

Court No. - 35

Case :- WRIT - A No. - 14478 of 2023

Petitioner :- Mohammad Rafe

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Shahla Naz, Rahul Mishra

Counsel for Respondent :- C.S.C., Raees Ahamad, Sanjay Kumar Om

Hon'ble Vikas Budhwar, J.

1. Vakalatnama has been filed by Shri Sanjay Kumar Srivastava on behalf of respondent No. 6 is taken on record.

2. Heard Shri Rahul Mishra, learned counsel for the writ petitioner as well as Shri Saurabh, learned Standing Counsel who appears for respondent nos. 1 to 4, Shri S.K. Om, learned counsel who appears for the respondent No. 5 and Shri Sanjay Kumar Srivastava, learned counsel for the respondent No. 6.

3. Since, a counter affidavit has been filed on behalf of the fifth respondent sworn by the Manager of the fifth respondent-institution to which the learned counsel for the writ petitioner does not propose to file any response and the learned Standing Counsel as well as Shri Sanjay Kumar Srivastava who appears for the respondent No. 6 do not propose to file any response, thus, with the consent for the parties, the writ petition is being decided at the fresh stage.

4. The case of the writ petitioner is that the fifth respondent, Manager, Shiraz-e-Hind, Inter College, Murki, Kerakat, District Jaunpur is a minority institution conferred with certain protections under Article 30 of the Constitution of India and it is run by a society registered under the Societies Registration Act and is

recognised and aided institution governed under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No. 24 of 1971 stands applicable.

5. It is also the case of the writ petitioner that he was initially appointed as an assistant teacher in the said institution and is working since 09.03.2013, however, owing to certain acts and omissions, the manager of the institution in question, fifth respondent placed the writ petitioner under suspension on 06.07.2020. In para 8 of the writ petition, it is further asserted that without service of any charge-sheet, an ex-parte inquiry was conducted on 12.08.2020 holding the charges to be proved. On the basis of the ex-parte inquiry report dated 12.08.2020, a notice was issued to the writ petitioner on 17.07.2020 to appear on a particular date. Since the writ petitioner was in dark with regard to the contents of the charge-sheet which was made basis of holding the charges to be proved pursuant to the inquiry report, so the writ petitioner protested. In para 12 of the writ petition, it is stated that the writ petitioner was served with the charge-sheet dated 14.08.2020 but the same according to the writ petitioner was not as per the regulations in question. The writ petitioner constrained with the said situation preferred its reply on 20.08.2020, however an order is stated to have been passed by the fifth respondent on 03.09.2020 terminating the services of the writ petitioner. The writ petitioner in these circumstances had no option but to approach the District Inspector of Schools, Jaunpur, fourth respondent being aggrieved against the termination order and the District Inspector of Schools, Jaunpur, fourth respondent thereafter proceeded to disapprove the termination of the writ petitioner which led to filing of Writ-A No. 17781 of 2022 by the fifth respondent before this Court.

6. This Court entertained the writ petition and thereafter proceeded to decide the same by virtue of an order dated 15.11.2022 which is quoted herein-below:

"1. Heard Shri Sanjay Kumar Om along with Raees Ahamad, learned counsel for the petitioners; Shri Neeraj Pandey, learned Standing Counsel for the State-respondents and, Shri Rahul Mishra, learned counsel for respondent no.4.

2. Challenge has been raised by the Committee of Management to the order dated 07.07.2021 passed by respondent no.3/District Inspector of Schools, Jaunpur whereby the said authority has disapproved the punishment order dated 03.09.2020 issued by the petitioner Committee of Management that has established and is running a minority institution - Shiraze Hind Inter College, Murki, District Jaunpur.

