

Court No. - 35

Case :- WRIT - A No. - 15234 of 2023

Petitioner :- Shardindu Kumar Singh

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

Counsel for Petitioner :- Om Prakash Singh, Gautam Baghel

Counsel for Respondent :- C.S.C., Adarsh Singh, Indra Raj Singh

Hon'ble Vikas Budhwar, J.

In Re: Impleadment Application No.2 of 2023

By means of the present impleadment application one Sri Jay Shankar Mishra S/o Shiv Achal Mishra, Principal SKP Inter College, Azamgarh seeks to be impleaded as respondent no.7 in the writ petition.

Since there is no opposition in the impleadment application the same is allowed.

Let the impleadment be carried out during the course of the day.

Order on petition

A counter affidavit has been filed by the newly impleaded seventh respondent which is taken on record.

Heard Sri Gautam Baghel, along with Sri Om Prakash Singh, learned counsel for the writ petitioner and Sri Shailendra Singh learned Standing Counsel, who appears for respondents 1, to 5 and Sri Indra Raj Singh who appears for newly impleaded seventh respondent.

In view of the order, which is being proposed to be passed today, notices are not being issued to the sixth respondent.

The case of the writ petitioner is that fifth respondent, S.K.P. Inter College, Azamgarh is an institution recognised under the provisions of U.P. Intermediate Education Act, 1921, U.P. Act No.24 of 1971 and U.P. Act No.5 of 1982 are applicable.

It is the case of the writ petitioner that since February, 2023 Authorised Controller is managing the affairs of the institution and at present Principal of G.I.C. Jokahara, Azamgarh is functioning as

Authorised Controller of the institution. The petitioner claims that he was appointed as an L.T. Grade Teacher in the year 1993 approval whereof was granted by the District Inspector of Schools on 8.2.1993 and his services stood regularised on 27.6.2001. It is further the case of the writ petitioner that he was promoted as Lecturer in Zoology on 26.7.1999 on ad hoc basis and confirmed on 27.9.2001.

As per the writ petitioner a substantive vacancy stood vacant on 31.3.2018 on account of superannuation of the then Principal Triveni Bhargava consequent thereto one of the Senior Most Lecturer, Sri Narendra Singh was to officiate as Principal and his signature was attested on 1.4.2018. The writ petitioner further claims that in the seniority list he is at serial no.2 after Sri Narendra Singh.

Pleadings further reveal that on account of medical issues Sri Narendra Singh, Senior Most Lecturer who was functioning as ad hoc Principal tendered his resignation on 16.8.2022 and the signature of the writ petitioner was attested by the District Inspector of Schools, Azamgarh on 1.9.2022 as ad hoc Principal and since then the writ petitioner was working.

According to the writ petitioner on 10.7.2023 the fourth respondent, District Inspector of Schools, Azamgarh proceeded to issue communication to the Manager/Principal of the institution in question regarding the communication of the status of the pending writ petitions and the issue with regard to any interim order passed therein. It is the case of the writ petitioner that the writ petitioner inquired the said aspect and came to know that one Ram Sahai Maurya, had preferred Writ-A No.25304 of 2001 questioning the order dated 20.3.2001 and 10.5.2001 before this Court, Ram Sahai Maurya vs. Special Secretary, U.P. Govt. Shiksha Anubhag-I & others in which an interim order was passed and thereafter on 20.4.2018, the said writ petition came to be dismissed and the interim order was vacated.

On being apprised of the said situation, the writ petitioner issued a communication to Sri Ram Sahai Maurya for stoppage of salary on the ground that the writ petition has been dismissed. A show cause notice is stated to have been issued by the Authorised Controller of the institution to Sri Ram Sahai Maurya to the said extent. Thereafter the writ petitioner received a show cause notice on 3.8.2023 requiring him to submit his explanation within a period of three days regarding payment of salary to Sri Ram Sahay Maurya despite the fact that the writ petition stood dismissed.

