

Court No. - 35

Case :- WRIT - A No. - 18241 of 2023

Petitioner :- Mihir Singh

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Syed Fahim Ahmed, Sudhir Kumar Malviya

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

Heard Shri Syed Fahim Ahmed and Shri Sudhir Kumar Malviya, learned counsels for the writ petitioner as well as Shri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel for the respondent Nos. 1, 2 and 3.

In view of the order, which is being proposed to be passed today, notices are not being issued to the fifth and seventh respondent.

The case of the writ petitioner is that he after completing High School and Intermediate and obtaining the qualification of Bachelor of Arts from Gorakhpur Universities was appointed as assistant teacher in the fifth respondent institution, Swatantrata Sangram Senani Sudarshan Singh Inter College, Bahura, District Ballia. As per the writ petitioner owing to certain circumstances, he tendered his resignation on 15.08.2013, however, notice is stated to have been issued on 26.08.2017, 07.11.2017 followed by 17.12.2017 by the manager of the institution requiring the writ petitioner to furnish the details and the documents regarding the testimonials and the date of birth of the writ petitioner. In para 14 of the writ petitioner, the writ petitioner submits that he had submitted reply to said notice to the respondents. However according to the writ petitioner though there happened to be a

resolution of the committee of management of the institution in question which has been annexed as Annexure 17 at page 115 of the paper book relevant extract page 116 dated 14.10.2018 for dispensation of the services of the writ petitioner but the same was not approved as per of the provisions contained under Section 21 of the U.P. Act No. 05 of 1982. The writ petitioner submits that though charges-sheet was issued, he submitted his reply but no approval has been accorded by the Board in this regard, he seeks to rely upon paragraph No. 4 and 5 of the supplementary affidavit. He submits that on 16.01.2017 even prior the proposal for dispensation of the services of the writ petitioner which is dated 14.10.2018, recovery was sought to be made from the writ petitioner by virtue of the order dated 16/17.11.2017, a copy whereof has been appended at Annexure 13 at page 95 onwards. Learned counsel for the writ petitioner submits that the second respondent, Joint Director of Education, Azamgarh, Mandal Azamgarh has issued an *ex parte* notice dated 16.10.2017 with a direction to make recovery from the writ petitioner which became the basis of passing of the order dated 13.09.2023 and 21.09.2023 by the District Inspector of Schools, Ballia.

Questioning the order dated 16.10.2017 of the second respondent, Joint Director of Education, Azamgarh Mandal Azamgarh as well as the communications dated 13.09.2023 and 21.09.2023 etc for affecting recovery the writ petitioner has filed the present writ petition.

This Court has entertained the writ petition on 20.11.2023 while passing the following orders:

"The submission of the learned counsel for the writ petitioner is that an allegation was levelled to the extent that the educational certificates of the

writ petitioner was not found to be verifiable pursuant where to on 16.10.2017 the District Inspector of Schools proceeded to issue a communication whereby recovery was directed to be made and proceedings were also directed to be initiated against the writ petitioner thereafter, on 29.06.2018 a charge sheet was served and a resolution has been passed for dispensing with the services of the writ petitioner.

Questioning the order dated 16.10.2017 of the District Inspector of Schools and 13.09.2023 and 21.09.2023 effecting recovery the present writ petition has been filed. This Court finds from the record of the writ petition that there is no order of the Board either approving or disapproving the termination of the writ petitioner, let the learned Additional Chief Standing Counsel obtain instructions.

Put up this case as fresh on 29.11.2023 at 2:00 P.M."

Today instructions have been provided under the signature of the District Inspector of Schools, Ballia dated 21.11.2023. The instructions are completely silent regarding the approval as required at that point of time under Section 21 of U.P. Act No. 05 of 1982 from the Board.

Shri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel submits that the issues with the writ petitioner seeks to raise needs determination in the light of the fact as to whether approval has been accorded or whether the writ petitioner's resignation has been accepted, particularly, in view of the fact that mere tendering of resignation would not be a ground to hold that the same shall stand accepted. He further submits that might be entire story was cooked by the writ petitioner just in order to wriggle out from the disciplinary proceedings. He submits that he does not propose to file any response, let the writ petitioner approach the second respondent, Joint Director of Education Azamgarh Mandal, Azamgarh.

The writ petition is being decided in the following manner:

- a). The writ petitioner shall approach the Joint Director of Education Azamgarh, Mandal Azamgarh, second respondent by 16.12.2023.
- b). The Joint Director of Education, Azamgarh Mandal Azamgarh shall thereafter put to notice the fourth, fifth and sixth respondent while fixing a date on 20.12.2023.
- c). Hearing be done in the last week of December, 2023. Orders be passed by 12.01.2024.

The recovery proceedings sought to be initiated against the writ petitioner against the impugned orders dated 16.10.2017 passed by the second respondent and 13.09.2023 and 21.09.2023 passed by the respondent No. 3 shall be kept in abeyance till 12.01.2024.

It is clarified that in case, any of the conditions are violated by the writ petitioner then the interim protection accorded by the Court stands vacated and recovery be initiated against the writ petitioner. It is further clarified that the writ petitioner shall not take any unnecessary adjournments and in case by any probability, adjournment is being sought then the same should not be for a period more than 2 days.

The second respondent, Joint Director of Education Azamgarh Mandal, Azamgarh is required to address the following issues:

- a). Whether the claims set up by the writ petitioner for resignation was accepted or not.
- b). The issue with regard to holding of the departmental proceedings, passing of the punishment order and the facts as to

whether the same stood approved under the provisions contained under Section 21 of U.P. Act No. 05 of 1982.

c). Issue relatable to the recovery.

d). The issue is relating to selection and the appointment of the writ petitioner inclusive of death of birth suitability and eligibility.

In case the second respondent is of the opinion that the matter needs to be made to the address by any other authority then intimation be given to the writ petitioner and the affected parties including the committee of management/Principal through Whatsapp, registered post, Email etc.

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

Instructions filed today is taken on record and marked as Appexdix-A.

Order Date :- 5.12.2023

A. Prajapati