

Court No. - 35

Case :- WRIT - A No. - 18054 of 2023

Petitioner :- C/M Janta Inter College And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Vinod Kumar Singh

Counsel for Respondent :- C.S.C., Satyendra Chandra
Tripathi, Shiv Poojan Yadav, Sushil Kumar Shukla

Hon'ble Vikas Budhwar, J.

Heard Sri Vinod Kumar Singh, learned counsel for the petitioners as well as Sri Shailendra Singh, learned Standing Counsel, who appears for respondents 1 and 2 and Sri Satyendra Chandra Tripathi, learned counsel for the respondent no.3.

For the sake of brevity and clarity the facts of the case are not being narrated as the same stands reproduced in the earlier spell of litigation preferred by the writ petitioners herein in Writ-A No.11955 of 2023 wherein challenge was raised to an order dated 22.6.2023 passed by the second respondent, District Inspector of Schools, Baghpat whereby the suspension of the third respondent was disapproved. The order passed on 28.7.2023 in ex tenso is being quoted as under:-

*"Supplementary affidavit filed is taken on record.
Heard Sri Vinod Kumar Singh, learned counsel for the writ petitioner, Sri Shailendra Singh, learned Standing Counsel who appears for the respondent nos. 1 and 2 and Sri R.K. Ojha, Senior Advocate assisted by Sri Sushil Kumar Shukla, who appears for the respondent no.3.
The case of the writ petitioner is that petitioner no.1 happens to be an institution by the name and style of Janta Inter College Hilwari, District Baghpat which is recognised under the provisions of U.P. Intermediate Education Act, 1921 and the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 and the provisions of U.P. Act No.5 of 1982 are applicable as whereas petitioner no.2 is Manager of petitioner no.1 institution.
As per the writ petitioner the third respondent namely Sachin Kumar Rathi s/o Sri Harpal Singh Rathi was appointed as Physical Education Teacher on 17.11.2021 pursuant to his selection by the U.P. Secondary Education Services Selection Board, Prayagraj. Allegations have been leveled by the petitioner that the third respondent committed certain acts and omissions which was unbecoming of a teacher even in fact the same amounted to moral turpitude as allegations are with regard to misbehaviour with the girls student who are studying in the institution in question.
In para 6 of the writ petition it is further averred that pursuant to the*

complaint lodged in that regard a preliminary inquiry was initiated by the petitioner Committee of Management against the third respondent. It is further the case of the writ petitioner that a resolution was passed by the petitioner committee of management on 14.8.2022 placing the third respondent under suspension and formal order of suspension was issued under the signature of the Manager of the petitioner Committee of Management on 14.8.2022 and papers were transmitted to the second respondent, District Inspector of Schools, Baghpat, District Baghpat on 17.8.2022. Post suspension charge sheet was also issued and served upon the third respondent dated 24.8.2022 and an inquiry committee was also constituted appointing Sri Indra Pal as the member.

In para 8 it has been further averred that the charge sheet was served upon the third respondent on 26.8.2022. It has further alleged that since the third respondent did not submit its reply to the charge sheet dated 24.8.2022 so a notice was also issued by the Inquiry Officer on 22.9.2022 requiring the third respondent to sub his reply upto 25.9.2022. Thereafter, as per the writ petitioner an order was passed by the second respondent on 21.10.2022 whereby he disapproved the suspension of the third respondent. Challenging the said the writ petitioner claims to have preferred Writ-A No.20693 of 2022 which came to be disposed of on 13.12.2022 while passing the following order:-

"Heard learned counsel for the petitioner, Sri Satyendra Chandra Tripathi alongwith Sri Shiv Poojan Yadav learned counsel for respondent No. 3 and the learned Standing Counsel for the State respondents.

Challenge has been raised to the order dated 21.10.2022 passed by the District Inspector of Schools, Baghpat whereby he has disapproved the suspension order dated 14.8.2022 passed by the petitioner-Committee of Management of Janta Inter College, Hilwari, Baghpat.

