

Court No. - 35

Case :- WRIT - A No. - 17814 of 2023

Petitioner :- C/M Intermediate College, Rampurwa And Another

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

Counsel for Petitioner :- Ram Sagar,Utkarsh Tripathi

Counsel for Respondent :- C.S.C.,Satyendra Chandra
Tripathi,Shashi Prakash Rai

Hon'ble Vikas Budhwar,J.

Heard Shri Utkarsh Tripathi, learned counsel for the writ petitioners, Shri Shailendra Singh, learned Standing Counsel who appears for the respondent Nos. 1 and 2 and Shri Satyendra Chandra Tripathi who appears for the respondent No. 3 and Shri Shashi Prakash Rai who appears for the respondent No. 4.

Since the counsel for the rival parties has made a joint statement that the present writ petition raises legal issue and they do not propose to file any response to the writ petition thus, the writ petition is being decided without seeking any response at the fresh stage.

The case of the writ petitioners is that there happens to be an institution by the name of Intermediate College, Rampurwa, Khajni, District Gorakhpur which is an institution recognised under the provisions of U.P. Intermediate Education Act 1921 and provisions of U.P. Act No. 05 of 1982 and U.P. Act No. 24 of 1971 stands applicable. The writ petitioner claims that it is validly elected committee of management.

As per the writ petitioners, the third respondent, Shri Mahanand Dwivedi was earlier working as an Assistant Teacher in Adarsh

Inter College, Hata Bajar Shivpur, Gorakhpur and he had obtained a degree of M.Ed., Education from fourth respondent University, Mahatma Gandhi Kashi Vidyapith, Varanasi in the year 1996. It is also the case of the writ petitioners that at that point of time in the year 1996, the third respondent was already employed as a Government servant. It is further the case that despite the fact that the third respondent was regularly employed, he obtained a degree as a regular student. The third respondent according to the writ petitioners was appointed as a principal in the petitioners' institution on 08.12.2022 pursuant to the selection by Madhyamik Shiksha Sewa Chayan Board, Prayagraj.

On noticing the said irregularity, a show cause notice was issued to the third respondent by the writ petitioners on 07.07.2023 to which a reply was submitted by the writ petitioners on 14.07.2023. Verification exercise was undertaken by the writ petitioners before the respondent-University. However, according to the writ petitioners, the same was not to the satisfaction of the writ petitioners. On 07.08.2023, a resolution was passed by the committee of management of the petitioners' institution and the third respondent was placed under suspension on 08.08.2023. A direction was also issued to the third respondent to hand over the charge to the senior most assistant teacher Shri Ganga Prasad Yadav. In para 12 of the writ petition, it is further asserted that the entire documents pertaining to the suspension of the third respondent was placed before the District Inspector of Schools, Gorakhpur for approval under Regulation 39 of Chapter III of Section 16 G of the U.P. Intermediate Education Act, 1921. Though all the papers were forwarded within a period of four days and a request was made on 12.08.2023 for approving the suspension of the third respondent but no action has been taken. In

the meantime, an inquiry committee as per the writ petitioners was constituted on 12.08.2023 and a chargesheet was also issued on 14.08.2023.

Despite the fact that the District Inspector of Schools, Gorakhpur was required to accord consideration to the resolution of the committee of management of the petitioners' institution for approval but the same was not made in spite of various reminders, so the writ petitioners herein preferred the present writ petition with a direction to the second respondent, District Inspector of Schools, Gorakhpur to take appropriate decision on the suspension of the third respondent dated 08.08.2023. This Court entertained the writ petition on 01.11.2023 while passing the following orders:

"The contention of the learned counsel for the writ petitioner is that the third respondent had committed fraud in procuring appointment on the basis of forged eligibility. The petitioner Committee of Management proceeded to pass a resolution of suspension of the third respondent and the papers were transmitted on 12.08.2023 with relation to suspension of the third respondent on 08.08.2023 before the District Inspector of Schools, Gorakhpur.

