petitioner claims to have submitted its reply. It is the further case of the writ petitioner that the District Inspector of Schools, Hamirpur, second respondent issued a communication / notice dated 05.06.2023 fixing 16.06.2023 for hearing and thereafter on 28.06.2023, an order has been sought to be passed by the second respondent, District Inspector of Schools, Hamirpur approving the suspension of the writ petitioner.

Questioning the order dated 28.06.2023 passed by the second respondent, District Inspector of Schools, Hamirpur approving the suspension of the writ petitioner, the writ petitioner herein has filed the present writ petition.

The said writ petition was entertained by this Court on 12.10.2023, wherein the following orders were passed:-

"The contention of the learned counsel for the writ petitioner is that the order dated 28.06.2023 passed by the District Inspector of Schools, Hamirpur suffers from non-application of mind, though the basis for suspending the writ petitioner by the Committee of Management is that the writ petitioner is faced with the criminal case purported to be under Sections 323, 504, 506 and the provisions of SC/ST Act, as he was indulged in assaulting the victims/ the teacher of the same institution. However, a final report has been submitted in favour of the writ petitioner though on a protest petition, notices have been issued on 04.04.2023.

Sri Ashok Khare, learned Senior Counsel thus submits that the order in question proceeds on misconception of facts.

Sri Y.K. Srivastava, learned counsel who appears for the third respondent as well as the learned Standing Counsel seeks time to obtain instructions/ file affidavit.

Put up this case on 18.10.2023 as fresh at 02:00 P.M."

A counter affidavit has been filed by Sri Yogesh Kumar Saxena, learned counsel for the third respondent, to which as already noticed, a statement has been made by Sri Ashok Khare, learned Senior Counsel that he does not propose to file any response.

Since, Sri P.K. Shahi, learned Addl. Chief Standing Counsel does not propose to file any response to the writ petition, thus the present writ petition has been taken up on board and is being decided accordingly.

Sri Ashok Khare, learned Senior Counsel while assailing the order dated 28.06.2023 approving the suspension of the writ petitioner dated 01.05.2023 has sought to submit that the order dated 28.06.2023 which is impugned in the writ petition, cannot be sustained for a single moment, particularly, in view of the fact that it proceeds on wrong direction and perspective. It is the submission of Sri Khare that though the only basis, which has been made for approving the suspension is the lodging of the criminal proceedings pursuant to the FIR purported to be under Sections 323, 504, 506 IPC as well as provisions contained under the SC/ST Act, lodged on 28.12.2012 before the P.S. Muskara, Hamirpur being FIR No.0308 of 2012 against the writ petitioner and one Sri Bramhadeen, but according to him, the Police investigated the matter and thereafter a police report has been submitted in the shape of a final report whereby the writ petitioner has been exonerated and further merely because on a protest petition

preferred by the complainant/ teacher, only summons have been issued would not in any manner whatsoever attract the provisions under Section 16-G (5) of the U.P. Intermediate Education Act, 1921. He submits that until and unless, the protest petition stands allowed and there is any consequential direction issued by the learned Magistrate, the writ petitioner cannot be held to be guilty and the provisions of Section 16-G(5) cannot be pressed into service. He further submits that fundamentally also, the order in question cannot be sustained, particularly when the Manager of the Institution in question did not point out any infirmity or any thing adverse against the writ petitioner, as according to him, the working of the writ petitioner as a Teacher was upto the mark and the results of the students were also found to be as per the expectation. He further submits that one of the considerations, which became the basis of passing the impugned order was that the Committee of Management had put forward its stand that the charges stood proved against the writ petitioner, is also misconceived, particularly when at the stage, when the order in question was passed only the writ petitioner was placed under suspension and the disciplinary proceeding has been initiated, but the inquiry report came to be surfaced on 09.10.2023 and a show cause notice was issued on 10.10.2023, thus there was no occasion, even for the inquiry officer or the disciplinary authority to hold the petitioner guilty of the charges, particularly, when the said event and the occasion did not stand crystalized. According to him, the order in question is bereft of valid reason as to sustain it and the impugned order be set aside and the matter be remitted back.

Sri Yogesh Kumar Saxena, the third respondent and Committee of Management in question on the strength of averments contained in the counter affidavit filed by him today has invited the attention of the Court towards Annexure-2 at page-17 of the counter affidavit so as to contend that on 04.04.2023 on the protest petition being preferred by the complainant/ teacher, the writ petitioner has been summoned and further according to him, the charges are quite grave and the writ petitioner has committed offence, which has been made part and parcel of the inquiry proceeding in the shape of charge sheet. He further submits that rightly the provisions of Section 16-G(5) of the U.P. Intermediate Education Act, 1921 had been invoked as Section 16G(5)(c) of 1921 Act itself contemplates a contingency wherein besides the other charges, the Head of the Institution or the Teacher shall be suspended by the Management, in case any criminal case for an offence involving moral turpitude against him is under investigation, inquiry or trial. He submits that