Having heard learned counsel for parties and having perused the record, it transpires, respondent No. 3 was visited with the suspension order dated 14.8.2022, amongst others on certain charges of sexual harassment of girl students at the above described institution. According to the learned counsel for the petitioner, charge sheet was submitted on consideration of material in the shape of affidavits of parents of girl students clearly describing the act of sexual harassment committed by respondent No. 3. Perusal of the affidavits annexed to the writ petition prima facie indicates allegation of not only sexual harassment of girl students but transaction which may perhaps constitute ingredients of criminal offence as well. However, no conclusion is being drawn in these proceedings as the domestic enquiry proceedings are pending approval by the Board.

Suffice to note, 60 day time period contemplated under Section 16G(7) of the U.P. Intermediate Education Act, 1921 expired on 13.10.2022. To that extent, learned counsel for private respondent may be right that the respondent No. 3 became entitled to receive full salary upon expiry of that period. However, upon expiry of that period, the DIOS did not lose his jurisdiction to pass appropriate order on the proceedings seeking approval of the suspension order dated 14.8.2022. That law has been clearly enunciated by the Full Bench in the case of Chandra Bhushan Misra Vs. District Inspector of Schools, Deoria and others, (1995) 1 UPLBEC 460. Therefore, the consequence arising under Section 16G (7) would apply subject to the order that may be passed by the DIOS.

Perusal of the impugned order reveals, the District Inspector of Schools has proceeded to consider the matter on merits i.e. he has revoked the suspension

order upon consideration of material in the shape of certain affidavits relied upon by the private respondent to refute the charges levelled against him. While considering the validity of the suspension proceedings, the District Inspector of Schools had no jurisdiction to consider the merits of the charges levelled. All that he may have considered is the seriousness of the charges levelled against the private respondent and whether in face of such charges, pending domestic enquiry the said private respondent may have been entitled to resume work on the post. Seen in that light, the impugned order is wholly deficient. In the first place it is based on material that is extraneous to the issue of approval of suspension and then it records findings which are completed out of place. Here, it may be noted, according to learned counsel for the petitioner, the private respondent did not participate in the domestic enquiry proceedings and the enquiry was concluded ex parte on 29.9.2022 and a second show cause notice was issued to respondent No. 3 on 12.10.2022. Those proceedings are still pending with the petitioner-Committee of Management.

In such facts, impugned order can never be sustained. Inasmuch as learned counsel for private respondent also does not dispute that the merit of the charges could not have been gone into by the District Inspector of Schools, no useful purpose may be served in keeping the petition pending or calling for counter affidavit at this stage as no other consideration has been made by the District Inspector of Schools. The impugned order dated 21.10.2022 is set aside. Matter is remitted to the the District Inspector of Schools, Baghpat to pass fresh order within two weeks from today, keeping in mind the observations made above. Parties before the Court undertake to appear before the District Inspector of Schools, Baghpat on 19.12.2022 along with a copy of this order.

With the above observations, petition stands disposed of." Post remand by virtue of order of the writ court dated 13.12.2022 the second respondent has proceeded to disapprove the suspension of the respondent no. 3 on 22.6.2023. Challenging the order dated 22.6.2023 the writ petitioner has filed the present writ petition.

The matter was taken up on 26.7.2023 wherein following order was passed:- "Sri Vinod Kumar Singh learned counsel for the writ petitioners submits that even after passing of the order dated 13.12.2022 in Writ A No. 20693 of 2022 preferred by the writ petitioners challenging the order dated 21.10.2022, disapproving the suspension order the District Inspector of Schools was required to pass an order in conformity with law in the wake of the fact that there were series of allegations levelled upon the conduct of the third respondent. It is further the case of the writ petitioners that in the order impugned only in a cursory and a superficial manner, approval has been declined without prima facie evaluation of the charges. Sri Ojha learned Senior Counsel who appears for the third respondent, on the other hand, submits that he has not been served with the copy of the inquiry report and according to him the inquiry report may be perused by the Court in order to determine as to whether there is any merit in the charges prima facie so far as the suspension is concerned. He though, has made a statement that the merits of the charges cannot be weighed by this Court, however, they can be perused by the Court itself in order to find out as to whether in the facts and circumstances the suspension order needs to continue or not.

