

Court No. - 35

Case :- WRIT - A No. - 16883 of 2023

Petitioner :- C/M Adarsh Kanya Inter College

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Vinod Kumar Singh

Counsel for Respondent :- C.S.C,Babboo Ram,Gautam Baghel

Hon'ble Vikas Budhwar,J.

1. On the oral request of Sri Vinod Kumar Singh, learned counsel for the writ petitioner, Director of Education (Secondary) U.P., Prayagraj be impleaded as fifth respondent.

2. Heard Sri Vinod Kumar Singh, learned counsel for the writ petitioner, Sri H.K. Shukla, learned Standing Counsel who appears for respondents No. 1, 2 & 5 and Sri Gautam Baghel as well as Sri Babboo Ram, learned counsel who appears for respondent No. 4.

3. In view of the order which is being proposed to be passed today, notice is not being issued to the third respondent.

4. The writ petitioner as well as the fourth respondent had earlier approached this Court while filing Writ A No. 7370 of 2023 C/M Adarsh Kanya Inter College and Others Vs. State of U.P. and Writ A No. 10687 of 2023 (Gargi Chauhan Vs. State of U.P.) in which this Court proceeded to pass the following order.-

"1. Since common question of facts and law are involved in Writ A No. 7370 of 2023 C/M Adarsh Kanya Inter College Vs. State of U.P. (in short 'leading writ petition') and Writ A No. 10687 of 2023 Gargi Chauhan Vs. State of U.P. (in short 'connected writ petition'), thus, with the consent of the parties the writ petition is being consolidated and decided by a composite order.

2. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Jigar Khare learned counsel for the writ petitioners appearing in the leading writ petition, respondent No. 5 in the connected writ petition, Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel who appears for respondents No. 1 to 4 in both the writ petitions and Sri Gautam Baghel learned counsel who appears for the fifth respondent in leading writ petition and petitioner in the connected writ petition.

3. The facts of the case as worded in the writ petitions are that Adarsh Kanya Inter College, Garh Mukteshwar is a recognized and aided intermediate college governed under the provisions of U.P. Intermediate Education Act, 1921, U.P. Act No. 5 of 1982 and U.P. Act No. 24 of 1971. As per the writ petitioner in the leading writ petition, petitioner No. 1 is a validly elected Committee of Management and the petitioner No. 2 is a Manager. Records reveal that Smt. Gargi Chauhan (delinquent) was initially appointed as

Lecturer (English) in the institution in question and while she was working on the said post in the institution in question, she was selected on the post of Principal in the institution in question by U.P. Secondary Education Service Selection Board and she joined as Principal on 01.04.2022 on probation. It is alleged that the delinquent has committed certain acts and omissions unbecoming of the Principal of the institution, thus, on 04.01.2023 the Committee of Management of the institution took a decision for placing the delinquent under suspension and for appointing an inquiry committee to conduct inquiry with regard to the allegations levelled upon the delinquent. A formal suspension order is stated to have been passed by the Committee of Management on 04.01.2023 and on 09.01.2023 the Manager of the Committee of Management is stated to have transmitted the papers before the third respondent, District Inspector of Schools, Hapur for according approval. Pleadings further reveal that consequent to placing the delinquent under suspension one Smt. Sarita Jaiswal was appointed as Officiating Principal of the institution on 27.01.2023 and the three member inquiry committee headed by one Asha Ram Tyagi who claims to be Chairman stood constituted on 05.01.2023 pursuant to the resolution of the Committee of Management dated 04.01.2023 followed by issuance and serving of a charge sheet upon the delinquent on 31.01.2023. In para 14 of the leading writ petition, the Committee of Management of the institution has further come up with stand that the inquiry committee conducted inquiry and proceeded to submit the inquiry report on 24.02.2023 and on the basis whereof the Committee of Management of the institution in question resolved on 28.02.2023 to dispense with the services of the delinquent and the papers whereof was forwarded by the Manager of the institution in question to the third respondent, District Inspector of Schools on 01.03.2023 and as per the averments contained in para 16 of the writ petition, the District Inspector of Schools, Hapur, third respondent forwarded the same to U.P. Secondary Education Service Selection Board on 03.03.2023. It is further the case of the parties before this Court that the delinquent preferred an application on 13.03.2023 before the third respondent, District Inspector of Schools for revoking the suspension order followed by other representations and on 13.04.2023 an order has been passed by the District Inspector of Schools whereby it has proceeded to accord joining to the delinquent.

