

Court No. - 35

Case :- WRIT - A No. - 16304 of 2023

Petitioner :- C/M Gandhi Vidya Niketan Degree College And Another

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

Counsel for Petitioner :- Jayant Prakash Singh, Sr. Advocate

Counsel for Respondent :- CSC, Prateek Rai

Hon'ble Vikas Budhwar, J.

Heard Sri H.N. Singh, learned Senior Counsel assisted by Sri Jayant Prakash Singh, learned counsel for the writ petitioner, Sri P.K. Shahi, learned Addl. Chief Standing Counsel for the Respondent Nos. 1 and 2 as well as Sri Prateek Rai who appears for Respondent Nos. 3 to 5.

In view of the order, which is being proposed to be passed today, notices are not being issued to the sixth respondent.

Questioning the order dated 20.07.2023 passed by the Vice-Chancellor, Chaudhary Charan Singh University, Meerut, third respondent seeking to stay the suspension of the sixth respondent by the petitioner-Committee of Management, the writ petitioner herein preferred Writ-A no.12556 of 2023, wherein besides the ground that the order in question was in violation of principles of natural justice, it was also argued that the Vice-Chancellor, Chaudhary Charan Singh University, Meerut had no authority to constitute a committee to probe into the said aspects of the matter, particularly when the Vice-Chancellor performs essential functions.

The said writ petition on being entertained came to be disposed of by this Court on 09.08.2023 while passing following orders:

“1. Heard Sri H.N. Singh learned Senior Counsel assisted by Sri Jayant Prakash Singh learned counsel for the writ petitioners who are two in number, Sri Santosh Kumar, learned Standing Counsel who appears for respondents No. 1, 2 and 5, Sri Avneesh Tripathi, learned counsel who appears for respondents No. 3 and 4 and Sri R.K. Ojha learned Senior Counsel assisted by Sri Gautam Baghel, learned counsel who appears for the sixth respondent.

2. The case of the writ petitioners as worded in the writ petition is that the petitioner No. 1, Gandhi Vidya Niketan Degree College, Budhpur Ramala, District Baghpat is a Government aided degree college run by a Committee of Management and there is one sanctioned post of Principal amongst other staff. It is further the case of the writ petitioners that in the year 2021 the U.P.

Higher Education Service Selection Board proposed the appointment of the sixth respondent, Sri Om Veer Singh Thenua on the post of Principal and accordingly, an appointment order was issued on 25.10.2021. It is also the case of the writ petitioners that the respondent No. 6 committed certain acts and omissions which were unbecoming of the Principal of the institution in question on account whereof the probation period was extended from 09.11.2022 to 09.11.2023 by virtue of the proposal dated 02.11.2022 and order dated 03.11.2022. As there were serious complaints regarding acts and omissions committed by the sixth respondent so a five member committee was constituted by the petitioner Committee of Management by virtue of the order dated 03.11.2022 and as per the stand of the writ petitioners the sixth respondent tendered unconditional apology that he would not commit such mistakes in future. It is further the case that the said acts and omissions were repeated and, thus, complaints were also made. In para 11 of the writ petition it is asserted that the petitioner Committee of Management appointed an inquiry committee to conduct inquiry against the criminal incidence and other complaints headed by Dr. Vikas Sharma, Professor/Head of the Department of English Chaudhary Charan Singh University Campus, Meerut on 08.06.2023. As per the writ petitioners a fact finding inquiry was conducted by the Committee which tendered its report on 08.07.2023 before the Committee of Management of the institution pursuant where to on 15.07.2023 the sixth respondent was placed under suspension. The charge of the Principal was handed over to the Senior Most Professor Dr. Sunil Kumar on 17.07.2023 and the matter being reported to the third respondent, Vice Chancellor, Chaudhary Charan Singh University, Meerut and inquiry committee of was constituted to inquire the matter of the headship in that regard. It is further the case of the writ petitioners that on 20.07.2023 the second respondent proceeded to pass an order whereby it stayed the effect and operation of the order dated 15.07.2023 passed by the Secretary of the Committee of Management Gandhi Vidya Niketan Degree College placing the sixth respondent under suspension the order impugned also recites that the petitioner Committee of Management was directed to explain the reasons and the circumstances to suspend the sixth respondent before a Committee comprising of three members.

3. Question the order dated 15.07.2023 passed by the third respondent, the writ petitioners have filed the present writ petition with a further prayer that a direction be issued to the third respondent, Vice Chancellor, Chaudhary Charan Singh University, Meerut to initiate a high level inquiry regarding misappropriation/embezzlement of huge Government fund of 1.50/- crores levelled upon the sixth respondent.

