

Court No. - 35

Case :- WRIT - A No. - 15697 of 2023

Petitioner :- Samita, Officiating Principal

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

Counsel for Petitioner :- Prabhakar Awasthi

Counsel for Respondent :- CSC, Anil Kumar Mehrotra, Srijan Mehrotra

Hon'ble Vikas Budhwar, J.

Heard Sri Prabhakar Awasthi, learned counsel for the petitioner, Sri H.K. Shukla, learned Standing Counsel who appears for Respondent Nos. 1 and 2 and Sri Shrijan Mehrotra, learned counsel for Respondent no.3.

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

The writ petitioner herein had preferred Writ-A No.10710 of 2023, Samita Vs. State of U.P. questioning the order dated 07.03.2023 passed by the Manager of the Committee of Management, third respondent reverting the writ petitioner to the post of Lecturer (Arts) as well as order dated 21.06.2023 passed by the second respondent, District Inspector of Schools, Bulandshahr, approving the suspension order.

The said writ petition on being entertained and after exchange of affidavits came to be decided on 04.08.2023 while passing the following order: -

“Rejoinder affidavit filed today is taken on record.

Heard Sri Prabhakar Awasthi, learned counsel for the petitioner, Sri P.K. Shahi, the learned Addl. Chief Standing Counsel, who appears for Respondents 1 to 2 and Sri Bheem Singh, who appears for the third respondent-Committee of Management. Since affidavits have been exchanged between the parties, thus with the consent of the parties, the writ petition is being disposed off at the fresh stage.

The case of the writ petitioner is that the third respondent, Arya Kanya Inter College, Bulandshahar is an institution recognized under the provisions of U.P. Intermediate Education Act, 1921, U.P. Act No.5 of 1982 and the provisions of Payment of Salary Act 1971 stand applicable. It is further the case of the writ petitioner that one Smt. Anita Bharadwaj, who was discharging the duties as an Officiating Principal was selected by the Commission as a regular Principal and thus a vacancy arose, pursuant whereeto, the writ petitioner claims to have assumed the charge of the

Officiating Principal in the third respondent-institution since the month of January 2022. It is further the case of the writ petitioner that since she was occasioned with certain odds and harassment, she lodged a complaint against Smt. Shashi, Lecturer on 14.11.2022. As per the writ petitioner, the Committee of Management of the institution in question on 06.12.2022 placed one Smt. Anita Rani, Assistant Teacher and the writ petitioner under suspension by virtue of a resolution of the Committee of Management dated 06.12.2022. It has been alleged that there was no such resolution placing the writ petitioner under suspension.

Further the pleadings reveal that one Santosh Kumar Raghav was appointed an Enquiry Officer and he in hot haste proceeded to serve a charge sheet upon the writ petitioner dated 13.12.2022, which has been disputed by the writ petitioner, as according to her, it was pasted on 08.01.2023 to which the writ petitioner tendered her reply on 09.01.2023 before the Management and on 11.01.2023 before the second respondent, District Inspector of Schools, Bulandshahar. In paragraph-18 of the writ petition, it has been averred that one Sri Mukesh Babu was appointed as the Enquiry Officer / Principal, Government Higher Secondary School, Barauli, Bulandshahar and dates were also fixed, however, District Inspector of Schools, Bulandshahar proceeded to pass the order dated 14.02.2023 approving the suspension of the writ petitioner which compelled the petitioner to prefer the Writ-A No.4077 of 2023, wherein instructions were sought on 23.03.2023. As per the writ petitioner, the Committee of Management of the institution in question thereafter as per their own stand proceeded to conclude the enquiry whereby a final punishment order was passed in pursuance of the resolution of the Committee of Management dated 14.02.2023, whereby two increments were withheld and the writ petitioner was reverted to its original post having lien on the post of Lecturer (Arts) and she was denuded of the status of Officiating Principal. As per the writ petitioner, the order dated 27.03.2023 presupposes a situation, whereby the enquiry proceedings came to be concluded entailing the winding up of the proceedings with regard to suspending the writ petitioner and thus, after passing of a final order, the petitioner is freed from the rigors of the suspension.

