

Court No. - 35

Case :- WRIT - A No. - 17975 of 2023

Petitioner :- C/M Shri Lakshman Das Damele Inter College And Another

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

Counsel for Petitioner :- Prabhakar Awasthi, Saurabh Tripathi

Counsel for Respondent :- C.S.C., Mahendra Singh

Hon'ble Vikas Budhwar, J.

Counter affidavit on behalf of third respondent as well as affidavit of service is taken on record.

Heard Shri Prabhakar Awasthi, learned counsel for the writ petitioners as well as Shri Awadesh Kumar Mishra, learned Standing Counsel for the respondent Nos. 1 and 2 and Shri Mahendra Singh, learned counsel for the respondent No. 3.

The case of the writ petitioners is that the third respondent who is working as an assistant teacher committed acts and omissions unbecoming of the teacher in institution in question thus a notice was stated to have been issued to which he submitted his reply and thereafter a three member committee was constituted on 22.12.2022 by the writ petitioner, committee of management which granted opportunity to the third respondent to submit his reply and thereafter an order is stated to have been passed a resolution of the committee of management dated 24.06.2023 whereby increment was withheld on cumulative basis for a period of one year. The matter travelled before the District Inspector of Schools, Jhansi who in-turn on 31.07.2023 constituted a three member committee which tendered its his report on 05.08.2023 and on the basis whereof the District Inspector of Schools, Jhansi

proceeded to pass the order impugned whereby he not only sought to rely upon the ex-parte enquiry committee constituted on 31.07.2023 substituted the punishment while administrating warning to the third respondent.

Questioning the said order dated 27.09.2023, the writ petitioner has filed the present writ petition.

The writ petitioner was entertained by this Court on 27.10.2023 while passing the following orders:

"Shri Prabhakar Awasthi, learned counsel for the writ petitioners while assailing the order dated 27.09.2023 passed by the District Inspector of Schools, Jhansi submits that the order in question suffers from patent irregularities, particularly, in view of the fact that first of all, it is an ex-parte order, secondly, District Inspector has no power under the statute to constitute a three member committee and to accept his report and also pass an order according to his whims and fancies without any authorization from the statutes. Since a writ of certiorari is being sought, let the respondent filed their counter affidavit.

Shri Ratan Deep Mishra, learned Standing Counsel who appears for the respondent Nos. 1 and 2.

Issue notice to respondent No. 3.

Steps to be taken by 31.10.2023.

Counter affidavit be served upon the learned counsel for the writ petitioners by 16.11.2023. Thereafter, rejoinder affidavit be filed by 21.11.2023.

Put up as fresh on 21.11.2023.

Affidavit of service be filed before the next date fixed."

A counter affidavit has been filed on behalf of the first and second respondent sworn by District Inspector of Schools, Jhansi followed

by a counter affidavit by the third respondent.

Learned counsel for the writ petitioner does not propose to file any further affidavits.

Shri Prabhakar Awasthi, learned counsel for the writ petitioner submits that the order dated 27.09.2023 passed by the second respondent, District Inspector of Schools, Jhansi is in violation of principle of natural justice as it seeks to rely upon the ex-parte inquiry report dated 05.08.2023 of the three member committee constituted by the District Inspector of Schools, Jhansi on 31.07.2023. In this regard, he relies upon the paragraph 22 of the writ petition, he further submitted that first of all District Inspector of Schools has no power under the statute to constitute a three member committee and further according to him, in case, the report had been furnished to him to the committee of management, it could have been responded in such a manner so as to convince that the ultimate punishment was perfectly invalid.

Shri Awadesh Kumar Mishra, learned Standing Counsel has not disputed that the fact that the order in question has been passed in violation of the principles of natural justice as according to him, para 13 of the counter affidavit does not deny the averments in para 22 of the writ petition. He further submits that the matter needs re-consideration by District Inspector of Schools, Jhansi.

Shri Mahendra Singh has adopted the arguments of the official respondents.

Considering the submissions of the rival parties as well as stand taken by them, this Court is of the opinion that the order in question which is subject matter of challenge is proceeding

towards fundamental defect and being in violation of principle of natural justices, the order dated 27.09.2023 passed by second respondent is set aside, matter stands remitted back to the second respondent to pass an a fresh order within a period of two months after putting to notice the writ petitioner and the third respondent while addressing the core and fundamental issues which have been discussed hereinabove.

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

Order Date :- 24.11.2023

A. Prajapati