On the request of Sri Singh learned counsel for the writ petitioner, put up this case on 28.07.2023 as fresh.

Sri Ojha further submits that he would not take time to give any reply to the

same in that regard. Sri Ojha further submits that though the functioning of the petitioner No. 1, Committee of Management has been kept on hold, however, he fairly admits that the writ petition is maintainable at the behest of the petitioner No. 2.

An oral request has been made by learned counsel for the writ petitioner to delete the prayer No. 2 to which Sri Ojha has not objection. Permission is accorded to delete the prayer No. 2."

Pursuant to the order dated 26.7.2023 the inquiry report has been filed along with the supplementary affidavit which is taken on record.

Learned counsel for the petitioner while challenging the order dated 22.6.2023 has sought to submit that the order of the second respondent disapproving the suspension of the third respondent is bereft of any valid reasons so as to disapprove the suspension order in the wake of the fact that there happens to be serious allegations against the third respondent. He further submits that though in the order in question it has been noticed that there were complaints from the parents/wards of the female students regarding misbehaviour by the third respondent but only on the superficial basis without adverting to the core issue so as to prima facie opinion on the charges so as to take a decision for approving or disapproving the suspension order, the only alleged reason taken is that since there was no first information report lodged against the third respondent by the wards of the students or by the petitioner committee of management and further it cannot be ruled out that due to confrontation of the office bearers of the committee of management and the third respondent the entire proceedings have been tailored just to place the third respondent under suspension and to dislodge him from performing the function.

He further submits that the matter needs to be given a relook and the matter be remitted back to the second respondent to accord fresh consideration that too by taking into account the fact as to whether the third respondent needs to be under suspension or not though the second respondent may not enter in to the merits of the charge sheet.

Sri Ojha, on the other hand submits that the para 7 of the order impugned itself encapsules the entire issue and the crux of the matter has been reduced in writing whereby even without touching into the matter the second respondent has prima facie formed an opinion that the present case does not warrant continuance of the third respondent to be under suspension as though the allegation might be there but there was no FIR lodged before the concerned police station either by the office bearers of the committee of management of the petitioner in question or the wards of the student . He further submits that entire exercise is being sought to be made just in order to dislodge the third respondent.

Sri Ojha, has invited the attention of the court towards the inquiry report so as to contend that though this Court might not at this stage venture into the inquiry report but prima facie the conduct of the Inquiry Officer proceeding has to be seen just in order to form a prima facie opinion with regard to the fact as to whether the suspension needs to be continued or not. Sri Ojha has also tried to place before this court certain affidavits which even in fact supports his case that the author of the said affidavit who are stated to have certain complaints against the third respondent has come up with stand that they have not lodged complaint and even in fact the same was forged. However, Sri Ojha submits that in case the matter stands remitted to the second respondent then off course the documents which he proposes to rely and place may be taken into account which may not be construed to be on

merits so as to trench into the inquiry report however they may be taken into account for prima facie finding out as to whether the suspension needs to be continued in the light of the fact that is to be approved or disapproved. Learned Standing Counsel submits that let the matter be revisited by the second respondent in this perspective.

To such a submission learned counsel for the petitioner has no objection and he gracefully accepts the same.

Considering the submission of the rival parties as well as the stand taken by them this Court is of the opinion that the matter needs to be given a relook just in order to form a prima facie opinion as to whether the charges continuance of the suspension of the writ petitioner or not.

Consequently the writ petition is being decided in the following manner:-

(a) the order dated 22.6.2023 passed by the second respondent is set aside;

(b) the matter is remitted to the second respondent to decide the same;

(c) on 7th August, 2023 the petitioner the Committee of Management, the third respondent, shall present themselves before the second respondent, District Inspector of Schools, Baghpat, District Baghpat;

(d) on 7th August, 2023 the version and the documents proposed to be submitted by the parties be exchanged;

((e) On 11th August, 2023 the hearing would be done in the presence of the writ petitioner and the third respondent. The final orders shall be passed on or before 24th August, 2023.