3. The facts of the case giving rise to this petition are, the private respondent no.4/Shri Mohammad Rafe was working as Assistant Teacher at the petitioner institution. Owing to certain complaints etc, he came to be suspended by the petitioner Committee of Management vide order dated 06.07.2020. Perusal of that order reveals, besides suspending the private respondent no.4, an Enquiry Committee was constituted under the chairmanship of one Mr. Ansar Ahmad. Also, six charges were spelt out in that suspension order. Last, private respondent was required to appear before the Enquiry Committee and to submit his defence, etc. Perusal of the enquiry report dated 12.08.2020 submitted by the Enquiry Committee to the Committee of Management reveals, it had issued a solitary notice to the private respondent for the date 17.07.2020. He did not appear on that date and did not present any defence. After recording this fact, the enquiry report merely recites that the charges against private respondent were found true. There is absolutely no statement/description of any evidence received by the Enquiry Committee and there is absolutely no discussion of how the conclusion of guilt was reached by the Enquiry Committee. This two page enquiry report led to the issuance of the second show cause notice to the private respondent on 14.08.2020. At that stage, the private respondent had filed his objection dated 20.08.2020. No opportunity of personal hearing appears to have been afforded to the private respondent on such reply. However, punishment order dated 03.09.2020 came

to be passed by the Manager of the institution, relying solely on the wholly ex-parte enquiry report dated 12.08.2020.

4. At that stage, private respondent appears to have objected to the punishment order. It is on that objection, the impugned order has been passed and the punishment has been disapproved.

5. Submission of learned counsel for the petitioner is, undisputedly, the petitioner Committee of Management has established a minority institution. It is fully protected under the umbrella of Article 30 of the Constitution of India. Relying heavily on the decision of the Supreme Court in *St. John Inter College vs. Girdhari Singh & Ors.*, (2001) 4 SCC 296, it has been submitted, by virtue of Section 30 of the Uttar Pradesh Secondary Education (Services Selection Board) Act, 1982 (hereinafter referred to as the Board Act), nothing contained in that Act applies to a minority institution. Further, relying on that decision, it has been further submitted, provisions of Section 16G(3)(a) of the Uttar Pradesh Intermediate Education Act, 1921 (hereinafter referred to as the Education Act) would also not apply to the petitioner minority institution. Therefore, there was no jurisdiction vested in the DIOS Jaunpur to disapprove the punishment awarded by the management of the petitioner minority institution.

6. The above submission has been met by learned counsel for the private respondent on the strength of illegality apparent on the face of the record in the conduct of the domestic enquiry proceedings. It has thus been strenuously urged, no disciplinary proceeding was ever conducted. The entire record of the disciplinary proceeding relied upon by the petitioner reflects the pre-disposition that existed with the Management to deal with the private respondent in an unfair manner. Neither any real opportunity was given by the Inquiry Committee nor the private respondent was aware of such proceeding, at the relevant time. The disciplinary authority has also not taken note of any objection raised by the private respondent.

7. In any case, even if it is accepted, the notice of the proceeding was given to the private respondent for the date 17.07.2020 and he did not appear on that date, the burden to prove the charges remained on the Management. No evidence was received and no consideration has been made of any evidence received before recording the pre-conceived conclusion of guilt of the private

respondent. Therefore, it has been submitted, the order of the DIOS is not conflicted with the interest of justice. Rules of natural justice as incorporated under Regulation 35, 36 and 37 of the Regulations framed under the Education Act have been held fully applicable to a minority institution as well. Here, reliance has been placed on the decision of the coordinate Bench of this Court in *Mehdi Hasan vs. The C/M M.M. Inter College & Ors.*, Writ - A No. 7234 of 2000. Therein, it was observed as below:

"9. This Court in *Iftekhhar Ahmad (supra)*, after noticing judgments of the Hon'ble Supreme Court in *State of Kerala vs. Very Rev. Mother Provincial*: (1970) 2 SCC 417, *Ahmedabad St. Xavier's College Society vs. State of Gujrat*: (1974) 1 SCC 717, *T.M.A. Foundation vs. State of Karnataka*: (2002) 8 SCC 481 and other judgments, went on to hold in para 29 that provisions of the Regulations would apply to a minority institution as well. The observations made in para 33 to 37 of the judgment, with which I am in absolute agreement, are reproduced:-

"33. Thus a minority has two choices they can establish an educational institution in terms of Article 29 (1) of the Constitution to conserve its language and culture. The second option is to come out from the ambit of Article 29 (1) of the Constitution and opt for a secular education under Article 30 (1) of the Constitution.

