

Court No. - 35

Case :- WRIT - A No. - 17915 of 2023

Petitioner :- Geeta Kumari

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Samarath Singh, Avnish Kumar Rai

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. On the oral request of the learned counsel for the petitioner C/M Janta Inter College, Umarpur, Kanpur Dehat through its Manager be impleaded as third respondent and Sri Jitendra Singh be impleaded as fourth respondent.

2. The case of the writ petitioner is that she happens to be the Principal of the third respondent-institution namely, Janta Inter College, Umarpur, Kanpur Dehat, who was earlier appointed as Assistant Teacher and consequent to the superannuation of the regular Principal namely, Sri Kailash Babu Shukla on 31.03.2016, she was handed over the charge of the Officiating Principal and her signatures have been attested on 13.04.2016 by the District Inspector of Schools, Kanpur Dehat. It is the case of the writ petitioner that the fourth respondent, Sri Jitendra Singh employed on compassionate basis as a class IV employee in the third respondent-institution on 20.09.1999 and the approval was accorded by the competent authority on 03.11.2022 while promoting him as Assistant Clerk. With regard to the illegality committed in the appointment of Sri Jitendra Singh his aunt, Satyawati lodged a first information report against Sri Jitendra Singh and the Manager and the officials of the institution in question on 27.07.2023 being F.I.R. No. 0130 Police Station, Sikandara, Kanpur Dehat under Section 420, 467, 468, 471, 406 & 120B I.P.C. Pursuant where to, the publication was made in the widely circulated newspaper and when the fraud relating to procuring of the compassionate appointment on fabricated grounds came to the knowledge of the institution in question then on 31.07.2023 the writ petitioner while discharging the functions as the Officiating Principal of the institution issued a communication seeking explanation of the fourth respondent, Sri Jitendra Singh. According to the writ petitioner, the second respondent District Inspector of Schools, Kanpur Dehat issued a communication to the Manager/Principal of the institution in question on 07.08.2023 seeking explanation within a period of three days to which

according to the writ petitioner, she tendered his explanation on 21.08.2023 along with the supporting documents. However, according to the writ petitioner on 25.08.2023 the second respondent, District Inspector of Schools, Kanpur Dehat issued a communication to the writ petitioner whereby taking ground that despite various communications being made to the Principal of the institution in question, documents have sought for were not submitted and accordingly, the District Inspector of Schools, Kanpur Dehat, second respondent proceeded to suspend the payment of salary to the writ petitioner and the concerned employee. The writ petitioner claims to have submitted a reply on 30.08.2023 before the District Inspector of Schools, Kanpur Dehat it has been marked as Annexure 9 at page 70 of the paper book reference whereof has been given in para 34 whereby the writ petitioner has come up with a stand that she took the charge of an Officiating Principal on 01.04.2016 and whatever the documents have forwarded to her she had forwarded the same and apart from the said documents there are no document which were made available to her, thus, she cannot be held to be guilty.

3. Questioning the order dated 25.08.2023 insofar as seeks to stop the salary of the writ petitioner as Officiating Principal, the present writ petition has been filed. The matter was taken up on 26.10.2023 and on the request of the learned counsel for the writ petitioner, the matter has been placed today.

4. Assailing the order dated 25.08.2023 passed by the second respondent, District Inspector of Schools, Kanpur Dehat, learned counsel for the writ petitioner submits that the said order is in violation of principles of natural justice as the said order has been passed without putting to notice the writ petitioner. He further submits that the appointment of the fourth respondent, Jitendra Singh was made wayback as a class IV employee on 30.09.1999 and at that point of time the writ petitioner was not the appointing authority as she was only an Assistant Teacher and subsequently she was accorded promotion as class III employee on 03.11.2022, thus, the appointing authority of the fourth respondent stood transformed from the Principal to the Manager of the Committee of Management, thus, the writ petitioner cannot be held to be guilty particularly when the writ petitioner has no say. He further submits that whatever documents were handed over to the writ petitioner by the erstwhile Principal had been forwarded to the District Inspector of Schools, Kanpur Dehat and at least proprietary demanded that opportunity of hearing ought to have been accorded in that regard.

5. Sri Ratan Deep Mishra, learned Standing Counsel who appears for respondents No. 1 and 2 has produced before this Court the documents which are 4 in number according to which on 07.08.2023 the Principal/Manager of the institution in question were required to submit documents and since the documents were not submitted which constrained passing of an order dated 25.08.2023 stopping the salary of the Officiating Principal and the concerned employee and now post the same on 21.09.2023 a communication has been issued whereby the salary of the staff and the teachers have been stopped and further on 10.10.2023 there happens to be a communication of the District Inspector of Schools, Kanpur Dehat whereby proceedings for single operation is to be accorded.

6. According to Sri Ratan Deep Mishra, learned Standing Counsel be that as it may from the order which is being subject matter of challenge it is not clear as to whether the writ petitioner was put to notice or not but the crucial aspects which needs determination is the fact that neither the Principal nor the Manager of the institution in question can withhold documents on the pretext that it is not available with them or it has not been handed over to them. He, however, submits that since after passing of the order dated 25.08.2023 now the orders have been passed on 21.09.2023 and 10.10.2023, thus, according to him, the matter be remitted back to the District Inspector of Schools, Kanpur Dehat to pass a fresh order within the time stipulated therein as obviously, in case, the fourth respondent is not eligible and qualified and has practised fraud while seeking compassionate appointment he cannot be allowed to continue in perpetuity. He further submits that he does not propose to file any response to the writ petition.

7. Considering the submission of the rival parties as well as the stand taken by them, in particular, the fact that the salary of the writ petitioner has been withheld without affording opportunity of hearing this Court finds that the order in question cannot be sustained insofar as it pertains to the writ petitioner, Geeta Kumari regarding withholding of salary. The view of this Court is further amplified from the judgment in the case of Bhagwan Shukla Vs. Union of India 1994 SCC (L&S) 1320 wherein the Hon'ble Apex Court has clearly observed that the order entitling civil consequences can only be passed after putting to notice to the persons against whom the order is being passed.

8. Accordingly, the writ petition is decided in the following terms:

(a) The order dated 25.08.2023 passed by the District Inspector of

Schools, Kanpur Dehat, second respondent insofar as it seeks to stop and withhold the salary of the writ petitioner is set aside;

(b) the matter stands remitted back to the District Inspector of Schools to decide the matter afresh within a period of two weeks from the date of production of certified copy of the order say, 27.11.2023 after putting the writ petitioner, the Committee of Management third respondent as well as the fourth respondent. The order passed today is only confined to the case of the writ petitioner as this Court has not adjudicated upon the rights and the claims of either third respondent, Committee of Management regarding the proposed action which is being sought to be taken by the District Inspector of Schools, Kanpur Dehat in the light of the document dated 10.10.2023 for resorting to single operation as well as with relation to the payment of salary with regard to the fourth respondent, Jitendra Singh.

9. With the aforesaid observations, the writ petition stands disposed of.

10. The document which has been filed by Sri Mishra, learned Standing Counsel who are four in number is taken on record and marked as Appendix 'A'.

11. Sri Ratandeep Mishra, learned Standing Counsel who appears for the respondents shall communicate the order passed today to District Inspector of Schools, Kanpur Dehat forthwith.

Order Date :- 28.10.2023
Rajesh