

Court No. - 35

Case :- WRIT - A No. - 15122 of 2023

Petitioner :- The C/M Shri Mahant Ram Baran Das Inter College
And Another

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

Counsel for Petitioner :- Shivendu Ojha, Sneh Pandey, Sr.
Advocate

Counsel for Respondent :- C.S.C, R.D. Yadav

Hon'ble Vikas Budhwar, J.

1. Heard Sri R.K. Ojha, learned Senior Counsel assisted by Yogesh Pratap Singh holding brief of Sri Surendra Ojha, learned counsel for the writ petitioner, Sri Pradeep Kumar Sahi, learned Additional Chief Standing counsel who appears for the respondents no. 1, 2 and 3 and Sri R.C. Maurya, Advocate holding brief of Sri R.D. Yadav for respondent no. 4.

2. The case of the writ petitioner is that the petitioner institution is recognized under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No. 5 of 1982 and 24 of 1971 stands applicable.

3. It is also the case of the petitioner that respondent no. 4 was selected by U.P. Secondary Education Services Selection Board in Janta Inter College Ranipur, Mau. He was transferred on 1.3.2016 in the petitioner institution and is working as a teacher of mathematics.

4. Pleadings reveal that it is the allegation of the writ petitioners that certain acts and omissions have been committed by the respondent no. 4 coupled with the fact that a First Information Report was lodged under section 147, 323 IPC in case crime no. 0216 of 2021, in retaliation to the same a First Information Report was also lodged by the respondent no. 4. A three member committee stated to have been constituted by the petitioner Committee of Management and followed by a chargesheet dated 8.12.2021. In para 16 of the writ petition, it is further asserted that an adverse entry was inflicted in the service record of the respondent no. 4 against which the respondent no. 4 preferred Writ-A No. 448 of 2023 (Umesh Yadav Vs. State of UP), which came to be disposed of on 10.1.2023 while following orders were

passed:-

"Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

It is argued by learned counsel for the petitioner that after completing ten years of regular and satisfactory service, the petitioner is entitled for selection pay scale and in this regard, representations have been made by the petitioner in which certain orders have been passed by the respondent No.3/District Inspector of Schools, Ghazipur but till date no final order has been passed in the matter.

On the other hand, learned Standing Counsel argued that in case, the petitioner will file fresh representation before the respondent No.3, the respondent No.3 will pass appropriate order expeditiously.

Heard learned counsel for the parties.

With the consent of learned counsel for the parties and without entering into the merits of the case, the writ petition is disposed of permitting the petitioner to make a fresh representation ventilating all his grievances along with necessary papers and documents and certified copy of this order before the respondent no.3 within a period of three weeks from today. If such a representation is filed, the respondent No.3 will pass appropriate orders on the same expeditiously and preferably within a period of three months thereafter, strictly in accordance with law."

5. As per the writ petitioners, they were required to submit reply to certain queries which the writ petitioners claim to have been submitted on 19.10.2022 before respondent no. 3, District Inspector of Schools, Ghazipur, in the supplementary affidavit filed on behalf of the writ petitioner, it is stated that earlier the matter was being heard by Sri Ashok Nath Tiwari, District Inspector of Schools, Ghazipur, however, pursuant to the order dated 28.6.2023 issued by the State Government, he was transferred and one Sri Hemant Rao assumed the charge of District Inspector of Schools. It is the case of the writ petitioner that on 7.8.2023, an order stated to have been passed by the District Inspector of Schools, Ghazipur, whereby, the action of the Committee of Management for inflicting the punishment of withholding of the increments was negated and direction was issued to accord the said benefit to the respondent no. 4.

6. According to the writ petitioners, in the meantime, on 21.4.2023, one Sri Arvind Kumar Singh who was lecturer in English expired, thus, a resolution stated to have been passed for promoting one Shri Ram Vilas Yati as lecturer.

7. This led to filing a writ petition No. 9518 of 2023 by respondent

no. 4, which came to be disposed of on 29.5.2023 for deciding his claim which entailed passing of the order dated 7.8.2023 by the District Inspector of Schools, Ghazipur, whereby, the direction has been issued to the Committee of Management of the institution in question, the petitioner to submit entire documents with regard to the promotion of the respondent no. 4. Assailing the said order, dated 7.8.2023, whereby, the action taken by Committee of Management with holding the increments as well as order dated 7.8.2023 calling for the records for promotion of respondent no. 4, the present petition has been filed.

8. While seeking response from the respondents, a supplementary affidavit has been filed by the petitioners on 15.10.2023 and a counter affidavit has been filed on 4.11.2023 on behalf of the respondent no. 3 sworn by District Inspector of Schools, Ghazipur.