Learned counsel for the writ petitioner has also invited the attention of the Court towards Annexure-15, page-85, reference whereof is at para-25 of the writ petition so as to contend that the second respondent, District Inspector of School, Bulandshahr proceeded to disapprove the action of the respondents reverting the writ petitioner as well as imposition of penalty of withholding of two increments by virtue of the order dated 31.03.2023. Pleadings further reveal that Writ-A No.4077 of 2023, Samita Vs. State of U.P. preferred by the petitioner came to be disposed off on 04.04.2023, whereby the approval order of the respondents dated 14.02.2023 was held to be illegal and it was set aside leaving it open to the Committee of Management to supply papers afresh within three weeks from the said date and in the event, the Committee of Management filed the documents before the second respondent that the second respondent after hearing the parties shall decide the matter afresh. On 21.06.2023, the second respondent, District Inspector of Schools, Bulandshahar has proceeded to approve the suspension of the writ petitioner.

Questioning the order dated 27.03.2023 passed by the Manager of the Committee of Management in question reverting the writ petitioner to the post

of Lecturer (Arts) as well as the order dated 21.06.2023 passed by the second respondent, District Inspector of Schools, Bulandshahr approving the suspension order, the writ petitioner filed the present petition seeking further relief that she may be permitted to discharge her duties as an Officiating Principal.

This Court entertained the present petition on 11.07.2023 while passing the following order:-

"Sri Prabhakar Awasthi, learned counsel for the writ petitioner has argued that the challenge made to, the two orders namely on 27.3.2023 passed by the third respondent, Committee of Management annexure-14 to the writ petition whereby the writ petitioner has been reverted and made admissible to the post of Lecturer as well as the order of the second respondent, District Inspector of Schools, Bulandshahr dated 21.6.2023 seeking to approve the suspension of the writ petitioner pursuant to the resolution dated 6.12.2022 of the Committee of Management which is per se legal and cannot be sustained under law for the simple reason that once as per the Committee of Management itself they had proceeded to pass an order dated 27.3.2023 reverting the writ petitioner from the post of Officiating Principal to Lecturer then the same pre-supposes the situation whereby suspension order comes to an end as the suspension order is passed for an interregnum period till the conclusion of the inquiry proceedings while passing of the punishment order.

Thus, the submission is that the order of the District Inspector of Schools dated 21.6.2023 proceeds on misconception of the fact. It is further submitted that so far as the issue of the validity of the meeting held on 6.12.2022 and the resolution passed therein this Court in the earlier spate of litigation in Writ Petition No.4077 of 2023, preferred by the writ petitioner Samita vs. State of U.P. and three others had summoned the original record on 23.3.2023 from the District Inspector of Schools, Bulandshahr and thereafter by virtue of final order/judgement dated 4.4.2023 had proceeded to record that the most crucial document being resolution dated 6.12.2022 which has been made the basis of placing the writ petitioner under suspension order was not on record.

It is that the submission of the learned counsel for the writ petitioner that the said document has been manufactured so as to put nail upon the claim of the writ petitioner. Apart from the same, learned counsel for the writ petitioner further submits that in view of the judgement in the case of Committee of Management Janta Inter College vs. State of U.P., Writ-A No.16536 of 2018 decided on 11.1.2019 under Section 21 of the Act No.5 of 1982 the Board is to accord approval then only punishment can be passed. However, in the present case, nothing is done and thus only said order is also illegal.

Sri Bheem Singh, who appears for the third respondent on the other hand submits that there is specific finding recorded in 108 of the paper book which happens to be order impugned wherein it has been asserted that due to certain omission the resolution dated 6.12.2022 was not placed before this Court but it is already in-existence and the nature of the charges leveled upon the writ petitioner itself cannot be a ground so as to permit him to continue in the institution in question are to be reverted. Learned Standing Counsel also support the arguments of the third

respondent.