Prayer in the present petition is for a direction to the second respondent, District Inspector of Schools, Gorakhpur to accord consideration to the proposal of the Committee of Management for suspension of the third respondent.

Sri Satyendra Chandra Tripathi, who appears for the third respondent has relied upon a judgment of the Division Bench of this Court in Committee of Management, Shri Maharshi Balmeek Inter College, Khandeha, Chitrakoot Vs. Rajesh Kumar Singh and others, reported in 2014(6) ADJ 1 (DB) so as to contend that once the issue of eligibility of a teacher is concerned, and a disciplinary proceeding has been initiated post suspending the teacher, then it is the Board under U.P. Act No.5 of 1982, which is to take a decision in the matter and the prayer so made in the writ petition for according consideration for approving the suspension cannot lie, as it is not within the realm of the disciplinary proceeding.

The counsel for the third respondent has also relied upon the provisions contained under Section 31 of the U.P. Act No.15 of 2023 as well as Section 6 of the U.P. General Clauses Act so as to further contend that once the repeal of the enactment has been made and the Board is not in existence, then in the circumstances, the prayer so accorded cannot be granted.

Sri H.K. Shukla, learned Standing Counsel in the said perspective is to obtain

instructions from respondent Nos. 1 and 2 with relation to the fact that as to what would be the import and impact of Repeal Act as well as the issue with regard to the competence of the District Inspector of Schools, to accord consideration in the manner of suspension of the third respondent in the light of the judgment in the case of Rajesh Kumar Singh (supra), particularly when this Court has mandated that in the matter with relation to the eligibility being questioned, the authorities are not empowered to decide the issue of suspension. A specific stand be exhibited on the next date fixed.

Put up this case on 06.11.2023 at 02:00 P.M."

Shri Utkarsh Tripathi, learned counsel for the writ petitioners has sought to argue that once the entire documents as envisaged under the regulations for taking a decision in the matter of suspension of the third respondent was placed before the second respondent, District Inspector of Schools, Gorakhpur then a decision either to approve or disapprove ought to have been taken by the District Inspector of Schools, Gorakhpur and he cannot sit tight over the said matter siding with the third respondent so as to even make the entire proceedings with relation to the suspension of the third respondent as infructuous.

Submission is, deliberately 60 days period is being allowed to lapse, however in view of the Full Bench Judgment in the case of **Chandra Bhushan Mishra Vs. District Inspector of Schools** reported in **1995 (1) UPLBEC 460** even after elapsing of 60 days, the District Inspector of Schools, Gorakhpur is not functus officio to accord consideration of the claim. He seeks to rely the Single Judge Bench in the Case of in Writ A No. 14973 of 2023 (The C/M Smt. Vimla Devi Inter College and Another Vs. State of U.P. and 2 others).

Shri Satyendra Chandra Tripathi who appears for the third respondent while opposing the writ petition has submitted that the District Inspector of Schools, Gorakhpur is not an authority vested with the power to approve the suspension of the third respondent

particularly when the question of eligibility is being sought to be raised. He submits that the power only vest with the U.P. Secondary Education Service Selection Board and in the said view of the matter the third respondent could not have been suspended and thus the writ petitioners are not entitled to a direction to the District Inspector of Schools, Gorakhpur to accord consideration that the issue of suspension. On merits, he submits that the degree of the third respondent has been verified by the University and it is nothing but an harassment which is being sought to be made out to it. He seeks to rely upon a Division Bench Judgment in the Case of **Committee of Management, Shri Maharshi Balmeek Inter College, Khandeha, Chitrakoot Vs. Rajesh Kumar Singh and Others** reported in **2014 (6) ADJ 1 (DB)** so as to contend that the eligibility of a teacher is not a matter of discipline and conduct which may be subjected to procedure of Disciplinary and Appeal rules by the committee of management as an employer. The management, thus, does not scrutinise the applications regarding eligibility of the qualifications nor has been given any power under Intermediate Education Act, 1921 or U.P. Act No. 05 of 1982 and the regulations framed therein to question the eligibility and the qualification of a principal or a teacher as the case may be.