Since the petitioner as well as third respondent are represented through their counsels and the learned Standing Counsel appearing for respondents no. 1 and 2 thus no further information be given to the respective parties. This court further expects that the second respondent shall pass an order in accordance with law after dealing with the contention of the parties.

Sri Ojha, at this stage submits that he has not been paid salary as the suspension order stood disapproved.

Learned Standing Counsel submits that appropriate decision with regard to payment of salary to the writ petitioner shall be taken in the light of the Full Bench in the case of Chandra Bhushan Misra Vs. District Inspector of Schools, Deoria and others, (1995) 1 UPLBEC 460 within a period of one week.

With the aforesaid observations, the writ petition stands disposed off."

Post remand now the District Inspector of Schools, Baghpat the second respondent has passed the order dated 4.10.2023 again disapproving the suspension of the third respondent. Questioning the said order the writ petitioner has filed the present writ petition.

A joint statement has been made by Sri Shailendra Singh, learned Standing Counsel, who appears for respondents 1 and 2 and Sri Satyendra Chandra Tripathi, learned counsel for the respondent no.3 that the writ petition be decided at the fresh stage itself as they do not propose to file any response to the writ petition. Thus with the consent the writ petition is being decided.

Sri Vinod Kumar Singh, learned counsel for the petitioners while assailing the order dated 4.10.2023 passed by the second respondent, District Inspector of Schools, Baghpat has sought to

contend that the said order cannot be sustained for a single moment particularly when the same does not advert to the exercise which is to be undertaken while approving/disapproving the order of suspension. He submits that earlier also an order was passed post remand on 13.12.2022 in Writ A No.20693 of 2022, Committee of Management, Janta Inter College vs. State of U.P. wherein the second respondent, District Inspector of Schools, Baghpat has sought to disapprove the suspension of the third respondent on the ground that though there were allegations against the third respondent regarding molestation of the girls student but the same could not be substantiated as no departmental inquiry was conducted by the petitioners, Committee of Management against the third respondent and on the basis of the affidavits against the third respondent without there being any first information report coupled with confrontation and discordant relationship between the Committee of Management and the third respondent, the third respondent was placed under suspension. At that stage this Court came to the rescue of the writ petitioners and by virtue of the order dated 28.7.2023 passed in Writ-A No.11955 of 2023 preferred by the writ petitioner the order in question was set aside, the matter was remitted back, however again now the said illegality has been again repeated particularly in view of the fact that though the order is shown to be lengthy enough starting from page 83 of the paper book but in the fourth column pertaining to discussion and deliberation it has been sought to be recorded that so far as the complainant being Smt. Manju wife of Rajesh, she is stated to have submitted an affidavit but according to her she is not a educated lady and she had not tendered the said affidavit.

The submission of the learned counsel for the writ petitioners is that the said affidavit was already on record and was taken notice by the District Inspector of Schools, Baghpat in its order dated 22.6.2023 thus the same cannot be made a basis to negate the claim particularly when there happen to be affidavits of one Sri Devendra Singh, Sri Krishna Pal, Sri Julficar, Sri Om Prakash and Sri Baljeet also to the said extent. He submits that the use of the word "*Balheen*" itself touches to the merits of the matter and according to him the order in question also becomes vulnerable particularly when it has been recorded that the placing of the third respondent under suspension tantamount to a major punishment and according to him the directions for warning and requiring the third respondent to be a good teacher with unblemished conduct and leaving it while imposing the punishment of warning was totally unwarranted as the District Inspector of Schools, Baghpat

under the provisions of Section 16G Regulation 39 of the Chapter III of the U.P. Intermediate Education Act, 1921 was only required to accord prima facie opinion with respect to the gravity of the charges with relation to continuance of the delinquent under suspension. He submits that while doing so the second respondent, District Inspector of Schools, Baghpat has transgressed its authority and over stepped the boundaries which are available under law. According to him the order in question be set aside.

