

Court No. - 35

Case :- WRIT - A No. - 15610 of 2023 (Leading writ petition)

Petitioner :- Brijesh Kumar Gautam

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

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

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

with

Case :- WRIT - A No. - 18533 of 2023 (connected writ petition)

Petitioner :- Committee Of Management R.V.M. Inter College And Another

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

Counsel for Petitioner :- Prabhakar Awasthi

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. Supplementary affidavit filed by learned counsel for the petitioner is taken on record.

2. Writ A No. 15610 of 2023 (Brijesh Kumar Gautam Vs. State of U.P. and other) is leading writ petition and Writ A No. 18533 of 2023 Committee Of Management R.V.M. Inter College And Another, as connected writ petition.

3. Heard Sri Ashok Khare, learned Senior counsel assisted by Sri Umang Srivastava for the writ petitioner in the leading writ petition and respondent No. 6 in the connected writ petition, Sri Shailendra Singh learned Standing Counsel, who appears for Respondents No 1 to 4 and 6 in the leading writ petition and respondents No. 1 to 5 in the connected writ petition and Sri Prabhakar Awasthi who appears for the respondent No. 5 in the leading writ petition and the writ petitioners in the connected writ petition.

4. Since common question of laws and facts are involved in the present petition thus they are being decided by the composite order.

5. Since affidavits have been exchanged between the parties and they do not propose to file any further affidavits thus the writ petition is being decided at the first stage.

6. The case of the writ petitioner is that the Committee of Management of the Institution in question, R.V.M. Inter College, Tilhar, Shahjahanpur proceeded to place Sri Brijesh Kumar

Gautam who is Lecturer in Physics under suspension owing to certain acts and omissions pursuant to the resolution of Committee of Management dated 29.06.2023 and the formal order dated 30.06.2023. A charge sheet stated to have been served upon the writ petitioner in the leading writ petition. A writ petition stated to have been preferred bearing number, Writ A 11579 of 2023, Sri Brijesh Kumar Gautam Vs. State of U.P. challenging the resolution of the Committee of Management and the order of suspension and the departmental charge-sheet which remain pending. However, in the mean time, now an order stated to have been passed on 26.08.2023 by the District Inspector of Schools, Shahjahanpur approving the suspension of the writ petitioner.

7. Questioning the order dated 26.08.2023 passed by the District Inspector of Schools, Shahjahanpur, the writ petitioner, Sri Brijesh Kumar Gautam has filed the leading writ petition. During the pendency of the said writ petition a connected writ petition has been preferred by the Committee of Management of the institution in question seeking to quash the order dated 13.10.2023 of the Joint Direction of Education, Bareilly Region Bareilly as well as the order dated 19.10.2023 according to which a parallel inquiry is directed to be initiated against the Committee of Management by District Inspector of Schools. The said order this led to filing of the connected writ petition. The writ petition was entertained by this Court, affidavits have been filed and both the writ petitions are before this Court today. Since a statement was made by the learned counsel for the parties that they do not propose to file any further response, thus the writ petition is taken on both.

8. Sri Ashok Khare, learned senior counsel for the writ petitioner while assailing the order dated 26.08.2023 passed by the District Inspector of Schools, Shahjahanpur has sought to contend that with respect to the decision to be taken for approval/ disapproval/ suspension of Sri Brijesh Kumar Gautam, the District Inspector of Schools, on 18.07.2023 fixed 27.07.2023 as the date of hearing. The writ petitioner claims to have appeared before the District Inspector of Schools and filed his representations. The Manager on the said date did not appear before the District Inspector of Schools, Shahjahanpur on 27.07.2023 and thereafter next date was fixed on 05.08.2023. While inviting attention towards Paragraph No. 27 to 29 of the writ petition, of the leading writ petition, it is being sought to be argued that the writ petitioner, Sri Brijesh Kumar Gautam had no knowledge about fixation of the date on 05.08.2023 as according to him 05.08.2023 was not the date fixed on 27.07.2023 and further on 05.08.2023 seemingly the

Committee of Management of the Institution in question tendered its version and in absence of service and knowledge about the same, order impugned has been passed. It is submitted that the order in question be set aside and matter be remitted back.

