

Court No. - 35

Case :- WRIT - A No. - 17871 of 2023

Petitioner :- Raghvendra Nath Dwivedi

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Yogesh Kumar Tripathi, Sr. Advocate

Counsel for Respondent :- C.S.C., Anoop Baranwal, Mahendra Pratap Yadav

Hon'ble Vikas Budhwar, J.

In Re: Civil Misc. Amendment Application No. 2 of 2023

By means of the present amendment application, pleadings are being sought to be amended while quashing the order dated 06.10.2023 passed by the District Inspector of Schools, Sant Kabir Nagar, fourth respondent.

Since there is no objection to the same.

The amendment application is allowed.

The necessary corrections be made during the course of the day.

Order on Appeal

1. Heard Sri R.K. Ojha, learned Senior Counsel assisted by Sri Yogesh Kumar Tripathi, learned counsel for the writ petitioner, Sri Santosh Kumar, learned Standing Counsel who appears for respondents No. 1 to 6 and Sri Sanjai Kumar Pandey (AOR A/S 0132/12) holding brief of Sri Mahendra Pratap Yadav, learned counsel and Sri Anup Barnwal, learned counsel who appears for the intervener.

2. The case of the writ petitioner is that earlier one Sri Balwant Vishwakarma preferred Writ A No. 11602 of 2023 questioning the order dated 01.05.2023 and 01.06.2023 whereby the District Inspector of Schools, Sant Kabir Nagar had issued a direction for granting officiating charge as Principal of the institution to the writ petitioner.

3. The said writ petition was entertained on 20.07.2023, the following orders were passed.-

"Heard Sri Ashok Khare Senior Advocate assisted by Sri Ajit Singh Barnwal

learned counsel for the writ petitioner as well as Sri Shailendra Singh learned Standing Counsel who appears for respondents No. 1 to 6 and Sri R.K. Ojha Senior Advocate assisted by Sri Promod Kumar Singh learned counsel for respondent No. 7.

The case of the writ petitioner is that the sixth respondent, Beni Mathav Gopinath Inter College Bakhera, District Sant Kabir Nagar is an institution recognized and aided under the provisions of U.P. Intermediate Education, 1921 and U.P. Act No. 5 of 1982 and U.P. Act No. 24 of 1971 stands applicable. In para 4 of the writ petition it has been asserted that in the fourth respondent institution there is authorized controller appointed who is still holding the charge of the institution in question. In para 5 an averment has been made that he was appointed as Lecturer (Economics) in the sixth respondent institution on 01.08.2022 and so far as the seventh respondent is concerned writ petitioner was appointed as a Assistant Teacher in L.T. Grade for Mathematics subject on 26.11.2010 in Janta Inter College, Asidhwa, Chetiya, Siddharthnagar. In para 8 it has been asserted that the seventh respondent was selected and granted appointed as Lecturer in Mathematics in the sixth respondent institution on 31.07.2012. Further assertion has been made that on 31.03.2023 one Raj Kumar Tripathi was to retire on the post of Principal causing vacancy in that regard. As per para 11 of the writ petition one Sri Vipul along with other had lodged complaint before the fourth respondent, District Inspector of School, Sant Kabir Nagar, against the seventh respondent on 22.03.2023 to which on 25.03.2023 the fourth respondent, District Inspector of School, Sant Kabir Nagar issued notice to seventh respondent. A notice was also issued on 26.03.2023 by the Principal of the sixth respondent institution to the seventh respondent and on 28.03.2023 the authorized controller, sixth respondent also issued notice to seventh respondent. In para 17 it is submitted that Sri Raj Kumar Tripathi superannuated on 31.03.2023 and he being the Principal of the college issued a letter to the sixth respondent seeking guidance as to whom the charge be handed over in pursuance thereof the sixth respondent on 31.03.2023 required Sri Raj Kumar Tripathi to hand over charge to the petitioner. It is the further case of the writ petitioner that he was handed over charge. It is also apparent from the record in particular at page 78 of the paper book that the fourth respondent, District Inspector of Schools, Sant Kabir Nagar by virtue of his communication dated 21.03.2023 required the sixth respondent to conduct inquiry against the writ petitioner. However, according to the learned counsel for the writ petitioner on 01.05.2023 the fourth respondent, District Inspector of Schools, Sant Kabir Nagar has issued a direction for handing over the charge upon the seventh respondent on the post of officiating Principal and subsequently on 01.06.2023 another order was passed for joining of the seventh respondent.