34. A common thread running through all these judgements are that under the umbrella of Article 30 (1) the minority Institutions do not have absolute right .The state may regulate service condition of teaching staff.

35. In absence of job security, talented teachers, even of their own religion will not like to serve in an institution where Damascus sword is always hanging over their head.

36. A minority institution which receives aid out of the State Fund owes a greater responsibility to the society as the children of the minority are entitled to get same standard of education like in the State run or other private institution, otherwise the students belonging to minority would not be able to compete with other students who are fortunate enough to get quality education in the other institutions. If the law gives free hand to the management of a minority institution to appoint and remove the teachers in an autocratic way then it will tend to adopt hire and fire policy under the

protection of Article 30 (1) of the Constitution. In such situation the ultimate sufferer would be the students of their own religion. If a sizeable section of society is left behind and they are unable to join the mainstream of the country. The task of the nation building which was envisaged by the founding fathers of the Constitution will remain a mirage.

37. Therefore, it must be prime concern of the state to apply the regulations to minority institution to achieve the objectives discussed in above noted decisions of the Supreme Court. Only then we can build a modern, progressive and secular Country."

10. Another aspect which needs to be noticed is that right of a teacher of minority aided college to receive payments of salary flows from section 3 of the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act of 1971. It is only when the action of Managing Committee is found to be in accordance with principles of fair play and natural justice that its action would be reasonable and denial of benefit due under section 3 of the Act of 1971 would not offend Article 14 of the Constitution of India and withstand test of judicial review under Article 226. No doubt the action of Managing Committee would be an act of a private body, but as it has the effect of denying rights flowing from the statute, as such a writ petition would lie against the impugned action. The objection, raised by Sri Gilani on behalf of respondents that the writ petition would not be maintainable against the respondent institution, is thus not liable to be accepted. Even otherwise the institution is performing a public duty and the salary to the teachers are since being paid out of the state funds, therefore, the writ petition is held to be maintainable.

11. Coming to the issue on merits, it is to be noticed that the procedure has been prescribed under the regulations for conduct of enquiry against a teacher of the recognized institution. Section 16-G of the Act of 1921 provides for service conditions of Headmaster, Principal and Teachers of the recognized institution. Section 16-G(3) framed under Chapter III provides for provisions in which a teacher can be subjected to disciplinary proceedings. Regulation 35 & 36, which are relevant for the present purposes, are reproduced:-

"35. On receipt of adverse report regarding complaint or charges of serious

nature, the Committee shall appoint the Principal or Headmaster as Enquiry Officer in respect of teachers and other employees (or Manager himself would enquire into if he has been delegated with the rights under the rules by Committee) and in case of Principal or Head Master a small sub-committee be appointed which will have instructions to present the report as soon as possible.

In respect of Fourth class employees Principal/Headmaster may appoint a senior teacher as Enquiry Officer.

36. The grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the employee charged and which shall be so clear and precise as to give sufficient indication to the charged employee of the facts and circumstances against him. He shall be required within three weeks of the receipt of the charge sheet to put in a written statement of his defence and to state whether he desired to be heard in person. If he or the inquiring authority so desires, an oral enquiry shall be held in respect of such of the allegations as are not admitted. At that enquiry such oral evidence will be heard as that inquiring authority considers necessary. The person charged shall be entitled to cross-examine the witnesses, to give evidence in person, and to have such witnesses called as he may wish; provided that the enquiry authority conducting the enquiry may for sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof. The inquiring authority conducting the enquiry may also, separately from these proceedings, make his own recommendation regarding the punishment to be imposed on the employee.

Clause (1) shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him.

All or any of the provisions of Clause (1) may for sufficient reasons to be recorded in writing be waived where there is difficulty in observing exactly the requirements thereof and those requirements can in the opinion of the inquiring authority be waived without injustice to be person charged."