4. Questioning the order dated 13.04.2023 passed by the District Inspector of Schools, Hapur the Committee of Management in question has preferred the leading writ petition. The said writ petition was entertained by this Court on 28.04.2023 wherein the following order was passed.-

"Heard Sri Ashok Khare, learned Senior Advocate assisted by Ms. Neha Rai Chaudhary, learned counsel for the petitioner, Sri Gautam Baghel, learned counsel for the respondent No.-5 and learned Standing Counsel for the State respondents.

The petitioner Committee of Management has challenged the order passed by the District Inspector of Schools dated 13th April, 2023 on the ground that without approving or disapproving the suspension order of the petitioner, the District Inspector of Schools could not have issued direction to reinstate the respondent NO.- 5 on the post of Principal just for the fact that more than 60 days have got expired from the date of suspension and that no teacher can be removed from service nor, his emolument can be decreased nor, pay-fixation be altered without prior approval of Board.

Learned Senior Advocate has argued that order of suspension even after expiry of the period of 60 days would not automatically end and would only be rendered ineffective for want of

approval. He has argued that disciplinary proceedings would have taken to be completed only after order is passed by the U.P. Secondary Education Service Selection Board (hereinafter referred to as 'Board') either approving the proposed punishment of dismissal from service or disapproving the same. In the circumstances, therefore, he argues that District Inspector of Schools was required to pass appropriate order either approving the suspension or disapproving the same. Learned Senior Advocate has argued that if petitioner is taken back in a regular mode of service, it would amount to an order of reinstatement even without there being any order of Board in the pending matter of approval of the proposed punishment.

Per contra, it is argued by learned Advocate appearing for the contesting respondent No.- 5 as well as learned Standing Counsel that a person is placed under suspension in contemplation of an inquiry with only object to keep him away from office so that he may not influence the inquiry for the position he holds. It is argued that once the inquiry is completed and the Committee of Management has forwarded the proposal to the Board of imposing penalty, may be in the nature of dismissal from service, the inquiry part stands completed and the delinquent employee cannot thereafter held to be in a position to influence the inquiry.

It is argued that there is no reinstatement in service if the suspension order has become ineffective or even disapproved. The reinstatement would be only when a person is out of employment for punishment imposed and is put back in service. It is submitted that suspended employee continues to be attached with the office and mere proposal to impose a penalty pending approval is not a punishment itself to deny him work.

It is argued by learned Standing Counsel that suspension is itself no punishment and after certain period almost 3/4th salary is paid to an employee in the name of subsistence allowance from the public exchequer and to make him sit idle and so any decision not to take work only for the reason that there is no quorum available with the Board to take decision and if matter is left pending for an indefinite period for lack of quorum, does not appeal to reason.

Matter requires consideration.

Sri Gautam Baghel, learned counsel for the respondent No.-5 and learned Standing Counsel pray for and are granted four weeks' time to file counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

List this matter on 11th July, 2023."

5. A counter affidavit has been filed by the fifth respondent, delinquent, in the leading writ petition dated 02.07.2023 to which a rejoinder affidavit has been filed.

6. Since there was no interim order accorded to the Committee of Management staying the effect and operation of the order dated 13.04.2023 passed by the District Inspector of Schools, Hapur so the delinquent preferred the connected writ petition with the prayer for a mandamus directing the fifth respondent namely, the Committee of Management of the institution in question to permit the writ petitioner to discharge his duties and to ensure joining of the delinquent as per the relevant statute.

