

Court No. - 35

Case :- WRIT - A No. - 17734 of 2023

Petitioner :- Principal Shri Dayanand Inter College And Another

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

Counsel for Petitioner :- Bheem Singh,Aalok Singh,Sr. Advocate

Counsel for Respondent :- C.S.C,Nand Lal Pandey

Hon'ble Vikas Budhwar,J.

Heard Sri G.K. Singh, learned Senior Counsel assisted by Sri Bheem Singh for the writ petitioners Sri Gaya Prasad Singh learned Standing Counsel, who appears for respondents 1, 2 and 3 as well as Sri Nand Lal Pandey, who appears for the fourth respondent.

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

The writ petitioners herein had filed Writ-A No.9968 of 2023, Principal, Shri Dayanand Inter College and another vs. State of U.P. & three others, questioning the order dated 15.5.2023 passed by the third respondent, District Inspector of Schools, Gautam Budh Nagar disapproving the proposal of dispensation of the services of the third respondent. This Court entertain the writ petition and thereafter passed an order dated 10.7.2023 which is quoted herein under:-

"Heard Sri G.K. Singh learned Senior Counsel assisted by Sri Bheem Singh appearing for the petitioners as well as Sri Shailendra Singh learned Standing Counsel who appears for respondents No. 1 to 3 and Sri N.L. Pandey appearing for respondent No. 4.

With the consent of the parties the writ petition is being decided without calling for the response as according to the counsel for the parties the documents which have been appended with the writ petition is self sufficient for disposal of the writ petition.

The case of the writ petitioners who are two in number is that there is an institution namely Sri Dayanand Inter College, Bambawad, District Gautam Buddh Nagar which is recognized up to intermediate level and the employee of the institution in question are being paid salaries in accordance with the provisions contained under the U.P. Intermediate Education, 1921 and the rules framed thereunder. It is also not disputed by the learned counsel for the parties that the said institution is also governed by the provisions of Uttar Pradesh High School and Intermediate College (Payment of Salaries of Teacher and other Employees) Act, 1971. In para 5 of the writ petition it has

been asserted that the fourth respondent, Shiv Kumar son of Late Atma Ram was appointed as a class IV employee (Mali) in the institution in question in the year 1996, however, there were certain allegations which were attributable to misconduct so the petitioner No. 1 who happens to be the principal of the institution in question terminated the services of the fourth respondent on 03.05.1996 in pursuance of the approval order dated 02.05.1996. The said order came to be revoked by virtue of an order dated 29.05.2006 of the third respondent District Inspector of Schools, Gautam Buddh Nagar. Challenging the order dated 29.05.2006 of the third respondent, District Inspector of Schools, a Writ Petition No, 31475 of 2006 was filed by the principal of the present institution in which an interim order was passed on 04.07.2006 and eventually the said writ petition came to be allowed by virtue of the order dated 04.12.2012 whereby the order impugned was set aside and the fourth respondent herein was accorded liberty to prefer appeal before the Committee of Management.

In para 10 of the writ petition it has been further averred that pursuant to the order of the Writ Court as referred to above the appeal of the writ petitioners was considered and thereafter he was reinstated and taken back in service. It is further mentioned in para 11, 12, and 13 of the writ petition that the work in the conduct of the fourth respondent institution was even not in conformity with the conduct which he has to exhibit pursuant whereunto again complaints were lodged and notices were issued pursuant thereto he was also placed under suspension on 28.07.2022. On 02.08.2023 the institution in question through its principal preferred application for according approval but the same was not accorded. It is the further case of the writ petitioner that on 05.08.2022 consequent to the appointment of the inquiry committee a charge sheet was issued to the writ petitioner, however in the meantime also despite the fact that the suspension order ought to have been accorded approval the same was not approved.

