

Court No. - 35

Case :- WRIT - A No. - 15938 of 2023

Petitioner :- C/M Sukhada Shiksha Mandir Balika Inter College
And Another

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

Counsel for Petitioner :- Bachchu Lal Yadav

Counsel for Respondent :- CSC,Ramji Mishra,Vashishtha Tiwari

Hon'ble Vikas Budhwar,J.

Heard Sri Bachchu Lal Yadav, learned counsel for the writ petitioners who are two in number as well as Sri Ratan Deep Mishra, learned Standing Counsel, who appears for respondents 1 and 2 and Sri Vashishtha Tiwari, learned counsel who appears for the respondent no.3.

Since counter and rejoinder affidavits have been exchanged between the parties and they do not propose to file any response to the writ petition, the writ petition is being disposed off at the fresh stage.

The writ petitioners herein had preferred Writ-A No.11114 of 2023, Committee of Management, Sukhada Shiksha Mandir Balika Inter College vs. State of U.P. & two others challenging the order dated 17.5.2023 passed by the District Inspector of Schools, Mathura disapproving the suspension of the third respondent. The said writ petition came to be disposed of by this Court on 17.7.2023 while passing the following orders:

"Heard Sri B.L. Yadav, learned counsel for the petitioners as well as Sri Santosh Kumar, learned Standing Counsel, who appears for Respondents 1 and 2 and Sri Vinod Kumar along with Sri Akash Rawal, who appear for the third respondent.

The case of the writ petitioner is that there is an institution (petitioner no.1), namely Sukhada Shiksha Mandir Balika Inter College, Vrindavan, Mathura, which is recognized under the provisions of U.P. Intermediate Education Act, and the provisions of Payment of Salary Act, 1971 and the provisions of Uttar Pradesh Secondary Education Services Selection Board are fully applicable.

It is the case of the writ petitioner that there are four sanctioned posts of the Lecturers in the college. According to the writ petitioners, the third respondent was appointed as Assistant Teacher in LT Grade in terms of the order dated 20.5.2010 issued by the Selection Board.

It is the further case of the writ petitioner that when the post of Principal fell vacant, then as per the seniority roster maintained therein, one Smt. Ranjana Singh, Lecturer (Sanskrit), Smt. Vandana Chauhan, Lecturer (Economics) and the petitioner, Lecturer (Social Science) are placed in the seniority list.

Learned counsel for the petitioner submits that due to certain acts and omissions of the third respondent, a resolution was passed, whereby the petitioner was placed under suspension on 13.04.2023. It is further the case of the writ petitioner that despite the fact that the charge sheet dated 20.04.2023 has been served upon the writ petitioner, but now by virtue of the order impugned the second respondent, namely, the District Inspector of Schools, Mathura has sought to disapprove the suspension of the writ petitioner. Learned counsel for the writ petitioner submits on the strength of the averments contained in paragraph-19 of the writ petition that the order impugned disapproving the suspension has been passed in violation of the principles of natural justice. It is further the case of the writ petitioner that the charges as depicted in the charge sheet are serious in this regard.

Sri Vinod Kumar Singh along with Sri Akash Rawal, learned counsel for the respondents on the other hand submit that though he does not dispute the fact that the writ petition has not been put to notice and the order is in violation of the principles of natural justice, but according to him, the statutory scheme as provided under Section 16G (5) and (7) of the U.P. Intermediate Education Act, 1921 has not been complied with, particularly, when even in fact 60 days have already been lapsed and the charge sheet has not been served upon the writ petitioner. Reliance has been placed upon page-34 of the writ petition, so as to demonstrate that the charge sheet has been served on 12.05.2023, but the said document has been manufactured for the purposes of filing of the writ petition.

Learned Standing Counsel on the other hand submits that the order impugned does not suffer from any illegality, however, he also disputed the fact that the order had been passed in violation of principles of natural justice as is apparent from the order in question.

Sri V.K. Singh, learned counsel for the third respondent has also argued that the third respondent has been restrained from being performing the duties, particularly, when 60 days itself lapsed.

During the course of argument, Sri Vinod Kumar Singh along with Sri Akash Rawal, learned counsel for the respondents as well as learned Standing Counsel, who appears for the State respondents submit that in the wake of the fact that since the order in question has been passed in violation of the principles of natural justice, though they do not propose to file any response to the writ petition and according to them, the matter be remitted back to the second respondent while fixing a date by the Court itself, so as to enable the parties to appear before the second respondent for getting the claims decided.

At this juncture Sri V.K. Singh along with Sri Akash Rawal as well Sri B.L. Yadav, learned counsel for the petitioner submit that they may be also furnished the documents, which have been filed, copy whereof has yet not been furnished to them.

Learned counsel for the petitioner has no objection to the same, as according to him, the matter is to be remitted back. Considering the submissions of the rival parties as well as the stand taken by them, the writ petition is being decided on the following terms:-

(a) The order dated 17.05.2023 passed by the second respondent, District Inspector of Schools, Mathura, is set aside;

(b) Matter is remitted back to the second respondent, District Inspector of Schools, Mathura;

(c) Consequent to the setting aside the order, the matter is remitted back to the second respondent while fixing 02.08.2023 as the date at 11:00 A.M.

