

**Court No. - 35**

**Case :-** WRIT - A No. - 14480 of 2023

**Petitioner :-** C/M Smt Vimla Devi Inter College And Another

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

**Counsel for Petitioner :-** Prabhakar Awasthi, Avadhesh Pratap Singh

**Counsel for Respondent :-** C.S.C., Sandeep Kumar

with

**Case :-** WRIT - A No. - 17376 of 2023

**Petitioner :-** Rajeev Kumar

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

**Counsel for Petitioner :-** Sandeep Kumar

**Counsel for Respondent :-** CSC

**Hon'ble Vikas Budhwar, J.**

1. Heard Shri Prabhakar Awasthi, learned counsel for the writ petitioners in the leading writ petition, third and fourth respondent in the connected writ petition, Shri Shailendra Singh, learned Standing Counsel who appears for respondent Nos. 1 and 2 in leading and connected writ petition and Shri G.K. Singh, Senior advocate assisted by Shri Sandeep Kumar, learned counsel for respondent No. 3 in the leading writ petition and the writ petitioners in the connected writ petition.

2. Since common question of facts and law are involved in Writ A No. 14480 of 2023 (C/M Smt Vimla Devi Inter College And Another Vs. State Of U.P. And 2 Others) (in short 'leading writ petition') and Writ A No. 17376 of 2023 (Rajeev Kumar Vs. State Of U.P. And 3 Others) (in short 'connected writ petition'), thus, with the consent of the parties the writ petition is being consolidated and decided by a composite order.

3. The writ petitioner in the connected writ petition, Shri Rajeev Kumar had questioned the order dated 18.06.2023 passed by the writ petitioner in the leading writ petition, C/M Smt Vimla Devi Inter College, Garhirami, Chhalesar, District Agra through its manager whereby his services were terminated and he was not permitted to discharge their duties of the officiating principal of the institution in question. The said writ petition was decided by this Court on 03.08.2023 while passing the following order:

*"Heard Sri Sandeep Kumar, learned counsel for the writ petitioner as well as Sri Shailendra Singh, learned Standing Counsel, who appears for the respondent nos.1 and 2 and Sri Prabhakar Awasthi along with Sri Awadhesh Pratap Singh, learned counsel, who appears for respondent nos.3 and 4.*

*The case of the writ petitioner is that he was appointed as an Assistant Teacher in the third respondent institution, Smt. Vimla Devi Inter College, Garhirami, Chhalesar, Agra, which is recognized under the provisions of the U.P. Intermediate Education Act, 1921, U.P. Act No. 5 of 1982 and U.P. Act No. 24 of 1971. It is also the case of the writ petitioner that he was appointed as an Assistant Teacher on 18.05.2001 under dying in harness rules and he was granted selection pay grade in the year, 2016 promoted as Lecturer Grade. Consequent to the superannuation of the Principal of the institution in question, the petitioner being the senior most teacher was given charge of the Principal of the institution since 01.04.2018 and the same was also approved by the District Inspector of Schools, Agra, on 23.04.2018 and the writ petitioner was also made admissible to the benefits on the said post.*

*As per the writ petitioner, on the basis of certain frivolous grounds, he was placed under suspension on 25.12.2022, which was disapproved by the District Inspector of Schools, Agra on 19.01.2023. Against the disapproval order, the third respondent institution preferred Writ - A No. 2487 of 2023 (Committee of Management Smt. Vimla Devi Inter College vs State of U.P. and 2 Others), which came to be disposed of with a direction to the Enquiry Officer to conclude oral enquiry in that regard. Further, since the writ petitioner was not being extended the benefits which he ought to have been*

granted and he was not being permitted to function as the Principal, so the writ petitioner preferred Writ - A No. 6084 of 2023 (Rajeev Kumar Vs. State of U.P. and 2 Others), which was entertained by this Court and response was sought on 07.04.2023. The District Inspector of Schools, Agra on 19.04.2023 directed the institution in question to accord joining but the writ petitioner was not allowed joining, however certain orders were passed in the pending writ petition preferred by the writ petitioner, whereby the direction was issued to pay salary. It is further the case of the writ petitioner that on 14.05.2023 again the writ petitioner was placed under suspension. Along with the suspension order, the third respondent also passed a proposal for infliction of censure entry just in order to oust the claim of the writ petitioner, which again led to filing of Writ - A No. 9717 of 2023 (Rajeev Kumar vs. State of U.P. and Others), wherein the suspension order was kept in abeyance. However, now by virtue of the order dated 18.06.2023, the services of the writ petitioner has been terminated and direction was issued to give charge to Sri Krisha Pal Singh.

Learned counsel for the writ petitioner questioning the order dated 18.06.2023, passed by the respondent no.3, whereby the services of the writ petitioner was terminated and not permitted the writ petitioner to discharge his duties as an officiating Principal of the institution in question, the writ petitioner filed the present writ petition.