Learned counsel for the writ petitioners has invited the attention of the Court towards paragraph No. 20 of the writ petition so as to further contend that the inquiry committee also tendered its report on 07.09.2022 and thereafter a resolution was passed pursuant whereunto on 08.09.2022 the services of the fourth respondent was dispensed with and the papers whereof was also sent for according approval. It is further the case of the writ petitioners that on 31.10.2022 the fourth respondent preferred an appeal before the Committee of Management of the institution in question and without waiting for a period of six weeks as contemplated under Chapter III Regulation 31 of the Intermediate Education Act, 1921 the writ petitioners approached the District Inspector of Schools, DIOS, Gautam Buddh Nagar on 03.11.2022 and the District Inspector of Schools thereafter proceeded to pass the order dated 15.05.2023 which has been impugned in the present writ petition. Sri Singh learned Senior Counsel submits that the order dated 15.05.2023 not only overlooks to consider the relevant aspects of the matter which under law it is required to be considered but also proceeds to pass an order which is not within the four corners of law. It is the further submission of the learned Senior Counsel appearing for the writ petitioners that without assigning any reasons in coming to the conclusions only conclusions have been drawn that the writ petitioner at best is liable to be inflicted minor penalty and the resolution of the Committee of Management post passing the order dispensing with the services of the writ petitioner was thoroughly uncalled for. Learned Senior Counsel for the writ petitioners submits that in view of the mandate contained under Chapter III Regulation 31 of the Act itself the fourth respondent could

not simultaneously after filing of an appeal on 31.10.2022 approach the District Inspector of Schools on 03.11.2022 as per the statutory scheme it had to wait till six weeks in this regard. Further submission of the learned Senior Counsel is that the power vested with the Committee of management to hear the appeal and to decide the same has been usurped by the District Inspector of Schools while delving into the issue and passing the order. It is further submitted by learned Senior Counsel that the order impugned fails to take into note the crucial aspect as to whether the inquiry was held as per law or not but the third respondent had proceed with the matter as if he was not required to go into the said issue. Learned counsel for the fourth respondent, Sri Pandey on the other hand submits, that from the perusal of the document which has been appended in the writ petition preferred by the writ petitioner which is at page 71 of the paper book it is clear that a communication had been issued by the manager of the committee of management to the fourth respondent whereby he has denuded to hear the appeal itself on the pretext that simultaneous proceedings are going on so there is no need to accord consideration to the appeal and thus in the wake of the said fact the fourth respondent had no option but to take recourse of approaching the District Inspector of Schools. It is the further submission of Sri Pandey that the order impugned is perfectly valid in accordance with law and while giving anxious consideration to Chapter III Regulation 32 an order has been passed as according to him the punishment which is being sought to be imposed is not only disproportionate to the gravity of charge but even otherwise the fourth respondent has not committed misconduct and mala fide has been alleged against the committee of management in question. It is further the submission of Sri Pandey that subsistence allowance has also not been paid post suspending his services and further there has been violation of principles of natural justice. Sri Shailendra Singh on the other hand supports the arguments of the fourth respondent but according to him he has nothing to add.

I have considered the submission of the rival parties and perused the record. Undisputedly the fourth respondent is a class IV employee of the institution in question. It is also not in dispute that the writ petitioner was placed under suspension pursuant whereto a charge sheet was also served upon him and thereafter the inquiry committee was constituted which tendered this report and thereafter the punishment order has been passed on 08.09.2022. Parties are also in agreement that the fourth respondent preferred this appeal on 31.10.2022 before the Committee of Management and on 03.11.2022 the fourth respondent also approached the District Inspector of Schools by filing representation.

Perusal of the order impugned in the writ petition reveals that the same is unreasoned and non-speaking as it does not consider the core issues with regard to the procedure adopted by the inquiry committee in conducting the inquiry as well as the action of the Committee of Management of the institution in question while imposing the punishment order in question. These are the relevant aspect which need to be considered and as rightly argued by the fourth respondent the issues with regard to the doctrine of prejudice while not paying subsistence allowance and also furnishing of document which he alleges to have not been furnished to him and on her issues which need to be addressed by the second respondent. Sri Singh at this stage submits that though at that point of time when the fourth respondent had approached the second respondent the proceedings were not maintainable before the third respondents particularly in view of the fact that

six weeks time had not lapsed but since with the passage of time now he does not seek to raise any objection in this regard as according to him the third respondent, District Inspector of schools, Gautam Buddh Nagar should advert into the core issues and thereafter proceed to pass an order on all counts and the grounds raised therein.

Learned Standing Counsel on the other hand submits that since the parties in the lis are already before this court thus, it would be appropriate that a time bound direction be issued to the third respondent, District Inspector of Schools, Gautam Buddh Nagar to advert to the said issue and to pass a reasoned and a speaking order after hearing the parties concerned.

In totality of the matter without seeking any response from the respondents the order dated 15.05.2023 passed by the third respondent, District Inspector of Schools, Gautam Buddh Nagar is set aside the matter is remitted back to it to decide the controversy afresh within a period of two months from the date of production of the certified copy of the order afresh by determining the following issues (a) legality of the inquiry proceedings conducted by the inquiry officer (b) furnishing of the document, (c) import and the impact of the allegation of non-payment of subsistence allowance and documents (d) other ancillary issues as raised by the petitioners.