(d) The petitioner as well as the third respondent shall appear by themselves or through their representatives and seek furnishing of the documents, which is to be furnished by either Committee of Management or the third respondent.

(e) A copy of the same be provided on the same date, i.e. on 02.08.2023.

(f) 04.08.2023 is the date fixed for hearing the matter and the parties shall appear on the said date.

(g) By 08.08.2023, the final orders shall be passed.

The said order has been passed with the consent of the parties before this Court. Thus, they would not seek any adjournment on the said dates, the respondent shall not accord any adjournment to the parties.

With the aforesaid observation, the writ petition stands partly allowed."

Post remand now an order has been passed on 8.8.2023 by the second respondent, District Inspector of Schools, Mathura disapproving the suspension of the third respondent.

Against the said order the writ petitioners have filed the present writ petition.

Sri Bachchu Lal Yadav, learned counsel for the writ petitioners while assailing the order dated 8.8.2023 has submitted that the said order cannot be sustained for even a single moment particularly in view of the fact that the District Inspector of Schools, Mathura has addressed upon the merits of the charges while disapproving the suspension of the respondents which is thoroughly impermissible in view of the law laid down by the judgment of this Court in the case of **Tej Narain Singh vs. State of U.P. and others 2008(7) ADJ 108 (DB)**. He submits that a charge sheet had been issued to the third respondent on 20.4.2023 containing various charges and in the order impugned under the caption deliberations/discussions

charges have been addressed on merits and on some places it has been mentioned "prima facie they are not proved" but with respect to the other charges it has been recited that the charges do not stand proved. He further submits that the merits of the charges ought not to have been gone into and while inviting attention towards para-7 of the impugned order he seeks to submit that it has been recorded by the District Inspector of Schools, Mathura that the said charges do not come within the legal framework and cannot be inferred for imposition of the punishment. According to him the only requirement for the District Inspector of Schools, Mathura was to have accorded it prima facie satisfaction with regard to the materials available before it so as to continue with the suspension and he could not discuss the charges point wise as the same amount to usurping the power of the Inquiry Committee and ultimately with Disciplinary Authority. He thus submits that the order in question be set aside the matter be remitted back.

Sri Vashishtha Tiwari, learned counsel who appears for the respondent no.3 submits that the order impugned is perfectly valid in accordance with law and no fault whatsoever can be attributed inasmuch as the District Inspector of Schools, Mathura while disapproving the suspension has only recorded the prima facie opinion/finding without going into the merits, he further submits that might be on some places it has been recited that the charges could not be proved by the petitioners would have been a typographical error as the import and the impact of the orders to be seen and not literal words in that regard. He further submits that even in view of the Chapter III Regulation 39 of the U.P. Intermediate Education Act, 1921 the exercise which was to be undertaken by the Committee of Management has not been accorded to and he in this regard has invited the attention of the Court towards paragraph 11 of the writ petition. He further submits that though that the said aspect seems to have been skipped by the District Inspector of Schools, Mathura but it is also a crucial aspect which vitiates the entire exercise of the writ petitioners. He seeks to rely upon a decision in the case of **Tej Narain Singh (Supra)** so as to contend that the said judgement is in favour of the third respondent particularly when only prima facie findings have been recorded.

Sri Ratan Deep Mishra, learned Standing Counsel has adopted the submission of Sri Vashishtha Tiwari. He submits that the order is perfectly valid and it is not liable to be interfered with.

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

Law on the said aspect stands crystalized in the case of **Tej Narain Singh (Supra)** where the District Inspector of Schools while either approving or disapproving the suspension is to form a prima facie opinion as to whether the suspension needs to be continued or not and not on the merits of charges.

Here in the present case the Court finds that findings have been recorded while addressing on the merits which is beyond the scope in a proceedings where only approval/disapproval of suspension is before the D.I.O.S. This Court further finds that the said findings ought not to have been recorded. As rightly pointed out by Sri Vashistha Tiwari that in the said order the crucial question with regard to non furnishing of the documents and completing formalities as per Chapter III Regulation 39 of the U.P. Intermediate Education Act, 1921 has not been considered thus in the opinion of the Court the order in question is liable to be set aside and the matter be remitted back to the third respondent to pass a fresh order.

Considering the submissions of the rival parties as well as the stand taken by them, the writ petition is being decided on the following terms:-

(a) The order dated 8.08.2023 passed by the second respondent, District Inspector of Schools, Mathura, is set aside;

(b) Matter is remitted back to the second respondent, District Inspector of Schools, Mathura;

(c) Consequent to the setting aside the order, the matter is remitted back to the second respondent while fixing 05.12.2023 as the date at 11:00 A.M.

(d) The petitioner as well as the third respondent shall appear by themselves or through their representatives and seek furnishing of the documents, which is to be furnished by either Committee of Management or the third respondent.

(e) A copy of the same be provided on the same date, i.e. on 05.12.2023.

(f) 07.12.2023 is the date fixed for hearing the matter and the parties shall appear on the said date.

(g) By 15.12.2023, the final orders shall be passed.

The said order has been passed with the consent of the parties before this Court. Thus, they would not seek any adjournment on the said dates, the respondent shall not accord any unnecessary adjournment to the parties.

With the aforesaid observation, the writ petition stands **partly allowed**.

Order Date :- 21.11.2023

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