Sri Satyendra Chandra Tripathi, learned counsel for the respondent no.3 submits that though the writ petitioner might be correct that there happens to be certain observations and findings which go into the merit of the matter and that too beyond the purview and the scope with relation to the reference which was pending before it but according to him the conduct of the Committee of Management is itself writ large for non according of any relief particularly when as per the writ petitioner there happens to be averments in paragraph no.16 and 17 that the Enquiry Committee has tendered this report way back in the month of October, 2022 and as second show cause notice has been issued but the disciplinary authority has not taken any action. He further submits that the conduct of the writ petitioner shows that it is being treating the tool of suspension as a punitive measure. He further seeks to rely upon the decision in the case of **Union of India and another vs. Ashok Kumar Aggarwal (2013) 16 SCC 147** so as to contend that the only purpose for placing the delinquent under suspension is to eliminate the chances of tampering with the inquiry and once the inquiry itself as per the writ petitioner stands concluded then to continue the writ petitioner under suspension would be illegal. He further seeks to rely upon the provisions of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 as well as the judgement in the case of **Aureliano Fernandes vs. State of Goa and others 2023 SCC Online SC 621** so as to that even as per the provisions of the 2013, Act as noticed above there has to be an internal committee to investigate into the complaints regarding sexual harassment and as the third respondent is witnessing the allegations of sexual harassment thus the entire inquiry proceedings cannot stand on any legs. He further submits that in case the order in question is set aside and the matter is remitted back then the third respondent shall be granted opportunity to place all its contentions as obviously according to him previously the said contentions were not raised according to him.

Sri Shailendra Singh, learned Standing Counsel has adopted the

argument of Sr Tripathi however according to him the District Inspector of Schools, Bulandshahr has virtually stepped its boundaries while touching merits and also gone into the issue of ultimate punishment. He submits that let a fresh exercise be taken by the District Inspector of Schools, Baghpat, second respondent.

To such a submission, learned counsel for the petitioner has no objection and he gracefully accepts the same.

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

Apparently from the order impugned it appears that on various places District Inspector of Schools, Baghpat, second respondent has addressed the issues on the merits which he was not required to do and to put the nail to the coffin the suspension has been treated to be a punishment and further a direction has been issued for imposition of punishment of warning. The said exercise was not necessary in the matter of approval/disapproval of suspension as what was to accord prima facie opinion as to whether the third respondent is entitled to continue his suspension or not.

So far as the argument raised by the Sri Satyendra Chandra Tripathi, learned counsel for the respondent no.3 upon the provisions of the 2013 Act and the judgement of Hon'ble Apex Court and continuance of the suspension even after the submission of the inquiry report according to him the same was not pleaded. It is always open for the third respondent to plead the said issues however the said issues which is being sought to be pleaded should be put to notice to the writ petitioners during the course of the hearing so as to enable him to respond to the same.

Considering the submission of the rival parties as well as the stand taken by them this Court finds that the order dated 4.10.2023 passed by the second respondent, District Inspector of Schools, Baghpat can not sustained. According the writ petition is being decided in the following terms:-

(a) the order dated 4.10.2023 passed by the second respondent, District Inspector of Schools, Baghpat is set aside;

(b) the matter is remitted to the second respondent to pass a fresh order;

(c) since the writ petitioners and the third respondent are appearing before this Court thus they having full knowledge of the orders

passed today;

(d) in the week commencing 27.11. 2023 the petitioners the Committee of Management, the third respondent, shall present themselves before the second respondent, District Inspector of Schools, Baghpat, District Baghpat;

(e) the version and the documents proposed to be submitted by the parties be exchanged;

(f) in the week commencing 11.12.2023 the hearing would be done in the presence of the writ petitioner and the third respondent. The final orders shall be passed on or before 24.12. 2023.

With the aforesaid observations, the writ petition is **partly allowed**.

Order Date :- 9.11.2023

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