8. At the same time, learned Standing Counsel would submit, there can be no denial to the fact that the rules of natural justice as contained in Regulation

35, 36 and 37 of the Regulations framed under the Education Act squarely apply to the minority institutions as well. Even otherwise, rules of natural justice that are wholly protected and therefore enforceable under Article 14 of the Constitution of India, cannot be disregarded or ignored on the plea of minority status of the petitioner institution. Thus, it has been submitted, insofar as it cannot be disputed that the petitioner management has acted in absolute defiance of the order passed by the DIOS, even if it may be without jurisdiction it only protects the interest of justice. The private respondent who is an employee at the aided educational institution cannot be left unprotected at the whims and fancies of the management that claims protection of minority institution but, at the same time, seeks to wholly violate the fundamental rights of its teaching faculty.

9. Reliance has been placed on the decision of the Supreme Court in *Gadde Venkateswara Rao vs. Government of A.P.*, AIR 1966 SC 828, wherein it was observed as below:

"In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order - it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case."

10. Further reliance has been placed on the another decision of this Court in *Service Single No. 3538 of 2007, Smt. Shashi Lata Jaiswal vs. State of U.P. Thru Secy. Secon Education & 3 Ors. and connected matters*, decided on 25.11.2014. Therein, relying on various decisions of the Supreme Court and this Court, it was observed as below:

"41. It is sell settled, where some authority has passed an order which is without jurisdiction, the Court is not bound to intervene by setting aside such order of the authority, it would result in revival of an illegal order.

42. A Division Bench of this Court (of which I was also a member) in *Amarendra Singh Vs. State of U.P.* 2008(1) ADJ 397 (DB)=2008(1)ESC 734 has held that since the petitioner has invoked extraordinary jurisdiction under Article 226 of the Constitution., the remedy is not as a matter of right and this

Court is not bound to interfere even if technically or otherwise the order impugned is found to be illegal or erroneous. There are certain exceptions which are well recognised and one of such exceptions is where setting aside of an order will result in revival of another illegal order.

43. In *Champalal Binani v. The Commissioner of Income Tax west Bengal and others* AIR 1970 SC 645, the Apex Court while dealing with jurisdiction of the Court with respect to issuance of writ of certiorari held that "a writ of certiorari is discretionary, it is not issued merely because it is lawful to do so."

44. In *Durga Prasad v. The Chief Controller of Imports and Exports and others* AIR 1970 SC 769 (para 7) and in *Bombay Municipal Corporation for Greater Bombay v. Advance Builders (India) Pvt. Ltd.* AIR 1972 SC 793 (para 13) it was held that writ jurisdiction is discretionary and the Court is not bound to interfere even if there is error of law.

45. It would be appropriate to refer the view expressed by the Apex Court in *Municipal Board, Pratabgarh and Anr. v. Mahendra Singh Chawla and others* 1982(3) SCC 331 which reads as under:

"...this Court is not bound to tilt at every approach found not in consonance or conformity with law. The interference may have a deleterious effect on the parties involved in the dispute. Laws cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Undoubtedly, rule of law must prevail but as is often said, 'rule of law must run akin to rule of life. And life of law is not logic but experience'. By pointing out the error which according to us crept into the High Court's judgment the legal position is restored and the rule of law has been ensured its pristine glory. Having performed that duty under Article 136, it is obligatory on this Court to take the matter to its logical end so that while the law will affirm its element of certainty, the equity may stand massacred. There comes in the element of discretion which this Court enjoys in exercise of its extraordinary jurisdiction under Article 136."

46. What has been observed by the Apex Court with reference to Article 136 of the Constitution, in my view would equally be applicable when this Court is required to exercise its equitable extraordinary jurisdiction under Article 226 of the Constitution of India. In a given case, having set legal position

straight, still this Court may decline to interfere where the equity justifies the same or where the fact and circumstances warrant that discretionary relief should be declined. Where interference with an illegal order may result in revival of another illegal order, the Court would be justified in refusing to interfere.