9. Learned counsel for the parties have submitted that they do not propose to file any response to the petition.

10. Sri Ojha, learner senior counsel while assailing the order dated 7.8.2023 passed by the District Inspector of Schools, Ghazipur according benefit to the respondent no. 4 for the grant of increments which have been withheld, submits that there has been a procedural irregularity committed while passing the order as according to him as per the own case of the official respondents, the District Inspector of Schools on 30.1.2023, a notice is stated to have been issued by Sri Ashok Nath Tiwari, District Inspector of Schools, Ghazipur in terms of the order dated 10.1.2023 passed in Writ-A No. 448 of 2023 for according hearing to the writ petitioners as well as responded no. 4. He submits that on 28.6.2023, Sri Ashok Nath Tiwari, District Inspector of Schools, Ghazipur was transferred and its place Hemant Rao assumed the charge, however, no hearing was ever conducted by him, thus, according to him the order in question cannot be sustained. So far as the challenge to the order dated 7.8.2023 providing for placing the inputs at the end of the Committee of Management for processing of the claim of the respondent no. 4 for promotion is concerned the arguments of learner senior counsel is that the said process is not contemplated under the statutes as might be an incumbent is eligible and qualified but a single proposal cannot be sent as it is the right of management to also send the proposal of all deserving candidates as selection is to be made based upon the eligibility and suitability of the deserving candidates and the same cannot be limited to a particular incumbent.

11. He further submits that the entire claim of the respondent no. 4

is dependent upon the final outcome with regard to the acts of the Committee of Management with respect to infliction of punishment to respondent no. 4. Sri Ojha further argues that in view of the repelling of the provisions contained under U.P. Act No. 5 of 1982 now unless and until new sets of provisions come into place the order in question cannot be sustained.

12. Sri R.C. Maurya holding brief of Sri R.D. Yadav who appears for respondent no. 4 submits that perusal of the order dated 10.1.2023 passed in Writ-A No. 448 of 2023, there is no such direction for the writ petitioners to be heard and further according to him once the order dated 7.8.2023 passed pursuant Writ-A No. 9518 of 2023 had been passed after hearing the writ petitioners then no exception can be carved out. He submits that once the respondent no. 4 senior, is entitled to the benefit.

13. Sri Pradeep Kumar Sahi, learned Additional Chief Standing Counsel appearing for the State official respondents, however, could not dispute the fact that on 28.6.2023 Sri Ashok Nath Tiwari, District Inspector of Schools, Ghazipur was transferred and was relieved on 3.7.2023, however, on 30.1.2023 a communication was issued to the petitioner and the respondent no. 4 to place their versions and to come for hearing, however, as per the documents available with him, the writ petitioners was not heard before passing the orders as after the next District Inspector of Schools joined the post he did not hear it.

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

15. The facts of the case are not in dispute. The only bone of contention is as to whether the petitioner were not entitled to be heard pursuant to the order dated 10.1.2023 passed in Writ-A No. 448 of 2023 or not. This Court finds that on 30.1.2023, Sri Ashok Nath Tiwari the then District Inspector of Schools, Ghazipur proceeded to issue a communication requiring the writ petitioners and the respondent no. 4 to participate in the hearing, however, on 28.6.2023, he stood transferred and he was relieved on 3.7.2023 and thereafter on 7.8.2023 the order impugned, insofar as it accords disapproval to punishment have been passed. The court finds that once a notice has been issued then that the writ petitioner ought to have been heard, thus, the order in question is in violation of principles of natural justice and is liable to be set aside.

16. Though, at this stage, Sri R.C. Maurya, Advocate holding brief of Sri R.D. Yadav, learned counsel for respondent no. 4 submits

that only on the basis of a FIR, the increments cannot be withheld and he seeks to rely upon the judgement of of this Court in the case of ***Surendra Kumar Gupta Vs. State of U.P. and Others (2022) 4 UPLBEC 3061***, however, this court at this stage is not expressing any opinion on the set aspects as once there is procedural irregularity then then it is for the District Inspector of Schools, Ghazipur to accord consideration to the claim set up by respondent no. 4. Insofar as the order dated 7.8.2023 for seeking documents input for promoting the respondent no. 4 is concerned, this court is of the opinion that the entitlement of the respondent no. 4 is dependent upon the order which is to be passed by District Inspector of Schools, Ghazipur post remand when the District Inspector of Schools, Ghazipur is to accord consideration as to whether the respondent no. 4 is entitled to the benefits of increments. Since the matter is being remanded so all legal contentions shall be left to the parties to raise with the court.

17. Considering the submissions of the rival parties as well as stand taken by them, the order dated 7.8.2023 Annexure No. 9 to the writ petition and 7.8.2023 Annexure No. 17 to the writ petition passed by the District Inspector of Schools, Ghazipur, respondent no. 3 are set aside. The matter stands remitted back to the District Inspector of Schools, Ghazipur to pass a fresh order after fixing the date in the 4th week of December, 2023 requiring the writ petitioners and the respondent no. 4 to submit their versions and thereafter, a date be fixed for hearing in the last week of December, 2023 and final orders be passed by second week of January, 2023.

Order Date :- 30.11.2023
S.A.