Sri Sandeep Kumar Singh, learned counsel for the writ petitioner submits that the order dated 18.06.2023 terminating the services of the writ petitioner is per-se illegal as it is in direct teeth of the provisions contained under Section - 21 of the U.P. Secondary Education (Service Selection Board) Act, 1982. According to him, the words employed in Section - 21 of the U.P. Act. No. 5 of 1982 itself provides that the management shall not except to the prior approval of the Board dismiss any teacher or remove him from service or serve on him any notice of removal from service or reduce him in rank or reduce the emoluments or withhold the increment for any period, whether (temporary or permanently) and any such thing done without such prior approval shall be void.

In nutshell, the submission of the learned counsel for the writ petitioner is

*that until and unless, the prior approval is accorded by the U.P. Secondary Education (Service Selection Board) Act, 1982, the order in question will be nullity in the eyes of law being void and thus no benefits whatsoever can be conferred by the respondent no.3, Committee of Management.*

*Countering the said submission, Sri Prabhakar Awasthi, who appears for the respondent nos.3 and 4 submits that he does not dispute the said legal settled position, as according to him Section 21 of the U.P. Act No.5 of 1982 will come to the rescue of the writ petitioner as the termination order though passed by the Committee of Management will remain unenforceable in the eyes of law till approved. He further has placed before this Court a set of documents being two pages under the signatures of the Committee of Management through its Manager addressed to the U.P. Secondary Board Service Commission sent through District Inspect of Schools, Agra dated 18.07.2023 for seeking approval with regard to dispensation of the services of the writ petitioner. He submits that had the Board being non functional the decision could not be taken.*

*Sri Prabhakar Awasthi, fairly admits that the writ petitioner cannot be denuded of the benefits though there is a proposal of the termination of the services of the writ petitioner for the time being till the final order is passed by the Board or any alternative arrangement in that regard.*

*Sri Shailendra Singh, learned Standing Counsel on the other hand submits that under Section 21 of the U.P. Act No. 5 of 1982, the Board is enjoined to take decision once a proposal is received by through District Inspector of Schools and the case of the writ petitioner shall be taken on top priority. He submits that till today the Board is not functional and in case the Board get functional or there is any other mechanism provided pursuant to the order of the State Government, the decision will be taken with top priority.*

*Considering the submission of the rival parties as well as the stand taken by them, the writ petition is allowed.*

*The order dated 18.06.2023 is set aside.*

*The natural consequences of the setting aside of the order dated 18.06.2023*

shall follow.

*Since, as informed by the learned counsel for the parties, the U.P. Secondary Education (Service Selection Board) is not functioning, thus as soon as the Board stands functional or any alternate mechanism is devised by the State Government, the case of the writ petitioner with regard to the proposal of the Committee of Management seeking approval, shall be taken on in top priority and shall be given its logical end.*

*The proposal dated 18.07.2023 of the Committee of Management sent to the Board through District Inspector of Schools, Agra, District - Agra is kept on record and marked as Appendix 'A'."*

4. Post passing of the said order, the District Inspector of Schools, Agra, proceeded to pass an order on 11.08.2023 requiring the committee of management of the institution in question to accord joining to Shri Rajeev Kumar as an officiating principal and to make him entitle to all the benefits which is an admissible to be enjoyed by him.

5. Questioning the said order the leading writ petition has been preferred by the committee of management of the institution in question seeking following reliefs:

*"i. Issue a writ, order or direction in the nature of Certiorari calling for the records of the case and to quash the impugned order dated 11.08.2023 (Annexure no. 11 to the writ petition) passed by District Inspector of Schools, Agra, respondent no. 2.*

*ii. Issue a writ, order or direction in the nature of Mandamus commanding the District Inspector of Schools, Agra, respondent no. 2 not to impel and compel the Committee of Management to take work from respondent no. 3."*

6. The said writ petition was entertained by this Court on 25.09.2023 while passing the following order:

*"Learned counsel for the petitioner submits that on 18.06.2023, the services of the third respondent was dispensed with and alleging non joining, the third respondent preferred Writ - A No. 11717 of 2023 (Rajeev Kumar vs. State of U.P. and Others), which came to be allowed on 03.08.2023, setting aside the order dated 18.06.2023, providing that the natural consequences of setting aside of the order shall follow, while noticing the resolution of the petitioner, Committee of Management dispensing with the services of the third respondent, dated 18.07.2023 being forwarded to the Board through District Inspector of Schools, Agra.*

