

Court No. - 35

Case :- WRIT - A No. - 15314 of 2023

Petitioner :- C/M Rashtriya Vidya Mandir Inter College And
Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- R. K. Singh Kaosik

Counsel for Respondent :- C.S.C.,Kaushlendra Panday,Prabhakar
Awasthi

Hon'ble Vikas Budhwar,J.

1. Heard Sri R.K. Singh Kaosik, learned counsel for the writ petitioner, who are two in number, Sri Shailendra Singh, learned Standing Counsel, who appears for the respondent nos.1 to 4 and Sri Prabhakar Awasthi, learned counsel, who appears for the respondent no.5.
2. The case of the writ petitioners are that the writ petitioner no.1, Rashtriya Vidya Mandir Inter College, Chandwak Dobhi, District – Jaunpur is an institution recognized under the provisions of the U.P. Intermediate Education Act 1921, the provisions of U.P. Act No.24 of 1971, stands applicable.
3. It is the case of the writ petitioner that on account of certain acts and the omissions of the fifth respondent, Chandra Prakash Singh, the Committee of Management was not happy with his conduct. Pursuant thereto, appropriate proceedings were also drawn and it is the case of the writ petitioners that the fifth respondent was absent unauthorizedly since, August, 2021.
4. According to the writ petitioner, a charge-sheet is stated to have been issued to the fifth respondent on 03.01.2022, but the fifth respondent avoided to receive the same. It is the further case of the writ petitioner that the salary of the fifth respondent has been

stopped since August, 2021. However, according to the writ petitioner, now pressure is being sought to be exerted under the communication of the third respondent, Joint Director of Education, Varanasi Region, Varanasi addressed to the fourth respondent, District Inspector of Schools, Jaunpur to seek clarification/version of the petitioner-Committee of Management within a period of ten days and in case the same is not submitted, then to take appropriate action in that regard with regard to the application of the fifth respondent with respect to voluntary retirement, which he had submitted on 30.06.2021.

5. Prayer in the present petition is for quashing of the communication dated 14.08.2023 issued under the signature of the third respondent addressed to the fourth respondent.

6. This Court entertained the writ petition on 12.10.2023, while passing the following orders :-

"The contention of the learned counsel for the writ petitioner is that the order dated 14.08.2023, passed by the Joint Director of Education, Varanasi Region, Varanasi proceeds on misconception of facts and law, particularly in view of the fact that the alleged application of the fifth respondent seeking V.R.S. has not been submitted before the petitioner-Committee of Management, as in this regard, averment has been made in paragraph no.17 of the writ petition and thus, according to him, since disciplinary proceedings have been initiated against the fifth respondent by the petitioner-Committee of Management, so the fifth respondent cannot insist that his V.R.S. be accepted.

Sri Shailendra Singh, learned Standing Counsel, who appears for the official respondents shall obtain instructions in the light of the averments made in paragraph no.17 and with relation to the other ancillary facts.

Learned counsel for the writ petitioner also file supplementary affidavit bringing on record the charge-sheet as well as the service being sought to be made upon the fifth respondent by the petitioner-Committee of Management.

Put up this case on 27.10.2023, as fresh."

7. Sri R.K. Singh Kaosik, learned counsel for the writ petitioner submits that once the writ petitioner is subjected to disciplinary proceedings while issuing of a charge-sheet on 03.01.2022, then the application if any submitted by the fifth respondent stating it to be addressed to the Manager/Principal of the petitioner-institution, which has virtually not been received by them could not be a basis for exerting pressure upon the petitioner-Committee of Management to direct the petitioner-Committee of Management to accord voluntary retirement to the fifth respondent. He submits that it is the prerogative of the Committee of Management/employer to either accept or to refuse the application for voluntary retirement, as the same is not a matter of right, but subject to the wish of the Committee of Management / employer as well as the fact that already departmental proceedings have been drawn in that regard.

8. Sri Prabhakar Awasthi, learned counsel, who appears for the fifth respondent on the other hand submits that the fifth respondent had submitted an application for voluntary retirement on 30.06.2021 and the said request was not acceded to, which entailed issuance of a communication dated 23.10.2021 by the District Inspector of Schools, Jaunpur, fourth respondent to the petitioner to process the same but on one pretext or the other, the same is being kept pending which also warranted issuance of the communication dated 14.08.2023 followed by 17.08.2023 under the signature of the District Inspector of Schools, Jaunpur. He further submits that the entire disciplinary proceedings, which is being sought to be shown to be lodged against the writ petitioner is dated 03.01.2022 post submission of the application of the fifth respondent for voluntary retirement and according to him the entire attempt has been made to somewhat block the claim of the

fifth respondent for voluntary retirement. Sri Awasthi further submits that the order which the writ petitioner is seeking to challenge is only a communication requiring the petitioner-Committee of Management to take decision and the said writ petition at this stage is not maintainable at all.

9. Sri Shailendra Singh, learned Standing Counsel, who appears for the official State-respondents has adopted the submission of the learned counsel for the fifth respondent, as according to him, the writ petitioner at the behest of the writ petitioner is not maintainable.

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

11. It is the case of the writ petitioners that they have not received the application dated 30.06.2021 seeking voluntary retirement and the fifth respondent is absenting himself from August, 2021. However, on the other hand it is the case of the fifth respondent that a voluntary retirement application has been submitted on 30.06.2021 and the same was being kept pending, thus the District Inspector of Schools intervened in the matter and then he issued communications in that regard and thereafter now in order to forestall the claim of the fifth respondent, the charge sheet is being said to be issued on 03.01.2022, which has not been served upon the fifth respondent though allegation of the other side is that the same has been refused by the fifth respondent. Be that as it may be, since the issue involved in this writ petition is with regard to the challenge made to the communication dated 14.08.2023 of the third respondent addressed to the fourth respondent requiring taking of decision by the petitioner-Committee of Management within a period of ten days according to the parties is also over, thus in the fitness of the matter and with the consent of the parties,

the writ petition is being disposed of with a direction to the fourth respondent to look into the matter and to pass an appropriate orders within a period of one month from the date of the production of the certified copy of the order looking into each and every aspect of the matter and after putting the writ petitioners and the fifth respondent under notice bearing in mind the fundamental and the core issues regarding the claim of the fifth respondent that he has submitted application for voluntary retirement on 30.06.2021, the claim of the petitioner-Committee of Management that the fifth respondent is absenting himself from August, 2021 and further the issuance, import and the impact of the communication issued by the educational authorities as well as the stand of the petitioner-Committee of Management that on 03.01.2022 disciplinary proceedings has been initiated. In case, the District Inspector of Schools is of the opinion that the matter needs to be decided by any other authority, then the papers be transmitted to him with due communication to the writ petitioners and the fifth respondent. The said exercise is to be completed strictly in accordance with law in the light of the Statutes.

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

12. The documents submitted by Sri Prabhakar Awasthi dated 30.06.2021 and 23.10.2021 as well as the instructions submitted by Sri Shailendra Singh, learned Standing Counsel are kept on record and marked as Appendix 'A'.

Order Date :- 28.10.2023

S Rawat