7. When the connected writ petition came up for consideration before this Court on 11.07.2023 then this Court connected the writ petition along with the records of the leading writ petition.

8. Since a statement has been made by the learned counsel for the rival parties that on the basis of the pleadings set forth in both the writ petitions the writ petitions be decided and they do not propose to file any additional

affidavit, thus, on their statement the writ petitions are being decided at the fresh stage.

9. Sri Ashok Khare, learned Senior Counsel appearing for the Committee of Management while assailing the order dated 13.04.2023 passed by the District Inspector of Schools, Hapur has sought to contend that the order impugned is bereft of any valid reasons as even in fact the said order is in excess of its jurisdiction insofar as it accords reinstatement to the delinquent. His submission is that in the order itself one of the reasons attributable to grant of benefits to the delinquent is that the institution in question has not followed the provisions under Section 21 of the U.P. Act No. 5 of 1982 with regard to the procedure to be adopted for seeking approval in the matter of punishment and, thus, the suspension order stands vitiated. According to Sri Khare learned Senior Counsel for the writ petitioner once it has come on record and as apparent from the impugned order that pursuant to the holding of the departmental inquiry after serving the charge sheet, appointment of the inquiry officer the entire documents stood transmitted by the Committee of Management to the District Inspector of Schools, Hapur on 01.03.2023 with the proposal of the dispensation of the services dated 28.02.2023 and the same has been further forwarded to the U.P. Secondary Education Service Selection Board on 03.03.2023 then the Committee of Management cannot be put to fault as even otherwise it is for the Commission to take appropriate action and the Commission being non-functional would not be a disqualification imposed upon the Committee of Management with regard to violation of any of the provisions of law. Further submission on behalf of the Committee of Management is that even before according reinstatement to the delinquent the gravity of the charges while having a prima facie view in order to keep the delinquent under suspension has also not been considered by the District Inspector of Schools, Hapur particularly when on the face of it the inquiry stands concluded and there is already a resolution of the Committee of Management dispensing with the services of the delinquent he, thus, submits that the blanket order passed by the District Inspector of Schools, Hapur for according reinstatement tantamounts to exercise of authority in excess and totally unwarranted in the facts of the case. Sri Khare has lastly relied upon the judgment in the case of C/M Intermediate College Gorai Vs. District Inspector of Schools, reported in 2001 ALJ 207 to buttress his submission.

10. Countering the said submission, Sri Gautam Baghel who appears for the delinquent in both the writ petitions has submitted that the conduct of the Committee of Management is very crucial and it denudes it from grant of any relief as according to him the suspension order as per the Committee of Management was passed on 04.01.2023, however, on 09.01.2023 as stated in para 10 of the leading writ petition the documents were transmitted by the Committee of Management before the District Inspector of Schools, Hapur a copy whereof is Annexure 3 in the leading writ petition at page 28 of the paper book, however, the said documents does not partake the character of the requirement which is to be resorted to by the Committee of Management in terms of sub-section (6) of Section 16G of the Intermediate Education Act read with the provisions contained under Regulation 39 of the Chapter III of the 1921 Act wherein there are series of documents which have to be submitted in order to facilitate the District Inspector of Schools to appropriately pass orders of approval or disapproval. Sri Gautam Baghel has

relied upon the judgment in the case of *Committee of Management & Others Vs. District Inspector of Schools, 1994 (1) UPLBEC 129* to buttress his submission, he further submits that even in fact on 06.03.2023 the DIOS Hapur required the Committee of Management to send documents with regard to the approval in the matter of the suspension of the delinquent as period of 60 days stood lapsed. Sri Gautam Baghel learned counsel for the delinquent further submits that though the Board itself is not functioning, however, he has been made a scapegoat in that regard as though he is slapped with the proposed punishment in the shape of a resolution of dispensation of services and on the other, he has not been accorded joining. Sri Gautam Baghel in his usual fairness has submitted that the order put to challenge in the present proceedings of the District Inspector of Schools, Maharajganj is not happily worded and it has not considered the core issues which would be relevant for deciding as to whether suspension is to continue or not, thus, the matter be remitted back to the District Inspector of Schools, Maharajganj to pass a fresh order with most expedition as per law within the time stipulated by this Court.

11. Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel who appears for the State respondents including DIOS Hapur, on the other hand, submits that let the fresh exercise be undertaken by the DIOS Hapur on which date the parties shall present themselves and get exchanged their version and thereafter final order be passed.

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

13. Undisputedly, the institution in question where at the delinquent happens to be posted is an institution governed under the provisions of the U.P. Intermediate Education Act and the rules framed thereunder. It is not in dispute that the delinquent was placed under suspension on 04.01.2023 charge sheet was served upon him, inquiry officer was appointed, inquiry committee tendered his report and thereafter there is a resolution passed for dispensation of the services and the documents has been submitted by the Committee of Management before the DIOS Hapur on 01.03.2023 and a communication has been made and the papers have been forwarded by the DIOS Hapur to the U.P. Secondary Education Service Selection Board on 03.03.2023. It is further not in dispute that the suspension was not approved and now by virtue of the order itself the delinquent has been directed to be reinstated. This Court is oblivious of the fact that there happens to be a proposal of the Committee of Management to dispense with the services of the delinquent but in view of the language employed under Section 21 of the U.P. Act No. 5 of 1982 the proposal does not partake the character of any punishment until and unless it is approved, thus, the DIOS Hapur is to decide the matter with regard to the suspension of the delinquent, Gargi Chauhan as the relationship between the employer and the employee still subsist. As rightly pointed out by the rival parties that the order in question has not considered the issues in proper perspective while recording reasons in coming to the conclusion, thus, the writ petition is being disposed of in the following manner; (a) the order dated 13.04.2023 passed by the DIOS Hapur is set aside; (b) the matter stands remitted back to the DIOS Hapur for considering the issue with regard to the approval of the suspension of the delinquent, Gargi Chauhan; (c) 21st August, 2023 shall be the date fixed by the DIOS

Hapur on which date the parties either themselves or through their representatives shall appear in the office of the DIOS Hapur and file their submissions after exchanging them; (d) 28 August, 2023 shall be the date fixed on which the hearing shall be conducted in accordance with law; (e) Orders be passed by the DIOS Hapur by 11th September, 2023. The DIOS Hapur while deciding the issue shall advert to the following fundamental and core issues; (i) the issue with regard to the continuance of the suspension of the delinquent Gargi Chauhan; (ii) the entitlement of the benefits to be accorded to delinquent Gargi as per the relevant statutes governing the field.

14. So far as the relief sought in the connected writ petition for reinstatement and consequential benefits is concerned the Court at this stage is not addressing to the same as the same is dependent upon the final order to be passed by the DIOS Hapur.

15. With the aforesaid observations, the writ petitions stand disposed of.

16. Needless to point out that while setting aside the order impugned in the leading writ petition this Court has not adjudicated on the merits of the matter and the DIOS Hapur shall decide the same strictly in accordance with law without being obsessed or influenced by any of the observations made hereinabove."

5. Post remand now the District Inspector of Schools, Hapur has proceeded to pass an order dated 23.09.2023 whereby the proposal of the petitioner Committee of Management dated 04.01.2023 suspending the fourth respondent has been disapproved.

6. Questioning the order dated 23.09.2023 the writ petitioner herein has filed the present writ petition.

7. Sri Vinod Kumar Singh, learned counsel who appears for the writ petitioner has invited the attention of the Court towards the order passed on 08.08.2023 in the captioned Writ A No. 7370 of 2023 and Writ A No. 10687 of 2023 so as to contend that this Court while setting aside the order dated 13.04.2023 passed by the District Inspector of Schools, Hapur had remitted the matter back to it requiring him to decide the issues afresh after according hearing to the parties in question. As per the writ petitioner, this Court had fixed 28.08.2023 as the date of hearing.