Both the orders have been subject matter of challenge in the present writ petition at the instance of the writ petitioner.

Sri Khare learned Senior Advocate for the writ petitioner has argued that

once the seventh respondent was facing certain allegations that too on the basis of the direction of the District Inspector of Schools, Sant Kabir Nagar dated 21.03.2023 then as per the relevant statute not only the seniority but suitability of the candidate is to be seen for the purposes of according joining as officiating principal as merely on the basis of seniority a senior most teacher cannot get any right to be posted as Assistant Teacher. Attention has been drawn towards Annexure 23 at page 78 of the paper book being a letter dated 12.06.2023 of the sixth respondent addressed to the seventh respondent wherein certain allegations have been sought to be levelled. It is the further submission of the learned counsel for the writ petitioner that both the impugned orders proceeds on misconception of facts and law as they tend to rely upon the judgment in the case of Gauri Shankar Dubey Vs. District Inspector of Schools 1992 (1) UPLBEC Page 158 which only takes into note the fact that seniority is only a criteria for granting officiation as an officiating principal in the institution in question. The submission of the learned counsel for the writ petitioner is that the order in question is set aside and the writ petitioner be accorded joining as officiating principal in institution in question. Sri Radha Kant Ojha Senior Advocate who appears for the seventh respondent, on the other hand, submits that might be the writ petitioner would be right in contending that there were allegations against the writ petitioner but the nature of the allegations and the time at which the said allegations were put into service are the relevant factors which needs to be taken into consideration particularly in view of the fact that as per the own saying of the writ petitioner itself the allegations are of the year 26.11.2010 which is prior to the induction of the writ petitioner in the sixth respondent institution as a Lecturer as these are referable to the erstwhile institution which has no concern in this regard particularly when no departmental proceedings whatsoever be initiated against the seventh respondent. It has been further sought to be argued that the said allegations are referable to obtaining of degrees simultaneously as not provided and for availing certain benefits which could not have been granted which even in fact are 13 years ago which are not co-related with the sixth respondent institution and obviously they do not partake the character of any allegation relating to financial misappropriation or insubordination in that regard. Sri Ojha, on the other hand, submits that the full bench judgment relied upon by the learned Senior Counsel for the writ petitioner in the case of **Kumari Radha Raizada Vs. Committee of Management Vidyawati Darbari Girls Inter College** decided on 12.07.1994 is of no avail to the writ petitioner as the said judgment will not apply in the present facts when the allegations are not so as to dis-entitle the writ petitioner as the seventh respondent as they do not constitute any allegation so as to exclude the claim of the writ petitioner of the seventh respondent who is senior in this regard.

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

Undisputedly, the seventh respondent is senior to the writ petitioner as the

seventh respondent was appointed as Lecturer on 31.07.2012 as well as the writ petitioner on 01.08.2012. It is also not in dispute that the allegations sought to be levelled are not related to any misconduct, insubordination of financial irregularity and the said allegations are even in fact in the erstwhile institution 13 years ago which were never put to any departmental proceedings and the writ petitioner, on the verge of the retirement of Sri Raj Kumar Tripathi when he was to be accorded posting as officiating principal now the said allegations have been a basis to denude the seventh respondent for being granted the said benefits.

In view of the aforesaid foregoing discussions this Court does not find any merit in the submission of the learned Senior Counsel for the writ petitioner and, thus, the writ petition being wholly misconceived and is liable to be dismissed.

Accordingly, the writ petition is dismissed."

4. It is further the case of the writ petitioner that though the order of the Writ Court dated 20.07.2023 had attained finality and it has not been subjected to any intra-court appeal or review but now on 29.09.2023 the sixth respondent who happens to be the authorized controller Beni Madhav Gopinath Inter College, Bakhera, District Sant Kabir Nagar has proceeded to suspend the writ petitioner on the basis of stale the charges which were nowhere related to the working of the writ petitioner in the institution in question in that regard.

5. Questioning the order dated 29.09.2023 passed by the sixth respondent placing the writ petitioner under suspension the writ petitioner has filed the present writ petition.