4. This Court on 02.08.2023 entertained the writ petition while passing the following order:-

"H.N. Singh learned Senior Counsel assisted by Sri J.P. Singh learned counsel for the writ petitioners submits that the order dated 20.07.2023 passed by the third respondent, Vice Chancellor, Chaudhary Charan Singh University, Meerut is in excess of jurisdiction particularly in view of the fact that for the purposes of placing the teaching/non-teaching staff under suspension, the committee of management is to accord its satisfaction prima facie that the charges are grave enough for imposition of the major penalty and here, in the present case a preliminary inquiry was conducted no doubt

not happily worded but by virtue of the order impugned not only without hearing the writ petitioner, committee of Management the suspension order has been stayed but also directions have been issued forming a committee for the purposes of seeking explanation and consideration of the same as to why the Management placed the sixth respondent under suspension.

Sri Singh has relied upon the provisions contained under sub-section (4) of Section 35 read with Section 13A of U.P. State Universities Act, 1973 so as to contend that though the power vested with the Vice Chancellor to stay, revoke or modify the orders passed by the committee of management but the said power is to be exercised within the four corners of law and in the guise of the said powers, such type of directions which are reflected in the impugned order could not have been issued.

Sri Avneesh Tripathi, who appears for the University submits that once the power vests with the Vice Chancellor to stay, revoke or modify the order of the committee of management then no exception can be drawn and further the illegalities at the end of the Committee of Management is writ large from the fact that on the basis of a totally non-speaking and un-reasoned preliminary inquiry report, the sixth respondent has been placed under suspension, however, might be the Committee of Management has not been heard but since only a stay order has been passed and the Committee of Management would be heard. He seeks to rely upon a division bench judgment of this Court on the said subject dealing with the power of Vice chancellor as encapsulated under Section 35 read with Section 13A of the U.P. State Universities Act.

Sri Gautam Baghel who appears for the sixth respondent seeks time to study the matter.

Sri Pradeep Kumar Shahi learned Standing Counsel also seeks time to obtain instructions.

On the request of the learned counsel for the parties, put up this case as fresh on 09.08.2023".

5. Today when the matter has been taken up Sri Avneesh Tripathi, learned counsel who appears for the respondent University has placed before this Court a letter dated 03.07.2023 under the signature of the Vice President of Managing Committee of the institution.

6. Sri H.N. Singh learned Senior Counsel for the writ petitioners has sought to submit that the order dated 20.07.2023 passed by the third respondent is in excess of its authority and the same cannot be sustained in the eyes of law particularly on three reasons, firstly a restraint order could only be passed after hearing the Committee of Management and after seeking its version, and secondly by virtue of the passing of the said order, the third respondent has delegated the essential functions which it had to perform and thirdly the order even in fact forestalls the functions as enumerated and entrusted to the Committee of Management to take disciplinary action in that regard.

7. Elaborating the said submission, Sri Singh who appears for the writ petitioners further submits that once the Committee of Management has taken

a decision to suspend the sixth respondent then the only course open under the relevant statute was to either approve or disapprove the suspension but he could not delegate essential functions to a Committee which tantamounts to an act which is in excess of the jurisdiction and not contemplated in the act he seeks to rely upon the provisions contained under Section 35 of the U.P. State Universities Act, 1973 with relation to sub-section (4) he further submits that the said action of the third respondent vitiates the order.

8. Further submission on behalf of the learned Senior Counsel for the writ petitioners is that at least proprietary demanded that the order could have been passed only after hearing and putting to notice the writ petitioners who had a say in the matter as the authority and the jurisdiction vested to the third respondent is not akin to a writ jurisdiction containing discretionary relief. He further submits that even in fact there are substantial grounds available on record which warrants placing the sixth respondent under suspension as a preliminary inquiry was made though the inquiry report was not happily worded but reasons are there on record to place the sixth respondent under suspension.

9. Sri Avneesh Tripathi, learned counsel who appears for the respondent University has contended that no prejudice whatsoever is being caused to the writ petitioners insofar as the suspension order dated 15.07.2023 has been kept in abeyance as the writ petitioners have been allowed to come before the Committee to put forward their submissions and it is not a case wherein a final decision has been taken as the same will be taken after considering the version of the petitioner Committee of Management. According to Sri Tripathi, sub-section (4) of Section 35 of the U.P. State Universities Act, 1973 itself empowers the Vice Chancellor of the University concerned to pass orders for staying the effect and operation of the suspension and further the power to approve and disapprove also contains the implicit power to stay. Sri Tripathi, on the question of nomination of a three member committee has sought to contend that he has obtained instructions according to which the Committee so constituted in the order dated 20.07.2023 is with relation to certain allegations being sought to be levelled against the present Committee of Management of the petitioner institution for probing and investigating the irregularities therein that too on the complaint of one Sri Dharmpal Singh Vice President of the Committee and, thus, though the order might not be happily worded with regard to the constitution of the committee but it may be read in such a manner that the three member committee constituted as per the order dated 20.07.2023 would not deal with the suspension of the sixth respondent and the writ petitioners are not required to submit their explanation before it while third respondent, Vice Chancellor, Chaudhary Charan Singh University, Meerut shall decide the claim of the writ petitioner for according approval to the suspension of the sixth respondent.

