

Court No. - 35

Case :- WRIT - A No. - 17886 of 2023

Petitioner :- Rajendra Prasad

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

Counsel for Petitioner :- Satya Prakash Mishra

Counsel for Respondent :- C.S.C.,Anoop Kumar Mishra,Shyam Mani Shukla

Hon'ble Vikas Budhwar,J.

1. A type copy of the impugned order dated 21.09.2023 passed by the District Inspector of Schools as verified by the learned counsel for the respondent is taken on record and marked as Appendix-A.

2. Heard Sri Satya Prakash Mishra, learned counsel for the petitioner as well as Sri Shailendra Singh, learned Standing Counsel, who appears for respondent Nos.1, 2 and 3 and S.N. Shukla for respondent No. 4 and Sri Anook Kumar Mishra for respondent No. 5.

3. The writ petitioner therein the fifth respondent herein, Durgesh Kumar had preferred a Writ A No. 11318 of 2023 wherein challenge was raised to an order dated 01.07.2023 passed by the District Inspector of Schools. The said writ petition came to be decided by virtue of an order dated 23.08.2023 which is quoted herein under:

"Heard Sri Ashok Khare, learned Senior Counsel, assisted by Sri Anoop Kumar Mishra, learned counsel for the writ petitioner, Sri Manoj Vashisth, learned Standing Counsel, who appears for respondent nos.1 and 2, Sri Shyam Mani Shukla, learned counsel, who appears for respondent nos.3 and 4 and Sri R.K. Ojha, learned Senior Counsel, assisted by Sri Satya Prakash Mishra, who appears for the respondent no.5.

With the consent of both the parties, the writ petition is being decided at the fresh stage, as the counsel for the parties do not propose to file any response to the writ petition.

The case of the writ petitioner is that the fourth respondent, Maulana Azad Inter College, Bareilly, District - Bareilly is an institution recognized under the provisions of the U.P. Intermediate Education Act 1921, U.P. Act No.5 of 1982 and the provisions of Payment of Salaries Act, 1971.

It is the case of the writ petitioner is that he was appointed on the post of Lecturer (Physics) in the institution in question on 25.09.2001 and in the seniority list so published, the name of the writ petitioner was assigned at Serial No. 2, referable to the Session 2022-2023. As per the seniority list, Sri Heera Mani, Lecturer (Chemistry), whose date of birth was 01.03.1963 attained the age of superannuation on 31.03.2023 and on 29.03.2023, the Principal of the institution, Smt. Suniti Sharma, whose date of birth is dated 16.02.1961 also attained the age of superannuation and so the fourth respondent, Committee of Management sent a letter on 28/29.03.2023 with a direction to her to handover the charge of the Principal in favour of the senior most lecturer. A copy of the said document is

already on record, Annexure No.3 at page no. 49 of the paper book. Though, the writ petitioner claiming himself to be senior most lecturer was anticipating that he would be granted the charge of an Officiating Principal, however in between on 31.03.2023, it appears that communication was issued under the signature of the Principal, Maulana Azad Inter College, Bareilly, whereby in the wake of the fact that a first information report had been lodged against the petitioner herein, so it was decided that the charge of the Officiating Principal be handed over to the fifth respondent. However, on 05.04.2023, the Management of the fourth respondent, Committee of Management instead of handing over charge to the fifth respondent, Rajendra Prasad son of Roshan Lal Gupta proceeded to pass resolution for handing over the charge to one, Sri Sanjay Kumar Tripathi. That led to challenge being raised at the instance of the fifth respondent, Rajendra Prasad, while filing Writ ? A No. 6837 of 2023 (Rajendra Prasad vs. State of U.P. And 5 others), which came to be decided on 05.05.2023, while passing the following orders :-

"Heard Sri Satya Prakash Mishra, learned counsel for the petitioner, Sri Anoop Kumar Mishra, learned counsel for the respondent no.5 and learned Standing Counsel for the State.

The petitioner has challenged the order dated 5.4.2023 passed by the Manager whereby the charge of the officiating Principal of the institution was given to one Mr. Sanjay Kumar Tripathi, Lecturer (Arts) working in the institution admittedly junior to the petitioner.

