

Court No. - 35

Case :- WRIT - A No. - 17364 of 2023

Petitioner :- Prabhat Kumar Upadhyay

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

Counsel for Petitioner :- Ashutosh Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

1. Heard Sri Ashutosh Shukla, learned counsel for the writ petitioner as well as Sri Saurabh, learned Standing Counsel who appears for respondents No. 1 to 3.

2. In view of the order which is being proposed to be passed today, notices are not being issued to fourth and fifth respondents.

3. The case of the writ petitioner is that he was appointed as a Junior Clerk on compassionate ground on 19.08.2002 in the institution, Nehru Snatakottar Mahavidyalaya, Lalitpur, however, pursuant to certain allegations he claims to have been placed under suspension on 11.07.2014 by the Manager/Secretary of the fourth respondent institution. The writ petitioner further claims that pursuant to the lodging of a complaint purported to be under Section 420, 409, 467, 468, 471, 120B I.P.C., Police Station Kotwali Sadar, District Lalitpur being Case Crime No. 1300 of 2014 he was confined in Jail and subsequently post passing of the order dated 27.04.2018 in Criminal Misc. Bail Application No. 1230 of 2017, he was granted liberty.

4. It is further the case of the writ petitioner that post issuance of the charge sheet dated 22.01.2015 and appointment of an Inquiry Officer an ex parte inquiry was conducted and the institution in question proceeded to dispense with the services of the writ petitioner, however, he while relying upon a document which is Annexure 12 at page 73 of the paper book reference whereof has been given in para 19 of the writ petitioner submits that the same has not been approved by the third respondent, Regional Higher Education Officer, Jhansi, till date in terms of the Statutes 19.02 and 19.03(1) of Chapter XIX of the first Statute University of Bundelkhand, 1977. Learned counsel for the writ petitioner has further invited the attention of the Court towards paragraph 19 that he has not been paid subsistence allowance in that regard.

5. Prayer in the present petition is for quashing of the order dated 11.07.2014 passed by the fourth respondent, Committee of Management suspending the writ petitioner and the communication dated 16.09.2017 of the Regional Higher Education Officer, Jhansi whereby certain inputs were required.

6. Learned counsel for the writ petitioner submits that though there has been a proposal of the Committee of Management dispensing with the services of the writ petitioner but he has not been approved by the third respondent, Regional Higher Education Officer, Jhansi, but he is entitled to payment of all benefits including subsistence allowance as well as reinstatement in that regard.

7. Sri Saurabh, learned Standing Counsel who appears for respondents No. 1 to 3 submits that the issues which the writ petitioner are seeking to raise needs determination at the level of the third respondent, Regional Higher Education Officer, Jhansi who would address the said issues including the fact as to whether the writ petitioner had not been paid subsistence allowance as claimed by him and further the fact that the dispensation of the services stood approved by the third respondent, Regional Higher Education Officer, Jhansi or not. At this stage, he further submits that he does not propose to file any response to the writ petition, let the writ petitioner approach the third respondent, Regional Higher Education Officer, Jhansi in that regard.

8. At this stage, Sri Ashutosh Shukla, learned counsel for the writ petitioner submits that, in case, the matter is being sent to the Regional Higher Education Officer, Jhansi for final adjudication on the said aspects of the matter then at this stage, in the present proceedings he is not challenging the order dated 11.07.2014 and 16.09.2017 reserving his right to challenge the same once an ultimate final order passed by the Regional Higher Education Officer, Jhansi negating the claim of the writ petitioner.

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

10. Since factual issues has arisen regarding the issue as to whether the writ petitioner was paid subsistence allowance or not and the fact whether the writ petitioner's dispensation of service has been approved by the third respondent, Regional Higher Education Officer, Jhansi or not, thus, this Court grants liberty to the writ petitioner to approach the third respondent by filing a comprehensive representation along with self attested copy of the

writ petition and on the receipt of the same the third respondent shall decide the issue strictly in accordance with law after putting to notice the fourth and fifth respondents in advance in writing so as to facilitate their inputs and thereafter proceed to decide the matter within a period of three months from the date of production of certified copy of the order.

11. Needless to point out that the writ petition has been decided without seeking any response, thus, passing of this order may not be construed to be an expression that this Court has adjudicated on the merits of the matter as the third respondent shall decide the matter strictly in accordance with law with independent application of mind without being influenced or obsessed by any of the observations made hereinabove and also seek to consider the legal as well as factual arguments advanced by the respective parties.

Order Date :- 26.10.2023

Rajesh