10. Sri Ojha, learned Senior Counsel assisted by Sri Gautam Baghel, on the other hand, fairly submits that so far as the composition of the three member committee is concerned it may not be justified as approval and disapproval aspects have to be seen by the Vice Chancellor itself, he, however, submits that sixth respondent shall render full cooperation before the third respondent, Vice Chancellor of the University concerned for disposal of the issue with regard to suspension.

11. Sri Santosh Kumar, learned Standing Counsel adopts the submission of the learned counsel for the respondents. In rejoinder Sri H.N. Singh learned Senior Counsel for the writ petitioners has submitted that he has no objection, in case, the petitioners are not required to submit their version and to approach the three member committee, however, he submits that a date being fixed on which date the petitioners Committee of Management would appear before the third respondent, Vice Chancellor and the matter be decided in that regard.

12. Since the parties in the present writ petition are represented through their counsel and they do not propose to file any response to the writ petition, thus, the writ petition with the consent of the parties is being decided at the fresh stage.

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

14. Undisputedly, the petitioner institution is governed under the provisions of the U.P. State Universities Act, 1973. It is also not in dispute that the sixth respondent was placed under suspension on 15.07.2023 pursuant to the interim inquiry report dated 08.07.2023 which according to the counsel for the respondents was a non-speaking, unreasoned. The order impugned in the writ petition dated 20.07.2023 as admitted to the parties has only stayed the effect and operation of the suspension order dated 15.07.2023 requiring the petitioner Committee of Management to submit its version before a three member committee. Sri Avneesh Tripathi who appears for the University has made statement that the committee is only entrusted with the duty and the task to investigate with regard to the allegations being sought to be levelled with respect to financial misappropriation that too on the basis of a complaints dated 03.07.2023 of the Vice President of the Committee in question he, thus, submits on instructions that the impugned order insofar as it contains the offending portion according to the learned counsel for the petitioner be interpreted in such a manner that now on the next date fixed, the third respondent, Vice Chancellor who will consider the claim of the writ petitioners.

15. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed of in the following manner; (a) the order dated 20.07.2023 passed by the third respondent, Vice Chancellor, Chaudhary Charan Singh University, Meerut insofar as it seeks to stay the effect and operation of the suspension 15.07.2023 is maintained; (b) the order dated 20.07.2023 passed by the third respondent insofar as it requires the writ petitioner, Committee of Management to give its explanation before a three member committee is modified to the extent that now the third respondent shall consider and decide the issue with regard to the suspension of the sixth respondent; (c) the third respondent, Vice Chancellor shall fix an appropriate date in the fourth week of August, 2023 on which after giving due information in advance in writing to the petitioners as well as the sixth respondent; (d) on the said date so fixed by the third respondent, Vice Chancellor, the petitioners and the sixth respondent shall appear before it along with the written submissions, if any and the same would be exchanged on the said date; (e) thereafter a date will be fixed in the second week of September 2023 on which date the matter shall be heard and within a period of further two weeks final

order shall be passed.

16. With the aforesaid observations the writ petition stands disposed of.

17. The passing of the order today is with relation to the issue of suspension of the sixth respondent and the order passed may not be construed to be an expression regarding taking of any action by the University in any other issue/matter.

18. The instructions filed today are taken on record and marked as Appendix 'A'."

As per the writ petitioner on 22.08.2023, the fourth respondent, Registrar, Chaudhary Charan Singh University, Meerut issued a communication to the third respondent, Vice-Chancellor, Chaudhary Charan Singh University, Meerut, a copy whereof was marked to the writ petitioner as well as the sixth respondent requiring them to appear on a particular date for hearing.

According to Sri H.N. Singh, learned Senior Counsel, now a communication dated 13.09.2023 has been issued under the signature of the fourth respondent, Registrar, Chaudhary Charan Singh University, Meerut requiring Sri Om Pal Singh, Committee of Management Gandhi Vidya Niketan Degree College Budhpur Ramala, Baghpat and the complainant, Sri Dharm Pal Singh, Vice-President of the petitioner-Committee of Management to appear on 18.09.2023 at 03:00 P.M. in respect of hearing to be conducted on the complaint regarding certain irregularities committed by the officials of the Committee of Management of the Institution in that regard.

