

Court No. - 35

Case :- WRIT - A No. - 16215 of 2023

Petitioner :- Smt. Arundhati

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

Counsel for Petitioner :- Sanjeev Singh, Ram Pyare

Counsel for Respondent :- C.S.C., Jitendra Singh Yadav, Vijay Kumar Tiwari

Hon'ble Vikas Budhwar, J.

1. Heard Shri Sanjeev Singh alongwith Shri Ram Pyare, learned counsel for the writ petitioner, Shri Gaya Prasad Singh, learned Standing Counsel for the respondent nos.1 to 4.
2. On the oral request of Shri Sanjeev Singh, learned counsel for the petitioner, he is permitted to add 'Assistant Director of Education (Basic), Gorakhpur, Basti Division, District Gorakhpur' as respondent no.7.
3. A statement has been made by Shri Vijay Kumar Tiwari and Shri Jitendra Singh Yadav, Advocate that they have filed their *Vakalatnama* on behalf of the respondent no.5.
4. The same is also verifiable from the case status of the High Court.
5. Office to trace out the same and place it on record.
6. In view of the order, which is being proposed to be passed, notice is not being issued to respondent no.6.
7. The case of the writ petitioner is that the respondent no.5 i.e. Prahladrai Banarasilal Balika Inter College, Khalilabad, District Sant Kabir Nagar 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 U.P. Act No.24 of 1971 are applicable.

8. The case of the writ petitioner is that she, pursuant to the regular selections held by Uttar Pradesh Secondary Education Service Selection Commission, joined the institution on the post of Lecturer in Sociology in the institution in question on 31.07.2006 and owing to her seniority, she was made an *ad-hoc* Principal since 01.07.2014. With respect to the approval of her suspension by the District Inspector of Schools, Sant Kabir Nagar, the writ petitioner preferred writ petition bearing Writ -A No.6873 of 2020 came to be allowed on 07.09.2020 permitting her to continue on the post in question. Contempt proceedings were also drawn by the writ petitioner for compliance of the order, pursuant to the order, the suspension of the writ petitioner was disapproved by the District Inspector of Schools, Sant Kabir Nagar on 18.03.2021.

9. According to the learned counsel for the writ petitioner not only the Committee of Management of the institution in question but others were instrumental in lodging all sorts of false complaints with respect to the working of the writ petitioner as In-charge of mid-day-meal program. A complaint is stated to have been preferred by the manager of the institution to the District Magistrate, Sant Kabir Nagar on 31.12.2022. Thereafter the matter was sent the Assistant Director of Education (Basic), Gorakhpur Mandal, Gorakhpur/Basti, who in fact transmitted the papers on 11.01.2023 to the respondent no.4 i.e. District Basic Education Officer/Nodal Officer, Mid-day-meal, Sant Kabir Nagar to seek inputs while fixing the date on 19.01.2023. In para 16 of the writ petition, it is further asserted that the matter is still engaging attention before the said authority, as no final orders have been passed, though the writ petitioner claims to have represented his case before the said authority on 19.01.2023.

10. It is the case of the writ petitioner that again a complaint was lodged on 20.09.2022 before the Block Education Officer, Khalilabad, Sant Kabir Nagar. Thereafter, series of complaints were lodged and an order has been passed on 19.08.2023 by the respondent no.4 i.e. District Basic Education Officer/Nodal Officer, Mid-day-meal, Sant Kabir Nagar, whereby the writ petitioner has been stripped off to perform her duties as officiating Principal with respect to the works assigned her under the project of mid-day-meal on premise that an inspection was conducted on 18.01.2023 and various short-comings were noticed and further reliance has been placed upon the enquiry report dated 20.08.2022.

11. Questioning the order dated 19.08.2023 passed by the respondent no.4 as well as the consequential orders dated 21.08.2023 and 13.09.2023 of the respondent nos.3 and 5, the writ petitioner has filed the present writ petition.