6. The said writ petition came up for consideration before this Court on 26.10.2023 wherein the counsel for the intervener has produced before this Court the order dated 06.10.2023 approving the suspension of the writ petitioner by the District Inspector of Schools, Sant Kabir Nagar. Thereafter, it appears from the record that amendment application has been filed which by a separate order has been allowed.

7. Sri Ojha, learned Senior Counsel assisted by Sri Yogesh Kumar Tripathi, learned counsel for the writ petitioner submits that though the suspension order dated 29.09.2023 of the sixth respondent was totally unwarranted for as it was nothing but an attempt on the part of the authorized controller to just block the handing over the charge to the writ petitioner as an officiating principal that too on

the basis of the stale charges and further coupled with the fact that the said charge do not constitute any misconduct, however, the District Inspector of Schools, Sant Kabir Nagar has proceeded to approve the suspension of the writ petitioner on 06.10.2023. He submits that the order passed by the District Inspector of Schools, Sant Kabir Nagar is in utter violation to the principles of natural justice and further the same is a cryptic, non-speaking unreasoned order as if the District Inspector of Schools, Sant Kabir Nagar has only endorsed the claim of the authorized controller of the institution in question without being any independent application of mind. He submits that the order be, matter be remitted back giving opportunity to the writ petitioner to put forward his stand.

8. Sri Santosh Kumar, learned Standing Counsel who appears for respondents No. 1 to 6 has produced before this Court the instructions dated 28.10.2023, however, he fairly submits that before passing the impugned order opportunity of hearing was not accorded to the writ petitioner and he also gracefully accepts that order does not deal with each and every aspect of the matter which was required while approving or disapproving the suspension.

9. Sri Vijay Kumar Pandey holding brief of Sri Yadav, learned counsel who appears for the seventh respondent has sought to defend the order of the District Inspector of Schools, Sant Kabir Nagar but he could not point out from the record that the writ petitioner was put to notice.

10. Sri Anup Barnwal, learned counsel who was allowed to join the present proceedings as an intervener has sought to contend that as per the averments contained in para 21 of the counter affidavit it is apparently clear that there are serious charges against the writ petitioner, he submits that though the writ petitioner might not have been heard and the order in question does not take into account each and every aspect matter, however, the same will not vitiate the order impugned. He submits that he should be accorded opportunity to join the proceedings if the matter stands remitted to the District Inspector of Schools, Sant Kabir Nagar.

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

12. The order dated 06.10.2023 of the District Inspector of

Schools, Sant Kabir Nagar, fourth respondent seemingly is a non-speaking and un-reasoned order besides being cryptic. Further, the learned counsel for the respondents could not demonstrate even from the order itself which is subject matter of challenge that the writ petitioner was put to notice. Further the instructions are also silent in this regard, produced by Sri Santosh Kumar, learned Standing Counsel.

13. Be that as it may, since the order dated 06.10.2023 passed by the District Inspector of Schools, Sant Kabir Nagar, fourth respondent is totally a non-speaking unreasoned order and besides being in violation of the principles of natural justice, thus, it cannot be sustained.

14. The order dated 06.10.2023 passed by the fourth respondent, District Inspector of Schools, Sant Kabir Nagar is set aside, the matter stands remitted back to the fourth respondent, District Inspector of Schools, Sant Kabir Nagar to decide the issue of suspension of the writ petitioner pursuant to the order passed by the authorized controller on 29.09.2023 strictly in accordance with law bearing in mind the ingredients which have to be pressed into service in order to give a consideration for approval/disapproval. The said exercise is to be conducted and completed within a period of six weeks from the date of production of certified copy of the order. So far as the prayer made by Sri Anup Barnwal who appears for the intervener is concerned this Court is not in a position to pass any positive order, however, it is open for him to approach District Inspector of Schools, Sant Kabir Nagar and if the District Inspector of Schools, Sant Kabir Nagar finds that there is any requirement to have any say of the intervener then he shall do the needful.

15. The instructions filed today is taken on record and marked as Appendix 'A'.

16. Short counter affidavit filed on behalf of intervener is taken on record.

17. Supplementary affidavit filed today is taken on record.

Order Date :- 1.11.2023

Rajesh