

Court No. - 35

Case :- WRIT - A No. - 16864 of 2023

Petitioner :- Shyam Sundar Alias Shyam Sundar Chaturvedi

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

Counsel for Petitioner :- Arvind Kumar Srivastava, Archana Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

Heard Sri Arvind Kumar Srivastava, learned counsel for the petitioner as well as Sri P.K. Shahi, the learned Addl. Chief Standing Counsel, who appears for Respondents 1 and 2.

In view of the order, which is being proposed to be passed today, notices are not being issued to the 3rd and 4th respondents.

The writ petitioner herein claims to have retired on 31.12.2020 from the post of Assistant Clerk in Saraswati Vidya Mandir Inter College, Sikandra, Kanpur Dehat. According to the writ petitioner he has been paid entire post-retiral dues except the salary of Medical Leave for the period from 19.09.2016 to 23.09.2016, 23.02.2017 to 11.07.2017 and 03.03.2020 to 03.09.2020. Since the said payments were not being extended to the writ petitioner, he preferred Writ-A No.19240 of 2022, which came to be disposed of on 23.11.2022 while passing the following orders:

"1. Petitioner retired on the post of Assistant Clerk at Saraswati Vidya Mandir Inter College, Sikandra, Kanpur Dehat on 31.12.2020. While other dues have been paid out to the petitioner, the petitioner claims payment against following medical leave : (i) 19.09.2016 to 23.09.2016; (ii) 23.02.2017 to 11.07.2017 and; (iii) 03.03.2020 to 03.09.2020.

2. Primarily, the leave is to be granted by the Committee of Management. However, the matter has remained pending for very long. Unless that decision is made by the Committee of Management and/or the DIOS, no useful purpose may be served in keeping the present petition pending or calling for a counter affidavit, at this stage.

3. Accordingly, present writ petition is disposed of with a direction, in case the petitioner files a fresh representation before respondent no.2 within a period of two weeks from today supported by his personal affidavit annexing thereto such documents as the petitioner may seek to rely to establish he had applied for the aforesaid medical leave, in accordance with law, the said authority shall cause necessary enquiry to be made from respondent no.4 to ascertain the correct facts. If the facts claimed by the petitioner are true and the petitioner found entitled to medical leave, the DIOS, Kanpur Dehat shall

ensure that the application for medical leave filed by the petitioner are processed by the Committee of Management and forwarded to him within a period of one month from the date of compliance shown by the petitioner.

4. In case, the Committee of Management fails or unable to verify the facts asserted by the petitioner, the DIOS may then pass a reasoned and speaking order within a further period of one month therefrom. If the claim made by the petitioner is to be rejected, adequate reasons for the same may be communicated to the petitioner within the same time.

5. Any amount found admittedly payable, be paid out to the petitioner within a further period of one month."

Now the second respondent, District Inspector of Schools, Kanpur Dehat has proceeded to pass order dated 28.07.2023 whereby in the wake of the facts that the medical certificate so submitted by the writ petitioner for taking the medical leave was not countersigned and verified by the Chief Medical Officer, thus the writ petitioner was not entitled to the said benefit.

Questioning the said order, the writ petitioner has preferred the present writ petition. This Court entertained the writ petition on 16.10.2023 while passing the following order:

"Since a writ of certiorari is being sought for quashing of the order of the District Inspector of Schools, Kanpur Dehat seeking to provide arrears of salary for medical and earned leave and the claim of the writ petitioner has been turned down on the premise that the then Manager has sent the documents for verification to the CMO but the CMO has not verified the same and the correspondences have been made by the wife of the writ petitioner and not by the writ petitioner. Learned counsel for the writ petitioner submits that for any fault of the CMO the writ petitioner cannot be made responsible and further the writ petitioner was under medical illness pursuant where to his wife made correspondences, thus, the writ petitioner is entitled to relief.

Sri Saurabh, learned Standing Counsel who appears for respondents No. 1 and 2.

Issue notice to respondents No. 3 and 4.

All the respondents may filed their response.

Counter affidavit be filed by 08.11.2023, rejoinder by 16.11.2023.

Affidavit of service to be filed before the next date fixed.

Put up this case as fresh on 17.11.2023."

Learned counsel for the writ petitioner submits that once he has availed the medical leaves and he has also submitted the medical

certificates showing the fact that he was ill during the said period, then for the purposes of verification, the issue would be between the District Inspector of Schools, Kanpur Dehat, second respondent and the Principal/ Committee of Management of the Institution in question. He also submits that in the writ petition itself he has appended the medical certificate.

Sri P.K. Shahi, learned Addl. Chief Standing Counsel on the other hand submits that there are certain other issues which would also come into play in that regard. He submits that let the writ petitioner approach the second respondent, District Inspector of Schools, Kanpur Dehat along with the medical certificate, which he claims to be possessing and thereafter the second respondent, District Inspector of Schools, shall make necessary correspondences with the third and fourth respondents and also get the medical certificate verified from concerned Chief Medical Officer in that regard and thereafter proceed to pass the order. He also made a statement that he was accorded time twice on 16.10.2023 and 24.11.2023 with a clear stipulation that no more time will be accorded to him to seek instructions/ file reply, in view of the order, he does not propose to file any response.

Having considered the submission of the rival parties including the fact that the notices were issued to the third and fourth respondents, pursuant to the order dated 16.10.2023, and there is a service report dated 16.11.2023 that the delivery upon the third and fourth respondents stands confirmed, thus the writ petition is being disposed of in the following manner:

(a) The writ petitioner shall approach the District Inspector of Schools, Kanpur Dehat, second respondent by 15.12.2023 along with the medical certificate and self attested copy of the writ petition; (b) The District Inspector of Schools, Kanpur Dehat, second respondent shall whereupon make necessary correspondence with the third and fourth respondents and also get the medical certificate of the writ petitioner verified from the concerned Chief Medical Officer and thereafter proceed to pass a fresh order strictly in accordance with law with the independent application of mind within a period of two months thereafter taking into account all the issues which would arise.

The order dated 28.07.2023 passed by the second respondent, District Inspector of Schools, Kanpur Dehat shall abide by the final orders to be passed thereon.

In case, there is any other dues, which remain pending and

admissible to the writ petitioner, it is open for the writ petitioner to claim the same.

With the aforesaid observations, the writ petition is **disposed of**.

Order Date :- 7.12.2023

N.S.Rathour