The writ petitioner claims to have submitted his objection/reply on 4.8.2023 however now according to the writ petitioner an order has been passed on 29.8.2023 by the fourth respondent, District Inspector of Schools, Azamgarh requiring the writ petitioner to handover the charge to the sixth respondent, Ranjit Singh, Lecturer in S.K.P. Inter College, Azamgarh.

Questioning the said order the writ petitioner has filed the present writ petition.

Sri Gautam Baghel, learned counsel for the writ petitioner has filed a supplementary affidavit bringing on record a document dated 4.9.2023 under the signature of the Authorised Controller of the institution requiring the writ petitioner to handover the charge to the 7th respondent as Sri Ranjit Singh, showed inability to function as Officiating Principal. He further submits that the order dated 29.8.2023 is patently illegal contrary to law as though a notice was issued to the writ petitioner seeking explanation with regard to the payment of salary to Sri Ram Sahay Maurya however despite the fact that the writ petition stood dismissed and the interim order vacated however due to inefficiency, lethargy and negligence of the writ petitioner salary remained to be paid to Sri Ram Sahay Maurya.

According to the writ petitioner he is tendered his reply to the notice dated 2.8.2023 on 4.8.2023 clearly pointing out that it was a fraud practised by Sri Ram Sahay Murya and for that the writ petitioner cannot be held to be guilty of any misconduct however now by virtue of the order impugned dated 28.9.2023 an additional ground has been taken with relation to the allegation of irregularities in NCC which according to the writ petitioner did not find place in the show cause notice.

Further argument has been raised that in view of the provisions contained under Section 21 of the U.P. Act No.5 of 1982 now the power only vested with the Board to withhold the benefits that too with relation to handing over the charge of Officiating Principal and reverting the writ petitioner to his original post where he holds lien.

Sri Indraj Singh who appears for the 7th respondent submits that besides the aforesaid irregularities noticed by the forth respondent, District Inspector of Schools, Azamgarh there are other irregularities which have been noticed and which have been put to inquiry against the writ petitioner. He further submits that the order in question cannot be said to be illegal particularly when one of the

grounds regarding payment of salary to Sri Ram Sahai Maurya despite the dismissal of the writ petition itself is sufficient as the writ petitioner while holding the charge of ad hoc Principal was required to be vigilant enough to update itself regarding the status of the cases pending in that regard.

Sri Shailendra Singh, learned Standing Counsel submits that the grounds which have been raised by the writ petitioner while challenging the order in question are not tenable as admittedly the writ petitioner was negligent and further post enforcement of the U.P. Act No.15 of 2023, Uttar Pradesh Education Service Selection Commission Act, 2023 now for these aspects of the matters fourth respondent, District Inspector of Schools, Azamgarh is the competent authority to pass the orders. According to him the writ petitioner may approach the fourth respondent while filing this representation and he shall be accorded hearing and thereafter suitable orders will be passed in this regard.

To such a submission of Sri Shailendra Singh, learned Standing Counsel that fifth respondent institution is manned by Authorised Controller this Court is not issuing notice to the Committee of Management of the institution in question.

Sri Gautam Baghel, learned counsel for the writ petitioner and Sri Indra Raj Singh, who appears for the seventh respondent have no objection. However, Sri Baghel submits at this juncture that the writ petitioner shall prefer a representation taking all the legal and factual grounds but the same be decided by the fourth respondent, District Inspector of Schools, Azamgarh within the time bound period.

Considering the submissions of the rival parties as well as stand taken by them, the writ petition is being disposed off without seeking any response from the respondents granting liberty to the writ petitioner to prefer a comprehensive representation by 19.10.2023 along with the self-attested copy of the writ petition and on the receipt of the same notices be issued to fifth respondent, sixth respondent and seventh respondent and thereafter, after hearing affected parties proceed to decide the entitlement of the writ petitioner strictly in accordance with law bearing in mind the contentions raised by the respective parties within a period of three weeks there from.

Needless to point out that the writ petition has been decided on the basis of the concessions made by the parties before this Court thus, passing of this order may not be construed to an expression that

this Court has gone into the merits of the case.

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

Order Date :- 12.10.2023/piyush