Shri Utkarsh Tripathi, learned counsel for the writ petitioners has produced before this Court the Full Bench Judgment in the **Special Appeal Defective No. 385 of 2016 (Maiku Lal Sen Vs. Jay Jay Ram Upadhyay and 7 others)** decided on 26.04.2019 so as to contend that the Full Bench of this Court has held that the judgment in the case of **Committee of Management, Shri Maharshi Balmeek Inter College, Khandeha, Chitrakoot** does not lay down correct proposition of law. He submits that two questions framed by the Special Appellate Bench have been

answered in the following manner:

"In the light of the discussions made above, we proceed to answer the reference in the following terms:

(I) The decision in Special Appeal No. 476 of 2014, C/M Shri Maharshi Balmeek Inter College v. Rajesh Kumar Singh and others, 2014 (3) ESC 1778, does not lay down the correct proposition of law.

(II) There is no inconsistency between Section 16-E(10) of the U.P. Intermediate Education Act, 1921 and any provision of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982. Therefore, the authorities mentioned in Section 16-E (10) can exercise their power, irrespective of the provisions under Section 21 of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982.

The reference is answered accordingly."

According to the learned counsel for the writ petitioners, the District Inspector of Schools, Gorakhpur has to take a conscious decision in this regard. He further submits that the only prayer made in the present writ petition is for a direction to the District Inspector of Schools, Gorakhpur to accord consideration to the resolution of the committee of management placing the third respondent under suspension and according to him the insistence of the learned counsel for the third respondent to delve into the merits at the stage would not be proper as it would be usurping the authority and the jurisdiction of the District Inspector of Schools, Gorakhpur.

Learned Standing Counsel, Shri Shailendra Singh and Shri Rai who appears for the University argued that once there happens to be a Full Bench Judgment then in the circumstances let the District Inspector of Schools, Gorakhpur take a conscious decision upon the proposal in the light of the provisions so applicable therein.

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

Since the judgment in the case of **Committee of Management, Shri Maharshi Balmeek Inter College, Khandeha, Chitrakoot (supra)** which the learned counsel for the third respondent seeks to rely upon has been overruled in the Full Bench Judgement in the case of **Maiku Lal Sen (supra)**, thus, it is not open for the third respondent to insist and assert that the management has no power to scrutinise the paper in record nor such a power is conferred under U.P. Intermediate Education Act, 1921 read with U.P. No. 05 of 1982 and the rules and regulations framed thereunder. This Court in view of the relief as couched in the present writ petition does not find it proper to go into the merits of the issue particularly when the relief is sought for a direction to the District Inspector of Schools, Gorakhpur to accord consideration to the proposal of the committee of management for the suspension of the third respondent.

In view of the said factual and legal position, the writ petition is being **disposed off** granting liberty to the writ petitioner to approach the District Inspector of Schools, Gorakhpur, second respondent along with self attested copy of the writ petition and the certified copy of the order setting out its claim for giving a logical end to the proposal of the petitioners' committee of management for approval of the suspension of the third respondent and on the receipt of the said motion and the end of the writ petitioner, the second respondent District Inspector of Schools, Gorakhpur shall put to notice the third respondent, Shri Mahanand Dwivedi, officiating principal and thereafter proceed to decide the issue of approval of suspension strictly in accordance with law within a period of six weeks from the date of presentation of the certified copy of the order.

Needless to point out that this Court has not adjudicated on the merits and second respondent, District Inspector of Schools, Gorakhpur shall pass an order strictly in accordance with law without being influenced or obsessed by any of the observation made hereinabove.

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

Order Date :- 8.11.2023

A. Prajapati