Sri Anoop Kumar Mishra, learned Advocate who has put in appearance on behalf of respondent no.5 claims that the order passed by the Manager dated 5.4.2023 has been recalled vide order dated 12.4.2023 and the petitioner has been directed to be given charge of officiating Principal of the institution.

Further, it has been noticed in the order that the petitioner has been handed over the charge and so consequently the District Inspector of Schools attested the signatures of the petitioner on 18.4.2023.

Thus, it is argued that once the petitioner's signatures have come to be attested in supersession to the order dated 5.4.2023 in as much as the order dated 5.4.2023 has been recalled vide order dated 12.4.2023, this writ petition is rendered infructuous as the relief claim for has stood satisfied.

All the orders placed above are taken on record.

Sri Satya Prakash Mishra, learned counsel for the petitioner states that the charge has been given to petitioner vide order dated 12.4.2023, the respondent no.5 who was earlier denied the charge on the ground that there was a disciplinary proceeding pending against him has filed writ petition and the order is sub judice before this Court in Writ A No.7083 of 2023.

Admittedly, when the said writ petition is still pending and the petitioner had already been given charge pursuant to the order dated 12.4.2023 and his signatures have come to be attested by the District Inspector of Schools dated 18.4.2023, there is no occasion for the Committee of Management to pass any fresh order. The order therefore, passed on 5.4.2023 may be required to be challenged.

However, since the petitioner's signatures continue to be attested by the District Inspector of Schools under his order dated 18.4.2023, he is restrained from

passing any fresh order pursuant to the order passed by the Manager of the Committee of Management dated 5.4.2023 without affording any opportunity of hearing to the petitioner.

The petitioner as well as respondent no.5 are accordingly directed to appear before the District Inspector of Schools on or before 15.5.2023.

In the event the petitioner as well as respondent no.5 appear as directed hereinabove, the District Inspector of Schools and file their objections, the District

Inspector of Schools shall fix a date issuing notice to the Manager of the Committee of Management and after providing opportunity of hearing to all the concerned parties shall pass orders within a further period of three months and untill such decision petitioner shall be permitted to continue as officiating Principal.

With the aforesaid observation and direction, the petition stands disposed of."

The Court while passing the order as referred to above proceeded to note that the order dated 05.04.2023 was recalled on 12.04.2023 and signature of the fifth respondent was attested on 18.04.2023. The writ petitioner herein also preferred Writ - A No. 7083 of 2023 (Durgesh Kumar vs. State of U.P. and Others), which came to be decided by virtue of the order dated 08.05.2023, which reads as under :-

"Shri Anoop Kumar Mishra, learned counsel for the petitioner, states that the order dated 12.4.2023 challenged in this petition has come to be cancelled by the Manager of the Committee of Management under his order dated 4.5.2023 and the matter has now been remitted to be decided by the District Inspector of Schools in Writ-A No.6837 of 2023 decided on 5.5.2023.

Since now, the order under challenge has been recalled, the writ petition is rendered infructuous. The matter regarding charge of post of Principal under the order dated 4.5.2023 of this Court is now stated to be pending before the District Inspector of Schools for consideration wherein the other party, namely, Rajendra Prasad is also pressing his claim.

It is, therefore, left open for the petitioner to appear before the District Inspector of Schools and get the matter disposed of in the light of the directions issued by this Court in Writ-A No.6837 of 2023 (Rajendra Prasad vs. State of UP and 5 others)."

As per the order passed in both the writ petitions preferred by the fifth respondent and the writ petitioner, the second respondent, District Inspector Schools, Bareilly was to decide the said issue and in the interregnum period the fifth respondent was to continue as an Officiating Principal of the institution in question. However, according to the writ petitioner, in between on the basis of the complaint so preferred by the writ petitioner dated 24.04.2023, an order was passed on 03.05.2023 about two days prior to the passing of the order by this Court itself, whereby the writ petitioner was made admissible to officiate on the post of the Principal in question, however subject to the final outcome of the pending Writ Petition No. 6837 of 2023 and 7083 of 2023.

