

Court No. - 35

Case :- WRIT - A No. - 18007 of 2023

Petitioner :- Smt.Kiran Mishra

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Prem Chand Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

1. Supplementary affidavit filed today is taken on record.

2. Heard Sri Prem Chand Pandey, learned counsel for the writ petitioner and Sri Shailendra Singh, learned Standing Counsel who appears for respondents No. 1 to 3.

3. In view of the order which is being proposed to be passed today, notice is not being issued to the fourth respondent.

4. The writ petitioner herein had earlier filed Writ A No. 11545 of 2023 (Smt. Kiran (Dubey) Mishra Vs. State of U.P.) questioning the order dated 06.07.2023 passed by the District Inspector of Schools, Ballia whereby the salary was stopped the said writ petition came to be decided by this Court on 20.07.2023 while passing the following orders.-

"Heard Sri Prem Chand Pandey, learned counsel for the petitioner and Sri H.K. Shukla, learned Standing Counsel for Respondents 1, 2 and 3.

In view of the order, which is being proposed to be passed, notices are not being issued to the fourth respondent.

The case of the writ petitioner is that the fourth respondent-institution, namely Amar Sanskrit Uchchatar Madhyamik Vidyalaya,Kejuri, Ballia is in grant-in-aid till Primary Section. It is further the case of the writ petitioner that pursuant to the selection conducted therein, the writ petitioner was issued appointment as Assistant Teacher in Primary Section on 17.09.1999 and he was accorded joining on 22.9.1999. It is further the case of the writ petitioner that with regard to certain complaints being made with respect to the appointments being made, the same occasioned filing of writ petition before this Court and the same travelled before the Special Appellate Bench in Special Appeal No. 531 of 2005, State of U.P. Vs. Tarkeshwar Nath Singh and others, wherein certain orders were passed. It is further the case of the writ petitioner that he was not paid salary so he along with Smt. Bharti Jaiswal and others preferred Writ A No. 66522 of 2015 (Smt. Bharti Jaiswal and another Vs. State of U.P. and others), which came to be disposed off

granting liberty to the writ petitioner to prefer representation before the third respondent, District Inspector of Schools, Ballia. The writ petitioner claims to have preferred representation, but when nothing was done, then the writ petitioner resorted to contempt proceeding in Contempt Application (Civil) No. 1178 of 2018, in which notices were issued pursuant where to the third respondent, proceeded to pass an order dated 28.10.2017 noticing the fact that the writ petitioner was appointed on 17.09.1999 and he assumed the charge on 22.09.1999, however, approval was accorded with certain conditions that the same will be subject to the order passed in the litigations being preferred or pending and would automatically stand revoked in case of concealment. It is further the case of the writ petitioner that on 12.04.2018, the District Inspector of Schools, Ballia, third respondent accorded approval with the said condition. According to the petitioner, he has been paid salary, however, the same was arbitrarily stopped in the month of April 2023. Learned counsel for the petitioner has invited the attention of the Court towards Annexure-7 at page-33, reference whereof is given in paragraph-21 of the writ petition so as to contend that the fourth respondent has corresponded on 06.07.2023 with the third respondent, District Inspector of Schools, Ballia on the ground that since an exercise is being undertaken for making investigation and inquiry with regard to the appointment of the petitioner, thus, the payment of salary is being stopped.

Learned counsel for the petitioner submits that the procedure was adopted by the fourth respondent is novel as there has been no specific order putting the salary of the writ petitioner on hold as neither the writ petitioner has been put to notice nor there is any order in that regard and in an *ex parte* manner, the writ petitioner's salary has been stopped.

Prayer in the present petition is to quash the impugned order / letter dated 06.07.2023 of the fourth respondent.

Sri H.K. Shukla, learned Standing Counsel on the other hand submits that the said order might be as alleged by the petitioner has been passed in violation of principles of natural justice, but what is to be seen is the nature of appointment and also the fact as to whether any final order has been passed or not by the competent authority. According to him, no fruitful purpose would be served in detaining the petition on board, as the approval order is a conditional order subject to various conditions including the passing of the orders in pending writ petitions or also with regard to concealment of the fact. According to him, he does not propose to file any response and writ petitioner be granted liberty to approach the third respondent, who shall consider its claim of writ petitioner and pass order on it.

To such a suggestion, learned counsel for the writ 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, the writ petition is being disposed off granting liberty to the writ petitioner to approach the third respondent, District Inspector of Schools, Ballia while filing the application along with certified copy of the order as well as self-attested copy of the writ petition, on receipt of the same, the third respondent shall put to notice the fourth respondent in writing in advance and thereafter seek version of the fourth respondent and after fixing a date and

exchanging the documents, which the parties would require, proceed to decide the claim of the writ petitioner expeditiously, preferably within a period of two months from the date of production of the certified copy of the order.

With the above observations, the writ petition stands disposed of.

Needless to point out that as this petition has been disposed off without seeking any response and without hearing the fourth respondent, thus passing of this order may not be construed to an expression that this Court has adjudicated the writ petition on merits."

5. According to the writ petitioner, pursuant to the direction of the Writ Court dated 20.07.2023 now an order has been passed by the District Inspector of Schools, Ballia, third respondent on 19.09.2023 whereby salary has been allowed to be paid to the writ petitioner. According to the writ petitioner, the said order has attained finality. However, it is the case of the writ petitioner that now District Inspector of Schools, Ballia by virtue of the order dated 20.09.2023 has stopped/withheld the salary of the writ petitioner on the premise that the testimonials of the writ petitioner have been sent for verification and till the inquiry in this regard is completed the writ petitioner is not entitled to pay his salary.

6. Questioning the said order, the writ petitioner has filed the present writ petition, the learned counsel for the writ petitioner submits that the order dated 20.09.2023 was totally unwarranted and it has been passed in violation of principles of natural justice as there was no occasion to withhold the salary once already a decision has been taken by the said District Inspector of Schools on 19.09.2023. While inviting the attention of the Court towards supplementary affidavit filed today he seeks to rely upon Annexure SA (1 & 2), and in particular SA-2 at page 9 that the testimonials of the writ petitioner has been verified and the Manager of the institution in question has forwarded the same to the District Inspector of Schools, Ballia he, thus, prays that the order in question cannot be sustained.

7. Sri Shailendra Singh, learned Standing Counsel who appears for respondents No. 1 to 3, on the other hand, submits that since it has now the case of the writ petitioner as per the supplementary affidavit that his testimonials have been verified and the documents have forwarded by the Manager of the fourth respondent-institution to the third respondent, District Inspector of Schools, Ballia thus, according to him a direction be issued to the District Inspector of Schools, Ballia to take prompt decision in this matter and to process the salary of the writ petitioner as if it

occasions. He further submits that the writ petitioner may approach the third respondent and he be directed to decide the case.

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

9. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed of requiring the writ petitioner to approach the third respondent, District Inspector of Schools, Ballia by 07.11.2023 along with the self attested copy of the writ petition and on the receipt of the same the third respondent, District Inspector of Schools, Ballia put to notice the fourth respondent and proceed to decide the claim of the writ petitioner by 17.11.2023 bearing in mind the assertion made by the writ petitioner that the documents have been verified and a communication has been made by the Committee of Management of the institution in question on 20.10.2023 to the District Inspector of Schools.

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

11. Needless to point out that this Court has not adjudicated on the merits of the matter.

12. The order dated 20.09.2023 shall abide till passing of the final orders by the District Inspector of Schools, Ballia.

Order Date :- 1.11.2023
Rajesh