Accordingly, with the aforesaid observations, the writ petition stands allowed."

Post remand now an order has been passed on 3.10.2023 by the third respondent, District Inspector of Schools, Gautam Budh Nagar again disapproving the resolution of the Committee of Management for dispensation of the services of the third respondent.

Learned Senior Counsel for the writ petitioners has sought to argue that the order impugned in the writ petition cannot be sustained for a single moment particularly in view of the fact that again the same fallacy finds presence in the order which was already in the order dated 15.5.2023 as though the order is stated to be made lengthy but it bereft of any reasons in coming to the conclusions. He submits that after issuance of the show cause notice appointment of the inquiry committee submission of the inquiry report and after considering the same the ultimate punishment order was passed against the third respondent but the District Inspector of Schools, Gautam Budh Nagar had overlooked the crucial and core and fundamental aspects of the matter which were required either approving or disapproving the ultimate punishment order. He further submits that without entering into the said imperative exercise only finding has been recorded that the inquiry was not conducted as per the Regulations 1921. He further submits that there are grave and serious allegations against the third respondent for misbehavior as well as boozing and other activities unbecoming of an employee of the institution. According to him the order in question be set aside and matter be remitted back.

Sri Nand Lal Pandey, learned counsel for the third respondent on the other hand submits that first of all the third respondent has not been paid subsistence allowance post suspension and further a charge sheet had been issued on 5.8.2022 and thereafter an inquiry report was submitted on 7.9.2022 which does not accord reasons and coming to the conclusion and thereafter by a non-speaking order the services of the third respondent were terminated. He further submits that might be the third respondent did not participate in the inquiry proceedings but the same would not absolve the Inquiry Committee/Disciplinary Authority to prove the charge in absence of participation of delinquent. He however does not dispute that the order does not take into account the said crucial aspect as according to him since the third respondent is out of employment for a long period of time thus the order in question be set aside, the matter be remitted back to the District Inspector of Schools, Gautam Budh Nagar, third respondent.

Sri Gaya Prasad Singh, learned Standing Counsel adopts the submission and according to him the order suffers from procedural irregularities.

On a pointed query being made to the learned counsel for the respondents including the learned Standing Counsel and Sri Nand Lal Pandey as to whether they propose to file any response though made a statement that let the matter be remitted back and they do not propose to file any response.

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

This, Court unfortunately finds that the same mistake is being repeated by the District Inspector of Schools, Gautam Budh Nagar. The requirement was that the District Inspector of Schools, Gautam Budh Nagar while approving or disapproving the ultimate punishment order was to consider the issue as to whether the inquiry was conducted in the right perspective as per the regulations or not. The said ingredients while passing the order are completely missing. More so as rightly pointed out by the learned counsel for the third respondent that he was not being served with the copy of the inquiry report also and the said inquiry was ex parte the said aspects have not been considered.

Having heard the learned counsel for the parties and perusing the record. The Court finds that the order dated 3.10.2023 passed by the District Inspector of Schools, Gautam Budh Nagar is liable to be set aside.

Consequently the writ petition is being decided in following manner:-(a) the order dated 3.10.2023 passed by the District Inspector of Schools, Gautam Budh Nagar is set aside; (b) the matter stands remitted back to the District Inspector of Schools, Gautam Budh Nagar to pass a fresh orders (c) in order to facilitate early disposal of the case 5th December, 2023 is the date fixed for hearing of the matter (d) the parties shall appear on 5th December, 2023 on which date the submissions shall be exchanged by the parties and thereafter if required another date be fixed in the week commencing December, 2023 and order be passed by 22nd December, 2023.

The District Inspector of Schools, Gautam Budh Nagar while passing the order consider the following fundamental and core issues:-(a) the issue with regard to validity of the inquiry proceedings conducted by the Disciplinary Authority against the third respondent (b) issue with respect to the allegation of the fourth respondent that he was not served with the inquiry report (c) the claim of the disciplinary authority that the charges were found to be proved (d) any other ancillary and incidental issues (e) the issue regarding the prejudice caused to the fourth respondent in non payment of subsistence allowance.

It is expected that this time the third respondent, District Inspector of Schools, Gautam Budh Nagar shall pass an order strictly in accordance with law.

With the aforesaid observation, the writ petition is **disposed off**.

Order Date :- 24.11.2023

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