

Court No. - 35

Case :- WRIT - A No. - 18051 of 2023

Petitioner :- Kamal Singh

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Chhaya Gupta, Sujeet Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. Heard Sri Sujeet Kumar, learned counsel for the writ petitioner and Sri Shailendra Singh, learned Standing Counsel who appears for respondents No. 1 to 8. With the consent of the parties, the writ petition is being decided at the fresh stage.

2. The case of the writ petitioner is that he was appointed on the post of Senior Lecturer in District Institute of Education and Training, Jhansi on 20.10.2010 and his services are governed under the provisions of U.P. Teachers Service (Lecturer Grade) Service Rules, 2010 as amended in the year 2013 and he took charge on 18.11.2010. The writ petitioner further claims to have transferred to District Mainpuri on the post of District Basic Education Officer, Mainpuri which is equivalent to the post of Senior Lecturer. It is further the case of the writ petitioner that he was subsequently transferred to District Institute of Education and Training District Bulandshahr on 06.07.2022. As per the writ petitioner, a complaint was lodged by one Smt. Richa Sharma, Block Education Officer, Gulawathi under IGRS Portal pursuant whereunto proceedings were drawn for holding of an inquiry against Richa Sharma in which the writ petitioner was made the Inquiry Officer. The writ petitioner further claims to have conducted the inquiry along with one Sri Jilesh Kumar Lecturer DIET who was the observer of the Block Gulawathi. It is the case of the writ petitioner that when the writ petitioner along with one Sri Jilesh Kumar were doing the inquiry then Smt. Richa Sharma, Block Development Officer, Block, Gulawathi, District Bulandshahr made false and frivolous allegations against the applicant and one Sri Jilesh Kumar occasioning to a situation that a first information report was also lodged on 23.02.2023 before the Police Station, Gulawathi, District Bulandshahr being F.I.R. No. 0080 under Section 354A, 427, 504 & 506 I.P.C. against the writ petitioner and one Sri Jilesh Kumar. On the basis of the complaint so lodged against the writ petitioner regarding indecent behaviour and molestation the District Magistrate Bulandshahr passed an order pursuant whereunto the District Development Officer, Bulandshahr along with 4 others were nominated to conduct

inquiry by the orders of the respondent No. 8 Chief Development Officer, Bulandshahr dated 01.03.2023. It is the case of the writ petitioner that the said inquiry was ex parte which culminated into the passing of the order dated 26.09.2023 by the respondent No. 1, Additional Chief Secretary, Basic Education, U.P. Government, Lucknow placing the writ petitioner under suspension in terms of the provisions contained under U.P. Government Servant (Discipline and Appeal) Rules, 1999.

3. Questioning the order dated 26.09.2023 passed by the first respondent, the writ petitioner has filed the present writ petition.

4. Sri Sujeet Kumar, learned counsel for the writ petitioner while assailing the order dated 26.09.2023 placing the writ petitioner under suspension has sought to submit that the order placing the writ petitioner under suspension is tainted by mala fides and further it is nothing but an act of total non-application of mind particularly when firstly, on the basis of an ex parte preliminary report submitted by the Five Member Committee certain adverse inputs were pressed into service which became the basis for placing the writ petitioner under suspension and had the writ petitioner being confronted with the said preliminary inquiry report or allowed to participate while being associated in the said inquiry he could amply demonstrate that there was no occasion for placing the writ petitioner under suspension he further submits that the entire allegations have been tailored in such a manner by the complainant so as to forestall the conduction of the inquiry proceedings and to fix the writ petitioner. Learned counsel for the writ petitioner further submits that there has been virtually non-application of mind at the end of the appointing authority being the first respondent. Learned counsel for the writ petitioner also seeks to rely upon a judgment in the case of **Jilesh Kumar, Writ A No. 10096 of 2023** wherein the suspension order was set aside on 14.06.2023. He further submits that the suspension order cannot be sustained for a single moment.

5. Sri Shailendra Singh, learned Standing Counsel who appears for the respondents submits that the suspension order cannot be faulted with as the District Magistrate, Bulandshahr had only directed the Chief Development Officer to constitute a Committee for the purposes of arriving at a prima facie opinion as to whether there was any truth in the allegations and the complaint made by the complainant or not. He submits it is not a matter of right that the writ petitioner is to be served with a copy of the preliminary report at the stage when the challenge is being raised to the suspension order. He further submits that even from the perusal of

the order in question, it is clear that disciplinary proceedings has been contemplated and a direction has been issued for issuance of the charge sheet and, thus, the judgment in the case of Jilesh Kumar (supra) will not apply as the same was a case wherein the decision in the case of **Rajveer Singh Vs. State of U.P. 2010 (10) ADJ 246** Full Bench considering the case of case of State of U.P. Vs. Jai Narayan Dixit was taken into account when there was neither any contemplation of inquiry nor any charge sheet was served. He submits that in the present case the order in question recites that there happens to be a contemplation of inquiry and even an inquiry officer by post has been nominated. He further submits that a direction be issued to the Disciplinary Authority to conclude the proceedings provided, the writ petitioner cooperates in the matter.

6. Sri Sujeet Kumar, learned counsel for the writ petitioner at this stage could not dispute the fact that the suspension order recites that the inquiry is contemplated and the Inquiry Officer has been appointed and a direction has been issued for charge sheet. Though the argument of the counsel for the writ petitioner that there has been no independent application of mind might be available to him but this Court finds at this stage in the suspension order that the appointing authority was prima facie satisfied that there was certain materials which would entail holding of departmental inquiry.

7. Nevertheless, this Court in the present case does not find it to be a fit case to interfere with the suspension order, however, it is provided that the respondents shall conduct and conclude the inquiry proceedings within a period of two months from the date of production of certified copy of the order subject to the cooperation of the writ petitioner strictly in accordance with law in terms of rules contained under the U.P. Government Servant (Discipline and Appeal) Rules, 1999 and also pay subsistence allowance to the writ petitioner as and when the same falls due after fulfilling of the requirement as mandated under law.

8. With the aforesaid observation, the writ petition stands disposed of.

9. Needless to point out that the inquiry should be conducted in impartial and transparent manner as obviously a delinquent employee has a right for conduction of a fair inquiry.

Order Date :- 3.11.2023

Rajesh