9. Sri Shailendra Singh, learned Standing counsel who appears for the State official respondents has produced before this Court instructions dated 25.11.2023 under the signatures of District Inspector of Schools, Shahjahanpur according to which though on 27.07.2023 the writ petitioner, Brijesh Kumar Gautam was present but from the records it is not depicted that date was fixed on 05.08.2023 in his presence.

10. In so far as the connection writ petition is concerned the said writ petition questions the order dated 13.10.2023 passed by the Joint Director of Education, Bareilly Mandal, Bareilly wherein a communication has been issue to the various authorities regarding the complaint lodged by Sri Brijesh Kumar Gautam with respect to certain acts and omissions of the District Inspector of Schools and the Committee of Management which led to passing of another order dated 19.10.2023 whereby the Committee of Management was required to be present on 27.10.2023 on the basis of the complaint of Sri Brijesh Kumar Gautam dated 30.09.2023. He submits that such type of proceedings are totally unwarranted particularly once the order dated 26.08.2023 was in existence in that regard.

11. Sri Ashok Khare, learned senior counsel while countering the submission of Sri Awasthi, in the connected writ petition has sought to argue that there are various others complaints referable to the conduct of the District Inspector of Schools, Shahjahanpur and the Committee of Management which has no co-relation with the issue in question.

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

13. Since a specific allegation has been made in Para 27 to 29 of the leading writ petition regarding violation of principles of natural justice as the writ petitioner, Sri Brijesh Kumar Gautam was totally unaware about the date fixed on 05.08.2023 and the inputs submitted by Committee of Management on 05.08.2023, thus in the opinion of the Court the order dated 26.08.2023 passed by the District Inspector of Schools Shahjahanpur is liable to be set aside. Accordingly the order dated 26.08.2023 passed by the District Inspector of Schools Shahjahanpur is set aside.

14. In so far as connected writ petition is concerned challenge has been made to the orders dated 13.10.2023 passed by Joint Director of Education Bareilly Region Bareilly as well as the order dated 19.10.2023 passed by Regional Deputy Director of Education, III Region, Bareilly on the basis of the complaint of Sri Brijesh Kumar Gautam, the writ petitioner in the leading writ petition however it is not forthcoming as to under which provision of law the said inquiry has been initiated against the District Inspector of Schools Shahjahanpur and the Committee of Management of the institution in question. The Court also finds that once the order dated 26.08.2023 was already in existence of District Inspector of Schools Shahjahanpur approving the suspension of Sri Brijesh Kumar Gautam, prima facie there was no occasion to pass the order. Thus the order dated 13.10.2023 passed by Joint Director of Education Bareilly Region Bareilly on 19.10.2023 passed by Regional Deputy Director of Education, III Region, Bareilly are set aside.

15. At this stage Sri Ashok Khare submits that post remand the order be passed by any other District Inspector of Schools/Authority. As his client apprehends that the same mistake will be repeated by the District Inspector of Schools.

16. Sri Prabhakar Awasthi, learned counsel for the writ petitioner has no objection, however, his anxiety is that the matter be decided with expedition.

17. Sri Shailendra Singh learned Standing Counsel submits that let the parties approach the sixth respondent in the leading writ petition Director of Education (Secondary) U.P. Lucknow who shall mark a file to authority who will ultimately decide the matter.

18. Accordingly, it is provided that the writ petitioner in the leading writ petition, Sri Brijesh Kumar Gautam and the Committee of Management of the Institution in question shall approach the Director of Education (Secondary) U.P. Lucknow by 08.12.2023 who shall thereafter nominate authority who shall decide the respective claims of the parties and after putting to notice to the writ petitioner Sri Brijesh Kumar Gautam and the Committee of Management of the Institution in question after hearing them, orders being passed by 29.12.2023 strictly in accordance with law.

19. Both the writ petitions stand ***disposed off***.

Order Date :- 28.11.2023/Suraj Srivastav