

Court No. - 35

Case :- WRIT - A No. - 16008 of 2023

Petitioner :- Principal ,Arya Kanya Inter College

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

Counsel for Petitioner :- Siddharth Khare,Sr. Advocate

Counsel for Respondent :- C.S.C.,Prasoon Tomar

Hon'ble Vikas Budhwar,J.

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Jigar Khare, learned counsel for the writ petitioner, Sri Shailendra Singh, learned Standing Counsel who appears for respondents No. 1 to 4 and Sri Jitendra Kumar (AOR A/J 0172/12) holding brief of Sri Prasoon Tomar, learned counsel who appears for respondent No. 5.

2. The case of the writ petitioner is that he happens to be the Principal of Arya Kanya Inter College, Najibabad, District Bijnor which is a recognized institution under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No. 24 of 1971 stand applicable.

3. As per the writ petitioner, the fifth respondent, Radhey Shyam S/o Babu Ram owing to certain acts and omissions was placed under suspension on 20.04.2022. A charge-sheet is stated to have been served upon him containing certain charges on 05.05.2022 and inquiry report was also submitted by the Inquiry Officer dated 21.05.2022 and on the basis of the reference being made by the fifth respondent the matter engaged attention before the District Inspector of Schools, Bijnor, third respondent who proceeded to disapprove the suspension of the writ petitioner by virtue of the order dated 28.08.2023.

4. Questioning the said order the writ petitioner has filed the present writ petition.

5. Sri Ashok Khare, learned Senior Counsel assisted by Sri Jigar Khare, learned counsel for the writ petitioner submits that the order dated 28.08.2023 passed by the third respondent, District Inspector of Schools, Bijnor cannot be sustained for a single moment particularly in view of the fact that it suffers from fundamental errors which would vitiate the order in question.

6. Elaborating the said submission, he has sought to submit that

under the provisions of Section 16G read with Regulation 39 of Chapter III of the U.P. Intermediate Education Act, 1921, the District Inspector of Schools, Bijnor has to undertake an exercise either to approve or disapprove the suspension which obviously takes within its ambit the recording of prima facie opinion as to whether the suspension of the delinquent is to continue or not. He, thus, submits that in the present case in hand though the inquiry report of the Inquiry Officer post service of the charge sheet was before the District Inspector of Schools, Bijnor, however, he himself appointed an Inquiry Officer and on the basis of the inquiry report dated 23.04.2023 came to a conclusion that there was no case for placing the fifth respondent under suspension, he while inviting the attention of the Court towards paragraphs No. 27 and 28 has sought to submit that the said inquiry report of the Principal, Government Intermediate College dated 23.04.2023 is an ex parte inquiry report and the writ petitioner would know about factum of the said inquiry report being pressed into service to negate the claim of the writ petitioner when the order impugned was passed, according to him there was no such power available to the District Inspector of Schools, Bijnor to undertake the said exercise as, in case, the District Inspector of Schools, Bijnor on the basis of the records was of the opinion that the matter was not of approval then he ought to have disapproved the same. He further submits that so far as the issue with regard to non-payment of subsistence allowance is concerned at best a direction ought to have been issued for payment of subsistence allowance and particularly when the inquiry report was submitted then these factors would not be fatal to the case of the writ petitioner. He, thus, submits that there is no prima facie opinion recorded with regard to the gravity of charge which was an essential requirement either to approve or disapprove the suspension.

7. Sri Jitendra Kumar holding brief of Sri Prasoon Tomar, learned counsel who appears for respondent No. 5 submits that this is a classic case of victimization of the fifth respondent particularly when all sorts of attempts have been made to throttle the claim of the writ petitioner was being promoted as class III employee despite the fact that the fifth respondent is eligible and qualified and comes within the zone of consideration. He submits that the District Inspector of Schools, Bijnor on umpteen occasions had required the exercise to be undertaken considering the claim of the fifth respondent but the same was being ignored at each and every point of time. He further submits that even from the sequence of the events it is clear that the fifth respondent was placed under suspension on 20.04.2022, however, the papers pertaining to

approval was sent for by the Committee of Management on 12.12.2022 and the fifth respondent is not even allowed to work and not being paid subsistence allowance particularly when after lapsing of 60 days the suspension became enforceable.

8. Sri Shailendra Singh, learned Standing Counsel has adopted the submission of learned counsel for respondent No. 5, however, he gracefully submits that the crucial issues which ought to have been considered while taking decision either to approve or disapprove the suspension have not been adverted to.

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

10. Undisputedly, the writ petitioner was placed under suspension on 20.04.2022 followed by a charge sheet dated 05.05.2022 and as per the stand of the writ petitioner an inquiry report was submitted on 21.05.2022. Though, at this stage, it would not be appropriate for this Court to address upon the inquiry which was conducted though according to Sri Singh, the inquiry had been conducted without fixing date, time and venue. This Court further finds that the District Inspector of Schools, Bijnor has proceeded to rely upon the inquiry report of the Principal, Government Intermediate College dated 23.04.2023 in paras 27 and 28 of the writ petition it is the stand of the writ petitioner that neither the writ petitioner being the appointing authority was associated in the said inquiry nor the copy of the inquiry report was served, however, the same became the basis of passing the order and he could gather knowledge when the order has been passed. This Court further finds that while approving or disapproving the suspension of a delinquent, the District Inspector of Schools, Bijnor is under obligation to accord prima facie finding as to whether the charges are so grave so as to continue with the suspension though detailed inquiry in the matter is not required in that regard. Though another question arises that as to whether the District Inspector of Schools, Bijnor could have initiated a process while appointing an Inquiry Officer to conduct the inquiry. These issues also needs consideration, however, in the facts and circumstances of the case particularly when the copy of the said inquiry report has not been served to the writ petitioner as apparent from the order impugned this Court finds that the order in question cannot be sustained and the same is liable to be set aside.

11. Accordingly, the writ petition is decide on the following terms:

(a) the order dated 28.08.2023 passed by the District Inspector of

Schools, Bijnor, third respondent is set aside;

(b) the matter stands remitted back to the third respondent to decide the matter afresh;

(c) on 29.11.2023 the writ petitioner and the fifth respondent shall appear before the third respondent;

(d) on that date, the writ petitioner and the fifth respondent shall submit their version and be exchanged;

(e) the copy of the documents as required by the respective parties shall be served upon them;

(f) a date shall be fixed in the second week of December, 2023 for hearing;

(g) orders be passed by 21 December, 2023;

12. Since, according to the fifth respondent he has been paid subsistence allowance for only two or three months and not for the rest of the period, then the third respondent shall verify the records and thereafter make an endeavour directing the writ petitioner to pay the subsistence allowance as per rules. The third respondent shall decide the matter within the time stipulated by this Court bearing in mind the fundamental and core issues;

(i) prima facie opinion on the gravity of the charges in the matter of continuance of the suspension of the fifth respondent;

(ii) the import and the impact of non-payment of subsistence allowance as per the rules and the prejudice so claimed by the writ petitioner.

13. With the aforesaid observations, the writ petition is partly allowed.

14. At this stage, Sri Jitendra Singh holding brief of Sri Prasoon Tomar, learned counsel who appears for respondent No. 5 submits that the writ petitioner may not be allowed to work, suffice it to say that joining of the writ petitioner, payment of full salary shall be subject to the order passed by the third respondent, District Inspector of Schools, Bijnor.

Order Date :- 8.11.2023

Rajesh