12. Shri Sanjeev Singh, learned counsel for the petitioner while assailing the said orders has sought to submit that first of all the orders in question are in violation of the principles of natural justice as the writ petitioner was not heard before passing of the said orders as in this regard, he seeks to rely upon para 28 of the writ petition. He further submits that once the complaint was lodged by the respondent no.5 i.e. institution in question, the proceedings were drawn and the matter was engaging attention before the Assistant Director of Education (Basic), Gorakhpur Mandal, Gorakhpur/Basti and a communication has been made on 11.01.2023 for providing inputs then there was no occasion for the respondent no.4, who happens to be lower in hierarchy to have intervened and passed such orders that too in violation of principles of natural justice. He further submits that the order in

question cannot be sustained particularly when law does not contemplate two simultaneous parallel proceedings on the same issue. According to the learned counsel for the writ petitioner there happens to be a bitter pitched confrontation going on between the writ petitioner and the Committee of Management. He, thus, submits that there was no occasion to have divested the writ petitioner from the charge of mid-day-meal.

13. Shri Vijay Kumar Tiwari alongwith Shri Jitendra Singh Yadav, learned counsel for the respondent no.5 on the other hand submit that there are serious allegations including of irregularity, which goes to the root of the matter and according to them, even at the time of the inspection also, it was found that the writ petitioner was not present and the documents was also not provided in that regard. They submit that this Court might not intervene in the said issue at the motion of the writ petitioner particularly when her officiation as Principal of the institution is not touched with.

14. Shri Gaya Prasad Singh, learned Standing Counsel for the respondent nos.1 to 4 has adopted the submissions of the counsels for the respondent no.5.

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

16. It is apparent from the record that the proceedings have been drawn by the respondent no.7 requiring the respondent no.4 to furnish inputs while fixing the date as 19.01.2023 for hearing. However, as per the writ petitioner as encapsuled in para 16 that no decision whatsoever has been taken in this regard, thus prima-facie the opinion of this Court is that the matter needs to be decided by the respondent no.7. More so, this Court further finds

that the order in question, which is impugned in the writ petition, also does not show that the writ petitioner was put to notice.

17. However, at this stage, Shri Vijay Kumar Tiwari as well as Shri Jitendra Singh Yadav, learned counsel for the respondent no.5 and Shri Gaya Prasad Singh, learned Standing Counsel for the respondent nos.1 to 4 submit that be that as it may be, the writ petitioner may approach before the respondent no.7 and the findings recorded in the order dated 19.08.2023 of the respondent no.4 may not be treated to be the final but it may be provisional subject to the final orders to be passed by the respondent no.7, who is in fact higher in rank and in hierarchy.

18. To such submission, Shri Sanjeev Singh alongwith Shri Ram Pyare, learned counsel for the writ petitioner have no objection. However, their anxiety is that the said findings recorded in the said order may not be treated to be a gospel truth so as to block the avenues and benefits of the writ petitioner. They submit that if final decision be taken by the respondent no.7 in that regard then it should be time bound and shall once for all be decided strictly in accordance with law.

19. Considering the submissions of the rival parties as well as the stand taken by them and also bearing in mind that the matter as per the writ petitioner is engaging attention before the respondent no.7 and the order dated 19.08.2023 passed by the respondent no.4 is in violation of principles of natural justice, the writ petition being **disposed of** by granting liberty to the writ petitioner to approach the respondent no.7 and in case, the writ petitioner approaches the respondent no.7, then respondent no.7 shall put to notice to respondent nos.5 and 6 and thereafter proceed to decide the claim of the writ petitioner within three weeks therefrom looking into the

issue on each and every aspects.

20. Needless to points out that the order dated 19.08.2023 and the consequential orders would not come in the way for disposal of the claim of writ petitioner and the same shall abide by the final orders to be passed by the respondent no.7.

Order Date :- 31.10.2023/Zafar