47. In *Employees' State Insurance Corporation and others vs. Jardine Henderson Staff Association and others* AIR 2006 SC 2767, the Apex Court held that relief in a writ of certiorari can be denied inter alia when it would be opposed to public policy or in a case where quashing of an illegal order would revive another illegal order. In para 62 of the judgment the Court clearly held that the High Court under Article 226 and the Apex Court under Article 136 read with 142 of the Constitution has the power to mould the relief in the facts of the case.

48. In *Ramnik Lal N. Bhutta and Anr. v. State of Maharashtra*, AIR 1997 SC 1236, the Apex Court observed:

"The power under Article 226 is discretionary. It will be exercised only in furtherance of interest of justice and not merely on the making out of a legal point."

49. In *State of H.P. v. Raja Mahendra Pal and Ors.* (1999) 4 SCC 43, in para 6 of the judgment the Apex Court held:

"...It is true that the powers conferred upon the High Court under Article 226 of the Constitution are necessary in nature which can be invoked for the enforcement of any fundamental right or legal right but not for mere contractual right arising out of an agreement particularly in view of the existence of an efficacious alternative remedy. The constitutional court should insist upon the party to avail of the same instead of invoking of extraordinary writ jurisdiction of this Court. This does not however debar the Court from granting the appropriate relief to a citizen under peculiar and special facts notwithstanding the existence of an alternative efficacious remedy. The existence of special circumstances are required to be noticed before issuance of the direction by the High Court while invoking the jurisdiction under the said Article...."

50. Similarly, in *Director of Settlement v. M.R. Apparao* (2002) SCC 638 in para 17 the Apex Court held that the power vested in High Court under

Article 226 of the Constitution is discretionary.

51. Following the principle laid down in the aforesaid decisions, this Court has reiterated the same view in a number of cases, including R.K. Shukla VS. Chairman Town Area Committee & Another (Writ A No. - 19889 of 1991 decided on 17.1.2013). Suffice it to say that this Court is not bound to interfere even if technically or otherwise the order impugned is found to be illegal or erroneous."

11. Having heard learned counsel for the parties and having perused the record, while there can be no dispute to the fact, the jurisdiction of the DIOS in such matters was limited and confined and he may not have found existing any jurisdiction to disprove the punishment awarded by the minority institution and, at the same time, the writ petition cannot be allowed, in entirety, on that consideration alone.

12. As noted above, the interest of justice cannot be allowed to be defeated on pure technicalities in face of equally strong competing right of the private respondent as to the compliance of natural justice. Those rights cannot be allowed to be defeated while granting relief of quashing the order of the DIOS, in entirety. To do that would be travesty of justice.

13. Accordingly, it is declared, the DIOS had no plenary jurisdiction to pass the impugned order, as the petitioner is a minority institution. At the same time, in view of the discussion made above, the order dated 03.09.2020 is also found to be unsustainable in law, it having been passed in gross violation of principles of natural justice.

14. Accordingly, it is provided, the petitioner may require the Enquiry Committee constituted for that purpose to issue a fresh notice to the respondent no.4 within a period of one week from today as may allow him three weeks time to submit his reply. That Enquiry Committee may then conduct the enquiry strictly in accordance with law and record its conclusion with respect to each charge on the strength of evidence that may be led and explanation that may be furnished before it. Such enquiry may be concluded within a period of three months from the date of reply of the respondent no.4. Respondent no.4 also undertakes to cooperate in the enquiry proceedings. Upon conclusion of the enquiry, the disciplinary authority may proceed to issue a second show cause notice if required and pass appropriate reasoned

order with respect to penalty, if any. Such exercise may be completed within a period of one month from the date of conclusion of the enquiry proceedings. For a period of six months or till conclusion of the disciplinary proceedings, whichever is earlier, the petitioner shall continue on suspension.