8. Sri Vinod Kumar Singh, learned counsel for the writ petitioner has further invited the attention of the Court towards paragraphs No. 24 to 30 of the writ petition so as to contend that on 21.08.2023 only the versions submitted by the writ petitioner and the fourth respondent were exchanged no hearing took place and the next date of hearing was fixed on 28.08.2023 on which date the writ petitioner and the fourth respondent appeared before the District Inspector of Schools, Hapur, however, the incumbent who

was manning the said post, Sri Praveen Upadhyay was not available in his office and the dealing Clerk in the office of the District Inspector of Schools, Hapur had only taken signature of the writ petitioner and the fourth respondent on the attendance sheet and apprised that Sri Praveen Kumar Upadhyay, District Inspector of Schools had gone for medical treatment and when he would come back then he would join the hearing and according to him on 28.08.2023 no hearing was conducted and in the meantime the Principal, Government Inter College, Hapur was handed over charge on 02.09.2023 and Sri Praveen Kumar Upadhyay proceeded on leave and the third respondent, Sri Jyoti Prasad, Deputy Director of Education (Secondary), Meerut Region Meerut was assigned additional charge of District Inspector of Schools, Hapur and since 14.09.2023 Deputy Director of Education (Secondary), Meerut Region Meerut is looking into about the affairs and without there being any hearing the order impugned has been passed which is violation of principles of natural.

9. The present writ petition was taken up pre-recess today and on the basis of the averments made from paras 24 to 30 of the writ petition Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel was required to obtain instructions in the light of the said averments and allegations made in the writ petition.

10. Post-recess, when the matter was taken up Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel on instructions made a statement that Sri Praveen Kumar Upadhyay is ill and he is not attending the duties according to him, the matter be remitted back for fresh decision in that regard. The averments made in paras 24 to 30 of the writ petition have also not been disputed by Sri Gautam Baghel along with Sri Babboo Ram and as per their instructions the averments made in the said context are correct, they further submit that let the matter be decided afresh while setting aside the order in question but with the stipulation that it should be in the time bound manner as the fourth respondent is suffering a lot.

11. At this juncture, Sri Vinod Kumar Singh, learned counsel for the writ petitioner submits that let the newly impleaded fifth respondent, Director of Education (Secondary), U.P., Prayagraj take cognizance of the matter and nominate an authority who shall hear the matter in that regard.

12. To such a submission, Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel as well as Sri Gautam Baghel and Sri Babboo Ram have no objection.

13. A pointed query was made to Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel as well as Sri Gautam Baghel and Sri Babboo Ram as to whether they seek to file any response to which their answer was in negative as according to them the matter be remitted back.

14. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed of without seeking any response in the following manner:

(a) the order dated 23.09.2023 passed by the District Inspector of Schools, Hapur/Deputy Director of Education (Secondary), Meerut Region Meerut/Incharge, District Inspector of Schools, Hapur is set aside;

(b) the writ petitioner shall approach the fourth respondent shall approach the fifth respondent, Director of Education (Secondary), U.P., Prayagraj on 19.10.2023;

(c) the fifth respondent, Director of Education (Secondary), U.P., Prayagraj shall thereafter nominate an authority who shall hear the dispute inter se between the writ petitioner and the fourth respondent. The said authority shall fix a date in the week commencing 30.10.2023 for hearing;

(d) orders be passed within a period of 15 days therefrom after hearing the parties in question.

15. Since the order has been passed in presence of the parties in particular the writ petitioner who is represented through its counsel and the fourth respondent who is also represented through its counsel, thus, no more further communication be made in that regard.

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

Order Date :- 16.10.2023

Rajesh