might be there is a final report in favour of the writ petitioner, but the same has not attained finality, as the same is subject matter before the Magistrate on the basis of a motion in the shape of a protest petition and until and unless any order is passed therein, the writ petitioner cannot claim to be innocent with respect to the charges itself. He further submits that now the inquiry report had been submitted on 09.10.2023 and on 10.10.2023, a show cause notice has been served upon the writ petitioner and thus now, the final order has been passed in that regard. He further submits that in view of the provisions contained under the U.P. Act No.15 of Uttar Pradesh Education Service Selection Commission Act, 2023, a final decision is to be taken by the District Inspector of Schools, Hamirpur itself when the proposal of the Committee of Management is for punishment.

Sri P.K. Shahi, learned Addl. Chief Standing Counsel on the other hand submits that the order in question is not liable to be interfered and he adopts the submission of Sri Y.K. Saxena and according to him, he has nothing to add.

I have heard learned counsels for the rival parties and perused the records carefully.

Undisputedly, the disciplinary proceedings were drawn against the writ petitioner pursuant to the resolution of the Committee of Management and he was placed under suspension on 01.05.2023 followed by a charge sheet dated 13.05.2023.

The records further reveal that a criminal case was lodged against the writ petitioner by one of the teachers, namely, Mrigendra Singh S/o Panchhi Lal being FIR No. 0308 of 2022 before Police Station- Muskara, District Hamirpur under Sections 323, 504, 506 IPC and the provisions of SC/ST Act. It is not disputed by the parties that a final report has been submitted against the writ petitioner against which a protest petition has been filed by the informant/ teacher in which on 04.04.2023, the summons have been issued to the writ petitioner. Though according to the third respondent, there are other charges sought to be leveled in the charge sheet 13.05.2023, which are grave enough to warrant suspension. However, this Court finds from the order dated 28.6.2023 of the District Inspector of Schools, Hamirpur, second respondent, that the District Inspector of Schools, Hamirpur, second respondent has only adverted to the issue relatable to the criminal case pending against the writ petitioner. In the order impugned, it has also been recited that it is the stand of the Committee of Management of the Institution in question that the

charges leveled against the writ petitioner have been found to be proved, but the District Inspector of Schools has overlooked a crucial aspect of the matter that it is the case of the Committee of Management itself that the inquiry report holding the charges to be proved against the writ petitioner is dated 09.10.2023 and the show cause notice was issued on 10.10.2023, however the order approving the suspension of writ petitioner is dated 28.06.2023. Thus, the said aspect of the matter needs to have been considered from the said angle. Apart from the same, this Court finds that there is no deliberation by the District Inspector of Schools, Hamirpur in the order impugned recording the factum of submission of final report by the Investigating Officer and the import and the impact of the summoning of the writ petitioner on the motion of protest petition. This Court further finds that the stand of the Committee of Management has also been recited in the order impugned that so far as the working of the writ petitioner as a teacher while imparting education is concerned, there was nothing adverse found even from the own showing of the Committee of Management. Since the aforesaid aspects of the issues have not been taken into consideration and also the import and impact of the other charges sought to be leveled in the charge sheet dated 13.05.2023, thus in the opinion of the Court, the matter needs a re-look. Accordingly, this Court is of the firm opinion that the order dated 28.06.2023 is liable to be set aside and the matter be remitted back.

Accordingly, the writ petition is being decided in the following terms:- (a) The order dated 28.6.2023 passed by the District Inspector of Schools, Hamirpur, second respondent is set aside; (b) The matter stands remitted back to the second respondent, District Inspector of Schools, Hamirpur, to decide the matter afresh; (c) Since the writ petitioner is represented through its counsel as well as the Committee of Management is also represented through its counsel and according to Sri Saxena, who appears for the respondents, the matter needs to be decided post-remand, in most expedition, thus the District Inspector of Schools, Hamirpur is directed to 07.11.2023 a date, and on that date the writ petitioner and the third respondent shall appear before the third respondent and advance their argument and hearing be done and an order be passed by 16.11.2023; (d) the second respondent, District Inspector of Schools, Hamirpur while deciding the issue shall bear in mind the following fundamental and core issues:- (i) recording of prima facie opinion with respect to continuation of the writ petitioner under suspension in the wake of the charges sought to be leveled in pursuance of the charge-sheet dated 13.05.2023; (ii) the

import and impact of the Final Report submitted in favour of the writ petitioner and filing of the protest petition by the Teacher/ Informant; and (iii) any other ancillary and incidental issues.

Needless to point out that the second respondent, District Inspector of Schools, Hamirpur shall pass an order strictly in accordance with law within the time stipulated therein and only adjournment be accorded on extreme urgency after recording satisfaction.

With the aforesaid observations, the writ petition is **disposed off**.

Order Date :- 28.10.2023

N.S.Rathour