*According to learned counsel for the writ petitioner, on 11.08.2023, the District Inspector of Schools, Agra has made the third respondent entitled to entire benefits. It is the case of the writ petitioner that on 21.08.2023, the Uttar Pradesh Education Service Selection Commission Act, 2023 has come into effect, whereby Section - 31 provides for repeal of the Uttar Pradesh Higher Education Service Commission Act, 1980, Uttar Pradesh Secondary Education Service Selection Board Act, 1982 and Uttar Pradesh Education Service Selection Commission Act, 2019 however sub section - 2 of Section - 31 of the 2023, Act saves the net effect of the repeal in that regard. He submits that a catch 22 situation has arisen, as now the Board stands dissolved and the writ petitioner will continue to enjoy the benefits, which even otherwise he was not entitled to in the face of the gravity of the charges being attributed upon him.*

*Sri Shailendra Singh, learned Standing Counsel on the other hand submits that he may be granted time to seek instructions in the in the light of the fact that as to whether the proposal for dispensing of the services of the third respondent was before the Commission itself prior to the date when the Repeal Act came into operation and further what would be the contingency and which of the provisions would govern the field, in so far as the issue relates to the grant of approval / disapproval by the authority, if any.*

*Put up this case on 04.10.2023, as fresh."*

7. Since Shri Rajeev Kumar was not accorded joining, despite the order of the writ court as referred to above and also the order of

the District Inspector of Schools as referred to above and also the order of the District Inspector of Schools, Agra dated 11.08.2023 so he preferred the connected writ petitions seeking following reliefs:

*"i. Issue a writ, order or direction in the nature of mandamus commanding the respondents especially to the respondent no. 2 and 3 to permit to the petitioner to discharge his duty as officiating Principal of the institution in compliance to the order dated 03.08.2023 passed by this Hon'ble Court in Writ A No. 11717 of 2023 "Rajeev Kumar Vs. State of U.P. and others" as well as orders dated 11.08.2023 and 17.08.2023 passed by the District Inspector of Schools, Agra and further pay the month to month salary to the petitioner as officiating principal in accordance with law;"*

8. Both the writ petitions are before this Court today, Shri Prabhakar Awasthi along with Shri Avadhesh Pratap Singh has filed a supplementary affidavit in the leading writ petition which is taken on record.

9. The counsel for the parties in both the writ petitions has made a joint statement before this Court that they do not propose to file any further affidavits and according to them, the writ petitions be decided on the basis of the documents available on record as they are self-sufficient. With the consent of the parties, the writ petitions are being decided at the fresh stage.

10. Shri Prabhakar Awasthi along with Avadhesh Pratap Singh, learned counsel for the writ petitioners in the leading writ petition and third & fourth respondent in the connected writ petition have sought to argue that the order dated 11.08.2023 passed by the District Inspector of Schools, Agra impugned in the leading writ petition cannot be sustained for a single movement as though the order of termination of the services to Shri Rajeev Kumar was set

aside in Writ A No. 11717 of 2023 on 03.08.2023 but there was an observation in the order itself, noticing the fact that the U.P. Secondary Education (Services Selection Board) was not functional, thus as soon as the Board stands functional or any alternative mechanism is devised by the State Government, the issue with respect to the approval/disapproval of the order dated 18.06.2023 dispensing with the services of Shri Rajeev Kumar be taken on proprietary and given a legal end and once there happens to be a proposal of the committee of management of the institution in question dated 18.07.2023 sent to the board through District Inspector of Schools, Agra then it was incumbent upon the authorities to have passed an order either to approve or disapprove the termination of the services of Shri Rajeev Kumar and there was no occasion to accord the reinstatement and benefit as an officiating principal in the institution in question by virtue of the order dated 11.08.2023 passed by the District Inspector of Schools, Agra.

11. Submission is that once the services of Shri Rajeev Kumar have been terminated on the basis of serious charges then to accord in benefit of officiating principal would be detrimental to the interest of the institution. He further submits that now by virtue of the Uttar Pradesh Education Service Selection Commission Act, 2023 (U.P. Act No. 15 of 2023) notified on 21.08.2023, the provisions of Uttar Pradesh, Secondary Education Services Selection Board Act, 1982 stand repealed, thus, it is now the District Inspector of Schools, Agra who is to take decision on the approval of the termination of Shri Rajeev Kumar and instead of taking decision on the same, he has passed an order for reinstatement of the writ petitioners of Shri Rajeev Kumar on the post as an officiating principal. He while inviting the attention of

the Court towards the supplementary affidavit filed today has brought on record at page 6 Annexure SA-1, the proposal for termination of the service of Shri Rajeev Kumar dated 18.07.2023 and also salary receipts as Annexure SA-2 from page 8 to 24 of Shri Rajeev Kumar. He submits that the committee of management has no intentions to deprive Shri Rajeev Kumar, the salary which he has entitled but he has not entitled to take policy decisions as an officiating principal as there happens to be a proposal/resolution terminating his services in that regard.