At this very juncture, Sri Prabhakar Awasthi, made an oral prayer to delete the fourth respondent. He is granted permission to delete the fourth respondent.

Sri Bheem Singh as well as learned Standing Counsel shall obtain instructions and file affidavit by 20.7.2023.

Rejoinder affidavit shall be filed by 24.7.2023.

Since the parties themselves are represented before this Court, put up this Case as a fresh case on 25th July, 2023."

A Counter Affidavit has been filed by the learned Standing Counsel sworn by the District Inspector of Schools, Bulandshahr dated 22.07.2023 and also a counter affidavit has been filed by Sri Bheem Singh for the third respondent on 16.07.2023. Rejoinder affidavits have been filed by the petitioners, which are also available on record.

Sri Prabhakar Awasthi, learned counsel for the petitioner has argued that the order dated 21.06.2023 passed by the District Inspector of Schools, Bulandshahr is wholly unsustainable in the eyes of law, as it seeks to overlook the crucial aspects of the matter that once as per the stand of the Committee of Management in question, a proposal has been passed in the shape of order dated 27.03.2023 withholding the two increments and reverting the writ petitioner from the post of Officiating Principal to the Lecturer after concluding the disciplinary inquiry, then there is no occasion to have approved the suspension order, might be that the said order has not been approved by or disapproved by the Board under Section 21 of the U.P. Act no.5 of 1982.

In nutshell, the submission is that as per the principles enshrined in the Service Jurisprudence, the basic purpose for placing the delinquent under suspension is not only to eliminate the chances of any tampering by the delinquent in the inquiry proceeding, but also the nature of the charges. However, since the management has concluded the inquiry and a final order has been passed, though not approved or enforceable, then obviously in absence of any specific finding recorded in the said background, the order cannot be sustained.

Sri Awasthi, further submits that though the petitioner did not raise this ground specifically in golden words, but the District Inspector of Schools, who had passed the order dated 31.3.2023 disapproving the stand of the Committee of Management was also in custody of the said document, thus he ought to have applied its mind in order to give a prima facie opinion as to whether the suspension needs to be continued or not in that regard.

Sri Bheem Singh, who appears for the Committee of Management on the other hand submits that though the Committee of Management has concluded the inquiry and a specific stand has been taken in paragraph-40 of the affidavit by the Committee of Management, however, since the stand of the Committee of Management has not been affirmed by way of approval by the

Board, thus, it is merely a proposal. However, according to him, the said aspect also assumes significance and the matter be remitted back to the second respondent to accord fresh consideration upon the same within the time bound period.

Sri P.K. Shahi, learned Addl. Chief Standing Counsel, who appears for respondents 1 and 2 adopts the submissions of Sri Bheem Singh and according to him, he has nothing to add.

To the said submission, Sri Prabhakar Awasthi, learned counsel for the writ petitioner has no objection to the same and he submits that the matter be remitted back to District Inspector of Schools, Bulandshahar to accord fresh consideration.

Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed off in the following manner: (a) The order dated 21.06.2023 passed by the District Inspector of Schools, Bulandshahar is set aside; (b) parties, who are represented before this Court in the present proceedings shall appear before the District Inspector of Schools, Bulandshahr on 16.08.2023 along with their submission and records in writing; (c) On that date, the parties shall exchange their submissions; (d) Hearing be done on 18.08.2023; (e) Order be passed by the District Inspector of Schools, Bulandshahar by 25.08.2023.

With the aforesaid observations the writ petition stands disposed off.”

Post-remand, the matter came before the second respondent, District Inspector of Schools, who in turn proceeded to pass an order dated 26.08.2023 wherein in the operative portion, it was recorded as under: -

“Page- 58 ‘A’”.

The grievance of the writ petitioner is that despite the fact that the writ petitioner is to be accorded the benefits pertaining to the post of Officiating Principal, he is not being made entitled to the same.