Challenging the communication dated 13.09.2023 of the fourth respondent, Registrar, Chaudhary Charan Singh University, Meerut, the writ petitioners have filed the present writ petition.

Learned Senior Counsel, who appears for the writ petitioner submits that the said order is not only in complete violation of the directives issued in earlier spell of litigation in Writ-A no.12556 of 2023, C/M Gandhi Vidya Niketan Degree College and others Vs. State of U.P. decided on 09.08.2023, but also without jurisdiction and authority, as again the same error has been committed by the University while subjecting the writ petitioners to appear before the Committee, which is being permitted to probe into the matter, which even otherwise is not permissible under law.

Elaborating the said submission, learned Senior Counsel for the petitioners submits that there happens to be deliberation on the

said issue in the order dated 09.08.2023 passed in the earlier spell of litigation as encapsulated in paragraphs-14 and 15, wherein the counsel for the University had made a statement that the entire issues were to be gone into by the Vice-Chancellor of the University in question. He thus submits that now with respect to the allegation pursuant to the complaint of one Sri Dharam Pal Singh, Vice-President of the Committee of Management of the Institution in question, the writ petitioners have been directed to appear before the Committee, which is thoroughly impermissible and in direct teeth of the order of the Writ-Court dated 09.08.2023 in Writ-A No.12556 of 2023. He further submits that the Committee has no authority or jurisdiction to probe into the said allegations, as there is no such provision provided in the U.P. State Universities Act, 1973, as it is within the domain of the State Educational Authorities.

Sri Prateek Rai, learned counsel, learned counsel for the University submits that the issue, which was engaging attention in Writ-A No.12556 of 2023, was an order dated 20.07.2023 of the third respondent, Vice-Chancellor, Chaudhary Charan Singh University, Meerut, whereby the order of suspension of the sixth respondent passed by the petitioners on 15.07.2023 was stayed. On a statement made by the learned counsel for the University in the said writ petition, it was apprised to the Court that the Committee, so constituted comprising of three members was with respect to the complaint lodged by Sri Dharam Pal Singh, Vice-President of the Committee of Management of Gandhi Vidya Niketan Degree College, Baghpat dated 03.07.2023, thus the said committee would not deal with the suspension of the sixth respondent in that regard. On the said statement, the orders were passed on 09.08.2023 in Writ-A No. 12556 of 2023. He further submits that the issue of suspension of the sixth respondent and the complaint of Sri Dharam Pal Singh, Vice-President of Prabandh Samiti dated 03.07.2023 are two different aspects and they cannot be intermingled with each other. He has also produced before this Court a communication dated 25.09.2023 of the Office Superintendent of the University, whereby it is being sought to be demonstrated that the hearing is being conducted by a three-member committee with respect to the complaint of the Vice-President of Gandhi Vidya Niketan Degree College, Baghpat and so far as suspension aspect is concerned, Vice-Chancellor is seized with the matter. Lastly, it is being sought to be submitted by Sri Prateek Rai, who appears for the respondent-University that whatever legal or factual objections the writ petitioners seek to raise, it is always open for them to raise the same before the

Committee in that regard.

I have heard learned counsel for the parties and perused the record. The issue which was engaging attention in Writ-A No. 12556 of 2023 was relatable to the suspension of the sixth respondent. The Court adjudicated the said issue while passing the final order dated 09.08.2023. During the course of hearing of the said writ petition, the learned counsel appearing for the University on the basis of the instructions provided to him made a statement that the issue of suspension of the sixth respondent would be addressed by the Vice-Chancellor himself and so far as the constitution of a three-member Committee is concerned the same was in relation to the complaint dated 03.07.2023 lodged by Sri Dharam Pal Singh, Vice-President of Gandhi Vidya Niketan Degree College, Baghpat. On the statement so made by the counsel for the University, which was accepted by the writ petitioner, the order came to be passed in the said Writ Petition on 09.08.2023.

Nevertheless, the writ petitioner has been required by virtue of the communication dated 13.09.2023 to submit his reply/ objection on the issue relatable to the complaint lodged on 03.07.2023 by Sri Dharam Pal Singh, Vice-President of of Gandhi Vidya Niketan Degree College, Baghpat, it is always open for the writ petitioners to raise all legal and factual pleas in that regard, ofcourse questioning jurisdiction also.

This Court has no reasons to disbelieve that the reply/ objection of writ petitioners would be considered in accordance with law.

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

Order Date :- 13.10.2023

N.S.Rathour