

Court No. - 35

Case :- WRIT - A No. - 16285 of 2023

Petitioner :- Smt Kamini Pal

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Jigar Khare, learned counsel for the writ petitioner as well as Sri Saurabh, learned Standing Counsel who appears for respondents No. 1 to 3.

2. On a pointed query being raised to Sri Saurabh, learned Standing Counsel who appears for State respondent as to whether he proposes to file any response, he submits that he is armed with the instructions dated 10.10.2023 so he does not propose to file any response, thus, with the consent of the parties, the writ petition is being decided at fresh stage.

3. The case of the writ petitioner is that pursuant to the recommendation of the U.P. Public Service Commission the writ petitioner was appointed as Lecturer in Physics on 22.11.2010. As per the writ petitioner she is posted in Government Girls Inter College, Pukhraya, District Kanpur Dehat since 24.06.2019.

4. In para 5 of the writ petitioner, it is further asserted that the writ petitioner had been made the Officiating Principal of the Government Girls Inter College, Pukhraya, District Kanpur Dehat and she is functioning since 27.07.2022. It is the case of the writ petitioner that on 18.09.2023 the Additional Director of Education (Rajkiya) proceeded to pass an order placing the writ petitioner under suspension on the premise that there was certain complaints pursuant to the preliminary inquiry it was found that the writ petitioner was indulged in irregularity pertaining to the Mid-day Meal as the writ petitioner used to sell the food grains depriving the genuine and needy students and also misappropriated and misutilized the students' funds and the same stood proved also. Accordingly, proceedings purported to be under Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 was initiated and the writ petitioner was placed under suspension.

5. Questioning the order dated 18.09.2023 passed by the second respondent, the writ petitioner has filed the present writ petition. The matter was taken up on 06.10.2023 wherein this Court proceeded to pass the following order.-

"1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Siddharth Khare, learned counsel for the petitioner and Sri Santosh Kumar, learned Standing Counsel who appears for the State.

2. The submission of learned Senior Counsel who appears for the writ petitioner is that the suspension order dated 18.9.2023 seeking to suspend the writ petitioner is based upon the certain inputs which have not been forwarded to the writ petitioner. He has made reference in para 29 of the writ petition.

3. Sri Santosh Kumar, learned Standing Counsel shall obtain instructions before the next date fixed placing before this Court the inputs which were the basis of suspending the writ petitioner.

4. On his request, put up this case on 13th October, 2023 as fresh."

6. Subsequently, on 13.10.2023 when the matter was again taken up then the instructions under the signature of the District Inspector of Schools, Kanpur Dehat dated 10.10.2023 was forwarded to the Court a copy whereof was also directed to be served upon the learned counsel appearing for the writ petitioner.

7. On 13.10.2023 this Court proceeded to pass the following orders.-

"Copy of the instructions filed today by the learned Addl. Chief Standing Counsel in pursuance of the order dated 06.10.2023 is taken on record.

On the request of Sri Khare, learned Senior Counsel, the matter is passed over for the day.

Put up this case on 18.10.2023 as fresh.

A copy of the instructions has been handed over Sri Khare during the course of the day. "

8. Sri Ashok Khare, learned Senior Counsel appearing for the writ petitioner while assailing the suspension order dated 18.09.2023 passed by the second respondent has sought to submit that from the perusal of the instructions so provided therein dated 10.10.2023 it appears that Annexure 7 at page 12 of the instructions is a charge sheet issued to the writ petitioner dated 03.10.2023 which pertains to four allegations in that regard, he further submits that the said allegations contained in the charge

sheet are totally foreign and different from what has been made the basis to put the writ petitioner under suspension. He submits that so far as the charge No. 1 is concerned the same pertains to the conduct and the performance of the writ petitioner during the period when the evaluation was conducted in the centre and followed by creating obstacles in conduction of the inquiry which was proposed to be made further followed by the fact that despite the writ petitioner was directed to improve her services and mend herself she did not do so and also she was not working as per the expectation and the rules in this regard.

9. The submission is that the said charges are not only completely different but the same also does not constitute a ground for placing the writ petitioner under suspension particularly when the said charges would not warrant imposition of the major penalty so as to place the writ petitioner under suspension.

10. Sri Saurabh, learned Standing Counsel who appears for the respondents submits that once a charge sheet has been issued containing the charges then the writ petitioner should submit its reply to the same pleading her innocence. He further submits that the present case is not a case wherein the order of suspension can be interfered thereto as the same pertains to grave and serious allegations.

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

12. Prima facie, the Court finds that the allegations contained in the suspension order are completely different from what has been mentioned in the charge sheet and in the present case in hand the Court cannot at the stage of challenge made to the suspension comment upon the merits of the charges. However, looking into the fact that a charge sheet has been issued containing different charges from what has been mentioned in the suspension order and as per the learned Standing Counsel there is no other additional or supplementary charge sheet issued with respect to the allegations contained in the suspension order, thus, this Court at this stage finds that the suspension order has been proceeded on the basis of certain allegations which are not to be put to investigation/inquiry by the disciplinary authority.

13. Accordingly, in the facts and circumstances of the case, the suspension order dated 18.09.2023 is set aside leaving it open for the second respondent to pass appropriate fresh orders, if they so choose.

14. However, passing of the order today may not be construed to be an expression that this Court has forestalled the holding of the inquiry. The writ petitioner shall cooperate with the inquiry and the said inquiry is to be concluded within a period of two months from the date of production of certified copy of the order.

15. With the aforesaid observation, the writ petition stands disposed of.

Order Date :- 18.10.2023

Rajesh