15. With the aforesaid observations and directions, present petition is disposed of."

7. According to the writ petitioner, post remand by this Court in the order referred to above on 06.07.2020, a communication is stated to have been issued to the writ petitioner to submit his version, however on the same day i.e. on 06.07.2020, the writ petitioner was placed under suspension. Thereafter, according to the writ petitioner, another communication was issued by the fifth respondent on 09.12.2022. The writ petitioner responded to the same on 14.12.2022 giving his explanation in that regard. However, without confronting with the writ petitioner with the inquiry report and conducting the oral inquiry, the writ petitioner's services came to be dismissed on 15.04.2023 by the fifth respondent. It is also the case of the writ petitioner that the copy of the inquiry report dated 10.04.2023 which was made the basis for terminating the services of the writ petitioner was made available to the writ petitioner along-with the termination order dated 15.04.2023.

8. Questioning the termination order dated 15.04.2023 passed by the fifth respondent, Manager, Shiraz-e-Hind, Inter College, Murki, Kerakat, District Jaunpur, the writ petitioner has filed the writ petition.

9. This Court entertained the writ petition on 20.09.2023 while passing the following orders:

"Sri Rahul Mishra, learned counsel for the writ petitioner has submitted that the order dated 15.04.2023 dispensing with the services of the writ petitioner

as well as the inquiry report proceeds on misconception of facts and law and particularly they are eye wash, as in earlier writ petition instituted by the Committee of Management of the institution in question, Writ - A No. 11781 of 2022, decided on 15.11.2022 against the order disapproving the termination, this Court came into the rescue of the Committee of Management of the institution, while directing the inquiry officer to conduct the inquiry strictly in accordance with law and passed a reasoned order. The submission is that the entire exercise culminating into passing of the order is not only in violation of the order of the Writ Court, but also foreign to the principles as enshrined in service jurisprudence for holding inquiry.

Matter requires consideration.

Sri Dhirendra Singh, learned Standing Counsel appears for respondent nos.1 to 4.

Issue notice to the respondent nos.5 and 6.

Steps to be taken by 22.09.2023 both ways.

Counter affidavit shall be filed by 13.10.2023. Rejoinder affidavit may be filed by 17.10.2023.

Put up this case on 19.10.2023, as fresh.

Affidavit of service be filed before the next date fixed."

10. Pursuant to the steps taken by the writ petitioner, a counter affidavit has been filed by the fifth respondent. Today a vakalatnama has also been filed as noticed above on behalf of the sixth respondent. Since as already noticed, the parties do not propose to file further affidavits thus the writ petition has been taken on Board and decided at the fresh stage.

11. Shri Rahul Mishra, learned counsel for the writ petitioner submits that the order dated 15.04.2023 passed by the fifth respondent cannot be sustained for a single movement, particularly in view of the fact that firstly it does not confirm to the directions contained in the order dated 15.11.2022 passed in Writ-A No. 17781 of 2022 preferred by the fifth respondent whereby

modalities have been set up according to which the inquiry was to be conducted. He submits that there are sufficient pleadings in the writ petition which would even demonstrate that the copy of the inquiry report was made available to the writ petitioner only along-with the termination order dated 15.04.2023, thus, the writ petitioner was prejudiced so as he could not know about the contents of the inquiry report which was pressed into service to hold the writ petitioner guilty of the charges, particularly, when the entire proceedings are in violation of principles of natural justice. He submits that it was incumbent upon the inquiry officer to firstly conduct the inquiry in a transparent and impartial manner in conformity and consonance of the principles of natural justice and on the submission of the inquiry report before the disciplinary authority, the disciplinary authority was under obligation who have issued a show cause notice enclosing therewith a copy of the inquiry report so as to enable the delinquent to submit his reply and thereafter the orders ought to have been passed. He seeks to rely upon paragraph 29 of the writ petition so as to contend that the copy of the inquiry report was served along with the termination order. He also seeks to rely upon paragraph 35 of the counter affidavit filed by the fifth respondent, according to which, the said facts have been admitted. Thus, it is prayed that the order be set aside.