Learned counsel for the writ petitioner has also invited the attention of the Court towards Annexure No.14 at page no.88 of the paper book, which happens to be

the order of the fourth respondent, Committee of Management dated 04.05.2023, whereby it has been sought to be suggested that the order dated 12.04.2023 entitling the sixth respondent, who officiate as the Principal of the institution in question has been made redundant.

According to the writ petitioner, ultimately on 24.06.2023, the Joint Director of Education, Bareilly Mandal, Bareilly proceeded to pass the order dated 24.06.203 in the wake of the decision of the Court dated 05.05.2023, Writ A No. 6837 of 2023 (Rajendra Prasad vs. State of U.P. and Others) as well as Writ - A No. 7083 of 2023 (Durgesh Kumar vs. State of U.P. And 5 Others), whereby it sought to keep in abeyance the order earlier passed on 03.05.2023. In compliance of the order of the Writ Court passed in the above noted writ petitions, now the second respondent, District Inspector of Schools, Bareilly has proceeded to pass the order impugned dated 01.07.2023 making the fifth respondent admissible to officiate as a Principal in that regard.

Questioning the order dated 01.07.2023, passed by the second respondent, District Inspector of Schools, Bareilly, the writ petitioner has filed the present writ petition.

Sri Ashok Khare, learned Senior Counsel, who appears for the writ petitioner has sought to argue that the order dated 01.07.2023, passed by the District Inspector of Schools, Bareilly is patently illegal besides being perverse, as it skips and omits to consider the vital, fundamental and core issues, which ought to have been adjudicated by him. He submits that though the order appears to be of approximately five pages, however the discussion is just in a one paragraph and conclusion has been drawn.

Sri Ashok Khare, learned Senior Counsel for the writ petitioner, in order to buttress his submission has further sought to argue that even in fact the clog of certain irregularities so alleged to have been committed by the writ petitioner stands wiped off in view of the decision of the Committee of Management in question dated 03.05.2023, wherein the allegations were found not to be substantiated against the writ petitioner. He further submits that the order in question ought to have been adverted to the merits of the matter, however on the basis of certain technicalities and making the basis of the order dated 24.06.2023, passed by the Joint Director of Education, Bareilly Region, Bareilly staying the effect of the operation of the order dated 03.05.2023, the writ petitioner has been denuded of the benefits. The submission is that for the purposes of officiation various criterias have to be taken into consideration and in the present case, the said criterias tilt in favour of the writ petitioner, as the writ petitioner is not only senior, but the clog of a criminal case and the allegations stood wiped off and erased and thus he is entitled to be considered for officiation, particularly in view of the fact that the Committee of Mangement in its resolution supports the case of the writ petitioner.

Sri R.K. Ojha, learned Senior Counsel, who appears for the respondent no.5 has sought to submit that there happens to be a first information report lodged against the writ petitioner, which even in fact denudes the writ petitioner for officiation, particularly in view of the fact that mere seniority would not grant any benefit to the writ petitioner, as obviously his conduct and antecedents have to be also seen in that regard. He however submits that the Joint Director of Education, Bareilly Region, Bareilly had no authority to poke its nose in the matter, particularly when the order of the Writ Court directed the District Inspector of Schools to decide the matter and virtually the said order so passed in favour of the writ petitioner were prior to the passing of the order by the Writ Court and thus they become totally

inapplicable and redundant, when the matter stood remitted to the District Inspector of Schools, Bareilly to accord consideration to the claim of the writ petitioner.

Sri R.K. Ojha, further submits in his usual fairness that fundamental and core issues have not been adverted in the order impugned, thus according to him, let a fresh exercise be undertaken in this regard. However, he further submits that the fifth respondent is officiating on the post of the Principal, pursuant to the order passed by the Writ Court .

Sri Shyam Mani Shukla, learned counsel, who appears for respondent nos.3 and 4 has supported the case of the writ petitioner.

Sri Manoj Vashisth, learned Standing Counsel, who appears for respondent nos.1 and 2, however submits that the order in question cannot be faulted, in case the matter stands remitted back to the second respondent, District Inspector of Schools, Bareilly, then the said exercise should be conducted and concluded within the time stipulated by this Court.

