

Court No. - 35

Case :- WRIT - A No. - 16019 of 2023

Petitioner :- C/M Adarsh Inter College And Another

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

Counsel for Petitioner :- Arvind Srivastava III

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri Arvind Srivastava, learned counsel for the petitioners, who are two in number, and Sri P.K. Shahi, the learned Addl. Chief Standing Counsel, who appears for Respondent nos. 1 to 4.

This Court while entertaining the writ petition on 19.10.2023 sought for response and issued notices to the fifth respondent Sri Kanwar Pal Singh, Principal, Adarsh Inter College, Badgaon, Saharanpur. Office report depicts that notices were issued on 26.10.2023 and 21.11.2023. As per the office report, delivery upon the fifth respondent is confirmed.

Till the dictation of the order, nobody has put in appearance, thus this Court is deeming service upon the fifth respondent to be sufficient.

The case of the writ petitioner is that it is an institution recognized under the provisions of U.P. Intermediate Education Act, 1921, and the provisions of U.P. Act No.24 of 1971 and U.P. Act No.5 of 1982 are applicable. It is also the case of the writ petitioner that the fifth respondent was appointed as a Principal in the petitioner-Institution initially on probation period. However, according to the writ petitioner, the conduct of the fifth respondent was unbecoming of a Principal, as he used to indulge in illegal gratification in the form of fees. Complaint was lodged to the petitioner Committee of Management pursuant whereunto, after putting the fifth respondent to notice, the explanation was sought, and ultimately, he was placed under suspension on 10.07.2023 pursuant to the resolution of the Committee of Management. A charge sheet is stated to have been issued imputing 6 charges on 10.07.2023. According to the writ petitioners, the papers with regard to the approval of the suspension of the fifth respondent was transmitted to the fourth respondent, District Inspector of Schools, Saharanpur on 04.08.2023. Notices were issued by the District Inspector of Schools, Saharanpur, fourth respondent, to which the writ petitioners claim to have submitted their reply.

However, according to the writ petitioner in the meantime, the Enquiry Officer was appointed, who tendered his enquiry report before the Committee of Management on 19.08.2023 and after issuing a show cause notice, to the fifth respondent, a resolution is stated to have been passed by the Committee of Management on 27.08.2023 for dispensing of the services of the fifth respondent and the said communication was made along with papers while transmitting it to the District Inspector of Schools, Saharanpur, fourth respondent on 28.08.2023. However, now two orders have been passed; first dated 28.08.2023, whereby the suspension has been disapproved by the fourth respondent, District Inspector of Schools, Saharanpur, on the pretext that the same is not in conformity and in consonance with Section 16G of the U.P. Intermediate Education Act, 1921 and the second order dated 01.09.2023 passed by the District Inspector of Schools, Saharanpur, fourth respondent, even in fact denudes itself for according approval / disapproval upon the resolution of the Committee of Management for dispensation of the services of the writ petitioners.

Questioning both the orders, the writ petitioners have filed the present writ petition, in which on 19.10.2023, the following orders have been passed:

"The contention of the learned counsel for the writ petitioner is that the order dated 28.08.2023 passed by the District Inspector of Schools, Saharanpur insofar as it seeks to disapprove the suspension of the fifth respondent is illegal as no prima facie opinion has been accorded in disapproving the suspension as to how and why the suspension of the writ petitioner may not be continued and further while challenging the order dated 01.09.2023 the proposal sent by the Committee of Management for punishment has been returned back by the District Inspector of Schools, Saharanpur on the premise that since the writ petitioner has been reinstated in service pursuant to the revocation of the suspension, thus, there is no need to approve the said proposal.

Since a writ of certiorari has been sought and the fifth respondent has not represented in the Court.

Sri Gaya Prasad Singh, learned Standing Counsel who appears for respondents No. 1 to 4.

Issue notice to fifth respondent.

Steps be taken by 26.10.2023.

Affidavit of service be filed.

Counter affidavit be filed by the official respondents and the noticee by

17.11.2023, rejoinder by 21.11.2023.

Put up this case on 22.11.2023 as fresh."

Post passing of the said order, notices were issued to the fifth respondent, but the fifth respondent has not chosen to appear before this Court.

Sri P.K. Shahi, learned Addl. Chief Standing Counsel submits that though he could not file counter affidavit, however, according to him, the matter may be decided in the absence of the counter affidavit, in view of the order which is proposed to be passed.

Sri Arvind Srivastava-III, learned counsel for the writ petitioner submits that so far as the order dated 28.08.2023 passed by the fourth respondent, District Inspector of Schools, Saharanpur is concerned, the same is not only non-speaking, unreasoned but cryptic, as though reliance has been placed upon provisions contained under Section 16G(6), but there is no recital as to why and under what circumstances, the proposal of the suspension is not to be approved, particularly when the fifth respondent, is facing grave and serious charges and there happens to be a charge sheet in that regard. He further submits that at least proprietary demanded that the fourth respondent ought to have applied its mind while according prima facie opinion, whether the suspension is to be continued or not in view of the various judgments of this Court. So far as the order dated 01.09.2023 passed by the fifth respondent, District Inspector of Schools, Saharanpur while attacking the same, the learned counsel for the writ petitioner submits that merely because the fifth respondent has been reinstated, as there was no order passed on approval of the suspension of the services of the fifth respondent would not be in any manner whatsoever be a ground not to consider the proposal of the Committee of management for either approving or disapproving the dispensation of the services of the writ petitioner. He submits that the suspension and punishment are two different aspects of the matter and thus the order impugned cannot be sustained.

Sri P.K. Shahi, learned Addl. Chief Standing Counsel, who appears for the State respondents submits that the District Inspector of Schools, Saharanpur has not adverted to the issues on a correct perspective and direction. He submits that matter needs reconsideration, as the order disapproving the suspension is a cryptic and a non-speaking order, as whereas the order whereby the District Inspector of Schools, Saharanpur has denuded itself

from considering the proposal for dispensation of the services is untenable in the eyes of law. He submits that the orders be set aside and the matter be remitted back to the authority to pass a fresh order.

Considering the submission of the rival parties as well as the stand taken by them, coupled with the fact that the orders in question proceed in wrong direction and perspective and they are totally non-speaking, unreasoned and cryptic, same cannot be sustained in law. Consequently, the writ petition is being decided in the following manner: - (a) The orders dated 28.08.2023 and 01.09.2023 stand quashed; (b) matter stands remitted back to the District Inspector of Schools, Saharanpur to decide afresh after fixing a date in the second week of December 2023 putting to notice the writ petitioner as well as the fifth respondent and seeking their versions and thereafter fix a date for hearing in the third weeks of December 2023; and (c) orders be passed by 27.12.2023, strictly accordance with law.

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

Order Date :- 22.11.2023

N.S.Rathour