12. Shri Sanjay Kumar Om, learned counsel who appears for the fifth respondent, committee of management on the other hand submits that the charges against the writ petitioner are grave and serious and even if there is any procedural irregularities then to the writ petitioner cannot be allowed to be reinstated in service in that regard looking into the facts that the institution is a minority institution and it is the endeavour of the committee of management

of the institution to see that a person with unblemished character is allowed to function in the institution. He, however, submits that there are certain short-comings in conduction of the inquiry.

13. Shri Sanjay Kumar Srivastava, learned counsel who appears for the sixth respondent, the inquiry committee has adopted the submissions of Shri Sanjay Kumar Om.

14. Shri Saurabh, learned Standing Counsel submits that the institution being a minority institution, thus, the interference at the level of the State officials is quite minimal. He also as a matter of principle adopts the submission of Shri Sanjay Kumar Om who appears for the fifth respondent.

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

16. It is apparent from the pleadings set forth with the writ petition particularly in para 29 of the writ petition and the reply whereof in para 35 of the counter affidavit that the writ petitioner was not served with the copy of the inquiry report and the same was made available to the writ petitioner only along with the termination order dated 15.04.2023. Law is well settled that in the matters of conducting inquiry, the inquiry officer is to act in an impartial and transparent manner in consonance with the principles of natural justice. Since this Court finds that it is not disputed by the respondents that the copy of the inquiry report was not served upon the writ petitioner prior to the order of termination and he was denied opportunity to give its objection to the same after issuance of the show cause notice, thus, it cannot be said that the writ petitioner was not put to prejudice. As a matter of fact, the allegations of the writ petitioner is also to the extent that no date, time and venue has been fixed for conduction of the inquiry and

the Court finds that the copy of the inquiry report is annexed at Annexure 17 at page 102 of the paper-book it also does not recite the fact that as to by which mode the writ petitioner was required to appear for the oral inquiry. Since a major punishment has been imposed thus this Court finds that there has been infringement of principles of natural justice.

17. Once this Court has come to a conclusion that the inquiry proceedings stood vitiated due to procedural irregularity then a question arises as to what would be the further course of action, whether the writ petitioner/delinquent is to be reinstated in service or the inquiry proceedings is directed to be conducted from the stage when the defect occurred. This Court after going through the records available before this Court finds that there are charges against the writ petitioner, thus, this Court cannot in the present proceedings at this stage address on the merits of the charges when there are procedural irregularities. At this stage, Shri S.K. Om, learned counsel who appears for the fifth respondent submits that the disciplinary authority may be granted liberty to get proceeded the disciplinary inquiry from the stage of the submission of the reply to the charge-sheet.

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

19. Considering the submission of the rival parties as well as stand taken by them, the writ petition is decided on the following terms:

a). The order dated 15.04.2023 passed by the fifth respondent, Manager, Shiraz-e-Hind, Inter College, Murki, Kerakat, District Jaunpur is set aside.

b). The matter stands remitted back to the disciplinary authority to take an endeavour for conduction of the disciplinary inquiry from

the stage of the submission of the reply to the charge-sheet.

c). The inquiry officer shall fix date, time and venue while informing the writ petitioner as well as the fifth respondent in advance in writing and thereafter hold the inquiry strictly in accordance with the regulations and the statutes as available on record and after giving opportunity of hearing to the writ petitioner and fifth respondent conclude the inquiry within a period of three months from the date of presentation of the certified copy of the order.

d). In case the fifth respondent seeks to proceed with the inquiry then and also place the writ petitioner under suspension then the writ petitioner shall be paid arrears of subsistence allowance as well as current subsistence allowance as revised from time to time as per the rules.

e). The reinstatement of the writ petitioner and consequential benefits shall abide by the final orders to be passed by the disciplinary authority within the time stipulated hereinabove.

20. Shri Rahul Mishra, learned counsel for the writ petitioner as well as Shri Sanjay Kumar Om, learned counsel for the fifth respondent have made a statement at bar that their client shall cooperate with the inquiry in that regard.

21. With the further observations, the writ petition stands disposed of.

Order Date :- 9.11.2023

A. Prajapati