Considering the submission of the rival parties as well as the stand taken by them, particularly the fact that the order impugned in the writ petition as rightly pointed out by the learned counsel for the parties is not adverted to the core and the fundamental issues, which are relevant for officiation as Officiating Principal being suitability, eligibility and seniority and further the order impugned proceeds on certain considerations, which are totally irrelevant and not applicable, thus the writ petition in the said background is being decided in the following manner :-

(a) The order dated 01.07.2023, passed by the second respondent, District Inspector of Schools, Bareilly is set aside;

(b) The matter stands remitted back to the second respondent, District Inspector of Schools, Bareilly for passing fresh orders in accordance with law;

(c) Since, the parties are represented before this Court through their counsels and they seek ultimate decision on merits with most expedition, thus the parties in question agree to appear before the District Inspector of Schools, Bareilly on 05.09.2023;

(d) On 05.09.2023, the writ petitioner, the third, fourth and fifth respondent shall submit their version in writing before the second respondent, District Inspector of Schools, Bareilly;

(e) The parties shall exchange their versions amongst themselves;

(f) The District Inspector of Schools, Bareilly shall fix 13.09.2023, as the date for conduction of hearing. On that date, the hearing will be conducted;

(f) The orders be passed by 22.09.2023.

As jointly agreed between the parties, the arrangement, which is going on shall continue till the passing of the fresh orders. Needless to point out that since the parties are themselves represented before the Court through their counsels itself, thus they need not be given further intimation.

Passing of this order may not be construed to be an expression that this Court has

*adjudicated upon the merits of the matter, however the second respondent shall decide the matter strictly in accordance with law without being obsessed or influenced by any of the observations made herein above.
With the aforesaid observations, the writ petition stands partly allowed."*

4. Now post remand the District Inspector of Schools, Bareilly has passed an order dated 21.09.2023 negating the claim of the petitioner which is challenged in the present writ petition.

5. Leaned counsel for the writ petitioner submits that once the signature of writ petitioner was attested as an officiating principle might be he is junior to the fifth respondent then without there being any order of the District Inspector of Schools he cannot be divested of his legal rights. He further submits that there happens to be a First Information Report lodged against the fifth respondent by one Smt Sunita Sharma on 28.05.2023 before the Police Station Baradari being F.I.R. No. 0391 under Section 424, 467, 468, 471 and 409 I.P.C., thus the writ petitioner is not entitled to be accorded officiation. He further submits that might be according to the fifth respondent a final report is being submitted before the competent court but once the informant in the said case has required reinvestigation by approaching the S.S.P. Bareilly then it was not proper for the respondents to have accorded benefit to the fifth respondent. Further submission is that the writ petitioner is liable to be accorded the benefit.

6. Sri S.N. Shukla, Sri Anoop Kumar Mishra and Sri Shailendra Singh who appear for the respondents on the other hand submits that merely because there happens to be a First Information Report could not be a ground to denude the fifth respondent as already no conviction has been made. He further submits that earlier also allegations were sought to be levelled which culminated into an inquiry report and thereafter the disciplinary/ appointing authority on 03.05.2023 exonerated the fifth respondent, thus the joining of the fifth respondent cannot be faulted with particularly when the writ petitioner is herein junior to the fifth respondent.

7. I have heard the learned counsel for both the parties and perused the record. The facts of the case are not in dispute. It is also not disputed that the fifth respondent is junior to the writ petitioner. Though, First Information Report has been lodged but the same has not culminated into an order of conviction. Moreover, none of the parties have produced before this Court any provision of law or any judgment so as to suggest that mere lodging of an F.I.R. would be a fetter for officiation as a Principal. More so, in the present case it appears that the investigation has been conducted however the informant has requested for reinvestigation. The Court further finds that on 03.05.2023 with respect to certain irregularities fifth respondent has been exonerated and the fifth respondent is senior to the writ petitioner, thus, this Court in the present facts of the case does not find it justifiable to interfere with the order impugned in the writ petition.

8. The writ petition is accordingly ***dismissed***.