Prayer in the present petition is for a mandamus directing the second respondent to attest the signature of the petitioner as Officiating Principal in terms of Section 18(2) of U.P. Act no.5 of 1982.

Learned counsel for the writ petitioner seeks to submit that in the earlier spell of litigation, the issue, which engaged the attention of the Court was relatable to the action of the Committee of Management as well as of the District Inspector of Schools, while passing an order dated 27.03.2023 by the Manager of the Committee of Management seeking to revert the writ petitioner to the post of Lecturer (Arts) as well as the order dated 21.06.2023

passed by the second respondent, District Inspector of Schools approving the suspension of the writ petitioner. However, the said acts and omissions of the respondents were not subscribed as rather to the contrary, once as per own showing of the Management in question that on 27.03.2023, there happens to be a punishment in the shape of withholding of increment and also reversion of the writ petitioner, then the District Inspector of Schools was not justified in approving the suspension of the writ petitioner. He further submits that the order dated 27.03.2023 withholding the two increments as well as reverting the writ petitioner from joining on Officiating Principal and Lecturer (Arts) was not even subscribed or endorsed by the District Inspector of Schools, Bulandshahr, as he, to the said extent, passed the order dated 31.03.2023, whereby the said proposal was turned down. He thus submits that once now an order has been sought to be passed on 26.08.2023 by the District Inspector of Schools, whereby it is being sought to be recorded that the suspension of the writ petitioner has ceased to exist and he is to be reinstated then the position, which was existing prior to the passing of the order dated 27.03.2023 is to be restored.

Sri Anil Mehrotra, assisted by Sri Srijan Mehrotra, learned counsel for the third respondent submits while inviting attention of the Court towards Page-57 of the paper book being the order dated 26.08.2023 of the District Inspector of Schools, Bulandshahr that there happens to be certain other aspects relating to the functioning of the writ petitioner, which even in fact disentitles him to officiate on the post in question.

Sri H.K. Shukla, learned Standing Counsel, who appears for the official respondents further submits that the issue as to whether the writ petitioner is to be entitled to benefit of attestation of the signature of Officiating Principal post passing of the order dated 26.08.2023 of the District Inspector of Schools, needs consideration by the the District Inspector of Schools, Bulandshahar. He thus submits that let the writ petitioner approach the second respondent, which shall take into aspect all the aforesaid issues and thereafter proceed to decide the claim of the matter.

A pointed query was raised to Sri Shukla as well as Sri Mehrotra as to whether they seek to file any response, to which they submitted that in case the writ petitioner approaches the second respondent, they have no objection and they do not propose to file any response.

To such a submission, learned counsel for the writ petitioner has no objection to the same and he gracefully accepts the same.

Considering the submission of the rival parties as well as the 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 approach the second respondent, District Inspector of Schools, Bulandshahar along with a comprehensive representation accompanied with self-attested copy of the writ petition, who shall, on the receipt of the same, thereafter proceed decide the claim of the writ petitioner after putting to notice the third and fourth respondents within a period of six weeks from the date of production of certified copy of the order bearing in mind the following fundamental and core issues: - (a) import and impact of the proposal of the order dated 27.03.2023 passed under the signature of the Manager of the third respondent-Institution; (b) the import and impact of the communication of the District Inspector of Schools, Bulandshahar dated 31.03.2023; (c) the issue with relation to passing of the order dated 26.08.2023 passed by the second respondent, District Inspector of Schools, Bulandshahar post-remand by virtue of the order dated 04.08.2023 in Writ-A No.10710 of 2023 with regard to the reinstatement of the writ petitioner with all consequential benefits; (d) any other ancillary or incidental issues connected with the same.

Needless to point out that the writ petitioner has been decided without seeking any response from the respondents, thus passing of this order may not be construed to an expression that this Court has adjudicated the matter on merits.

With the aforesaid observations the writ petition stands **disposed off**.

Order Date :- 16.10.2023

N.S.Rathour