12. Shri G.K. Singh, learned Senior Counsel assisted by Shri Sandeep Kumar who appears for Shri Rajeev Kumar submits that once there happens to be an order dated 03.08.2023 in favour of the Shri Rajeev Kumar in Writ A No. 11717 of 2023 setting aside the termination order dated 18.06.2023 with a further observation that natural consequences setting aside of the order dated 18.06.2023 shall follow then a decision is to be taken by the competent authority for approval/disapproval of the punishment proposal and until unless there is any decision, he is entitled to continue as officiating principal. He submits that the order of the termination is not in-existence, thus he is entitled to benefits and there happens to be a proposal which is totally enforceable till it gets approved.

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

14. Undisputedly, the order of the committee of management of the institution in question dispensing with the services of Shri Rajeev Kumar on 18.06.2023 has been set aside in the earlier spell of litigation by order dated 03.08.2023 passed in Writ A No. 11717 of 2023 (Rajeev Kumar Vs. State of U.P. and others) wherein there

was a direction that natural consequences shall follow. On a pointed query being raised to Shri Prabhakar Awasthi and Shri Avadhesh Pratap Singh whether the said order has been subject matter of challenge or not, Shri Awasthi, apprised the Court that the said order has attained finality. The order dated 11.08.2023 of the District Inspector of Schools, Agra, in the opinion of the Court is a consequential order according benefits to Shri Rajeev Kumar as an officiating principal while restoring the status which was prior to passing of the order dated 18.06.2023. Notably, the resolution of the committee of management dated 18.07.2023 is nothing but a proposal which remains unenforceable till it is approved.

15. In the supplementary affidavit filed by Shri Prabhakar Awasthi Annexure SA-1 at page 6 there happens to be a proposal sent to District Inspector of Schools, Agra for being forwarded to the Board. Since now the Board stands abolished thus, it is the District Inspector of Schools, Agra to accord its consideration either to approve or disapprove the proposal of the committee of management dispensing with the services of Shri Rajeev Kumar. Though Shri Prabhakar Awasthi may be right in contending that the position have changed post order dated 03.08.2023 in Writ A No. 11717 of 2023, at the time of the passing of the order, the Board was not functional, however, now the Board stands abolished but the same may not be of much relevance as now post enactment of 2023 Act, it is the District Inspector of Schools, Agra to accord consideration. On being specifically asked whether Shri Rajeev Kumar is in any manner whatsoever responsible for non-consideration of the proposal of the committee of management by District Inspector of Schools, Agra regarding the punishment or not, Shri Prabhakar Awasthi could not give any reply. The only

argument advanced by Shri Awasthi is that Shri Rajeev Kumar is facing serious charges and his services is being dispensed with and once a proposal for punishment has been sent then it ought to have been accorded consideration.

16. In the opinion of the Court, the proposal of the committee of management for punishment is unenforceable until it gets approved. Hence in absence of any fault being attributed to Shri Rajeev Kumar, he cannot be denuded of the benefits which have been conferred with him as per law. The pleadings in the leading writ petition are for quashing of the order dated 11.08.2023 passed by the District Inspector of Schools, Agra and a mandamus has been sought commanding the District Inspector of Schools, Agra not to impel and compel the committee of management to take work from respondent No. 3, however, there is absolutely no prayer whatsoever for even a direction to the District Inspector of Schools, Agra to take accord consideration for approval/disapproval of the proposal for punishment. However, in the peculiar facts and circumstances as emerging in the present case in order to balance equities this Court is deciding the writ petition in the following manner:

- a). The relief claimed in the leading writ petition for quashing of the order dated 11.08.2023 of the District Inspector of Schools is declined.
- b). The status of Shri Rajeev Kumar shall stand restored as an officiating principal prior to passing of the order dated 18.06.2023 dispensing with the services.
- c). Since the committee of management by District Inspector of Schools, Agra claims to have forwarded the documents pertaining

to dispensation of the services of Shri Rajeev Kumar to the District Inspector of Schools, Agra on 18.07.2023 thus the District Inspector of Schools is directed to accord consideration to the same strictly in accordance with law putting to notice the committee of management of the institution in question and Shri Rajeev Kumar and to pass an order within a period of six weeks from the date of the production of the certified of this order.

d). The continuance of Shri Rajeev Kumar as officiating principal shall be subject to the final orders to be passed by District Inspector of Schools, Agra with respect to the proposal of the committee of management dated 18.07.2023 for approving the suspension of Shri Rajeev Kumar.

17. Since it is the allegation of the committee of management of the institution in question that there are serious charges levelled and proved against Shri Rajeev Kumar, officiating principal of the institution in question thus it is provided that Shri Rajeev Kumar shall not take any policy decisions as officiating principal of the institution in question and the transactions shall be subject to the periodical audits in that regard.

18. With the aforesaid observations, the writ petition stands **disposed of.**

**Order Date :- 18.10.2023**

A. Prajapati