

Court No. - 35

Case :- WRIT - A No. - 14343 of 2023

Petitioner :- Mahendra Singh

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

Counsel for Petitioner :- Bhawesh Pratap Singh

Counsel for Respondent :- C.S.C.,Saroj Kumar Yadav,Upendra Kumar

Hon'ble Vikas Budhwar,J.

1. Heard Sri Bhawesh Pratap Singh, learned counsel for the petitioner, Sri Pradeep Kumar Sahi, learned Additional Chief Stand Counsel for respondent no. 1 and 2 and Sri Saroj Yadav along with Upendra Kumar Verma who appears for respondent no. 3, Committee of Management, Badri Prasad Duli Chand Umrao Inter college, Amauli, Fatehpur to which the writ petitioner has filed a rejoinder affidavit.

2. Shri Pradeep Kumar Sahi, learned Additional Chief Standing Counsel has produced before this court the instructions under the signature of District Inspector of Schools, Fatehpur dated 16.9.2023 and According to him they are self sufficient for disposal of the controversy.

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

4. The case of the petitioner is that the 3rd respondent Badri Prasad Duli Chand Umrao Inter college, Amauli, Fatehpur is an institution recognised under the provisions of UP Intermediate College Education Act, 1971 and the provisions of UP Act No. 24 of 1971 stands applicable.

5. As per the writ petitioner, he was initially appointed as a class-IV employee on 13.10.1999 and thereafter the institution in question got upgraded to high school level on 10.2.1986 and was taken grant in aid with effect from 1.1.2004. It is further case of the writ petitioner that he was accorded promotion on the post of Assistant Clerk on 30.12.2014 and he is working in the institution in question. The writ petitioner claims to have been suspended on 11.4.2023 and thereafter according to the writ petitioner in terms of the provisions contained under Section 16(g)(3) read with

Regulation 39(2) and (3) of Chapter III of the Regulations of the UP Intermediate Education Act, approval was required from the District inspector of Schools.

6. As per the writ petitioner, the papers pertaining to the suspension of the writ petitioner was forwarded by the 3rd respondent, Committee of Management before the District Inspector of Schools, Fatehpur, second respondent, however, the date of hearing was fixed on 17.4.2023 and as per the writ petitioner subsequently no date was fixed, however, without recording any reasons that too prima facie in order to continue the writ petitioner under suspension, the suspension of the writ petitioner has been approved on 25.5.2023.

7. Questioning the order dated 25.5.2023, the writ petitioner has preferred the present writ petition.

8. This court entertained the writ petition on 29.8.2023 while passing the following orders:-

"Learned counsel for the petitioner while assailing the order dated 25.5.2023 approving the suspension of the writ petitioner dated 11.4.2023 has sought to argue that the date was fixed on 17.4.2023 for hearing and thereafter without fixing any other date and confronting the writ petitioner with the documents has sought to be demanded the approval order has been passed without going into the issue as to whether the writ petitioner is entitled to be continued the suspension or not principally while holding that the enquiry be completed within three months. He submits that the order in question does not advert to the core and the fundamental issues which are to be taken into consideration in that regard.

Sri Shailendra Singh, learned Standing Counsel submits that already three months period for holding an enquiry has come to an end and the writ petitioner despite having knowledge of the order in question is approached this Court after three months.

Be that as it may be the writ petitioner takes steps for service upon the third respondent.

Learned Standing Counsel has accepted notice on behalf of respondents no. 1 and 2.

Issue notice to the third respondent.

Steps to be taken by 30.8.2023 by both ways.

All the respondents shall file their response by 18.9.2023. Rejoinder affidavit shall file by 21.9.2023.

Put up this case on 25.9.2023 as fresh.

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

9. Post service of the notice Sri Saroj Yadav along with Upendra Kumar Verma have filed a counter affidavit sworn by the Manager of the institution in question. A rejoinder affidavit has also been filed in response to the same as already noticed. Sri Pradeep Kumar Sahi, learned Additional Chief Standing Counsel does not propose to file any response, thus the writ petition is being taken on board and decided.

10. Sri Bhavesh Pratap Singh while assailing the orders in question submits that though according to him, the writ petitioner was not put to notice post 17.4.2023 before passing of the order in question thus crucial issue is that there is virtually no finding that too on prima facie basis recorded which is required under statute in order to continue with the suspension or not. He submits only the contention and the version of the institution has been recorded and without according reasons conclusion has been drawn. He submits that the order in question be set aside. Sri Saroj Yadav who appears for the 3rd respondent, on the other hand, submits that the charges were levelled upon the writ petitioner are not only serious but grave enough for imposition of the major penalty and in this regard he has also produced before this Court, a document dated 11.9.2023 which happens to be the proposal pertaining to the termination of the writ petitioner.

11. On a pointed query being raised to Sri Saroj Yadav as to whether the order in question reflects any application of mind while recording reasons in coming to the conclusion, he could not point out even a single line. Sri Pradeep Kumar Sahi, learned Additional Chief Standing Counsel adopts the argument and according to him the order be set aside and the matter be remitted back.

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

13. Undisputedly, the petitioner has been placed under suspension and the paper was transmitted to the District Inspector of Schools, Fatehpur, second respondent to decide the said issue with regard to the approval/disapproval of suspension of the writ petitioner. However, the order has been passed on wrong direction and perspective, particularly, in view of the fact that it sans necessary deliberation and recording of prima facie findings which is imperative for continuation of the suspension.

14. In these circumstances, the order in question cannot be sustained and the writ petition is being disposed of in following terms:-

(a) Order dated 25.5.2023 passed by the District Inspector of School, Fatehpur is set aside.

(b) The matter stands remitted back to the District Inspector of Schools, Fatehpur.

(c) The writ petitioner as well as the 3rd respondent shall appear before the District Inspector of Schools on 1.11.2023 along with their written versions which shall be exchanged on that date.

(d) Date of hearing be fixed in the second week of November, 2023.

(e) Orders be passed by 17.11.2023.

(f) The second respondent District Inspector of Schools, Fatehpur shall bear in mind the aforesaid fundamental and core issues while deciding the matter.

(i) The issue with regard to the arriving of prima facie opinion regarding continuance of the writ petitioner under suspension or not.

(ii) Any other ancillary issue relating to the suspension.

15. Needless to point out that the order passed today may not construed do an expression that this court has adjudicated on the merits of the matter and this court has decided the writ petition on technical aspect that the order does not record reasons, however, the order does not preclude the management of the institution to take appropriate action in order to safeguard the interest of the institution in question.

16. With the aforesaid observation, the writ petition is partly allowed.

17. The instructions filed today are taken on record and marked as appendix A.

Order Date :- 12.10.2023

S.A.