

Court No. - 35

Case :- WRIT - A No. - 18343 of 2023

Petitioner :- C/M Adarsh Kanya Inter College And Another

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

Counsel for Petitioner :- Prabhakar Awasthi, Ishir Sripat

Counsel for Respondent :- CSC, Hritudhwaj Pratap Sahi, Sankalp Narain

with

Case :- WRIT - A No. - 17996 of 2023

Petitioner :- Dr Radha Srivastava

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Sankalp Narain, Hritudhwaj Pratap Sahi

Counsel for Respondent :- CSC, Akhilesh Kumar Gupta, Ishir Sripat, Prabhakar Awasthi, Rakesh Kumar Gupta, Saurabh Patel

Hon'ble Vikas Budhwar, J.

Since common question of facts and law are involved in Writ - A No. - 18343 of 2023 C/M Adarsh Kanya Inter College And Another Vs. State Of U.P. And 2 Others (in short 'leading writ petition') and Writ - A No. - 17996 of 2023 Dr Radha Srivastava Vs. State Of U.P. And 4 Others (in short 'connected writ petition'), thus, with the consent of the parties the writ petition is being consolidated and decided by a composite order.

Heard Shri Prabhakar Awasthi, learned counsel for the writ petitioners in the leading writ petition as well as respondent No. 4 in the connected writ petition, Shri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel who appears for respondent Nos. 2 in the leading writ petition and respondent Nos. 1, 2 and 3 in the connected writ petition as well as Shri V.K. Singh, learned Senior Counsel who appears for the respondent No. 3 in the leading writ petition and writ petitioner in the connected writ petition and Shri Adarsh Shukla, learned counsel for the respondent No. 5 in the connected writ petition.

The counsel for the rival parties have made a joint statement that they do not propose to file any further affidavits thus with

the consent of the parties, writ petitions are being decided at the fresh stage.

The facts of the case are that the petitioner's institution in the leading institution is an institution recognised under the provisions of U.P. Intermediate Education Act, 1921, provisions of U.P. Act No. 05 of 1982 and U.P. Act No. 24 of 1971 stands applicable. According to the writ petitioners, on 04.02.2023 the manager of the committee of management proceeded to suspend the Dr. Radha Srivastava (principal) of the institution in question on the allegation of irregularities pertaining to distribution of mid-day meal. When the matter travelled to the District Inspector of Schools, Jaunpur then the District Inspector of Schools, Jaunpur proceeded to constitute a committee headed by the District Basic Education Officer, Jaunpur who tendered his inquiry report on 20.07.2023 before the District Inspector of Schools, Jaunpur findings substance in the allegations regarding irregularities in the distribution of mid-day meal, noticing the said facts, an order is stated to have been passed by the District Inspector of Schools, Jaunpur on 19.05.2023 whereby it proceeded to disapprove the suspension of the Dr. Radha Srivastava, principal of the institution in question, since the inquiry in the said incident was going on.

Questioning the said order dated 18/19.05.2023 passed by the District Inspector of Schools, Jaunpur, the committee of management has preferred the present writ petition.

During the pendency of the aforesaid writ petition, now an order is stated to have been passed on 26.08.2023 keeping in abeyance the order dated 18/19.05.2023 passed by the District Inspector of Schools, Jaunpur and also an order dated 05.10.2023 and the order dated 10.10.2023 requiring the fifth respondent in the connected writ petition Smt. Alka Jaiswal,

assistant teacher in primary section to be handed over the charge of principal. The said orders have been subject matter of challenge in the connected writ petition. Both the writ petitions have been connected together and they are before this Court today.

Shri Prabhakar Awasthi, learned counsel for the writ petitioners in the leading writ petitioner has sought to submit that the order dated 18/19.05.2023 passed by the District Inspector of Schools, Jaunpur suffered from patent illegality as once it had come on record on the basis of the inquiry report of the District Basic Education Officer, Jaunpur that the allegations were found to be proved then it was an appropriate case for approving the suspension. He submits that now on approaching of the committee of management before the District Inspector of Schools, Jaunpur, another order has been passed on 28.06.2023 staying the effect and operation of the order dated 18/19.05.2023 which is perfectly valid and it cannot be said to be illegal. He further submits that now the suspension of Dr. Radha Srivastava stands approved thus now Smt. Akansha Jaiswal has been handed over the charge.

Shri V.K.Singh, learned Senior Counsel who appears for Dr. Radha Srivastava in the leading and connected writ petition submits that the order dated 18/19.05.2023 of the District Inspector of Schools, Jaunpur was perfectly valid and the orders staying the same that too observing on merits was totally uncalled for. At the stage, he, however, submits that assistant teacher of a primary institution attached thereto cannot be handed over the charge of the principal of the institution in question.

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

The facts of the case are not in dispute. However, this Court finds that the order dated 18/19.05.2023 had overlooked the crucial aspects relating to the import and impact of the inquiry report dated 20.07.2023 of the District Basic Education Officer, Jaunpur. So much as, the order dated 28.06.2023 also proceeds to address upon the merits which was not required.

At this stage, Shri Prabhakar Awasthi, learned counsel for the committee of management, Shri V.K. Singh, learned Senior Counsel who appears for Dr. Radha Srivastava and Shri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel submits that the orders impugned are liable to be set aside and fresh exercises be directed to be conducted by the District Inspector of Schools, Jaunpur.

Considering the submissions of the rival parties as well as stand taken by them, the writ petition is being decided without seeking any response from the respondents in the following terms:

- a). The orders dated 18/19.05.2023 in the leading writ petition and 28.06.2023 in the connected writ petition passed by the District Inspector of Schools, Jaunpur are set aside.
- b). The matter stands remitted to the District Inspector of Schools, Jaunpur to decide the matter afresh after fixing a date in the week commencing on 03.12.2023 granting opportunity to the parties to submit their version and thereafter post according of hearing, orders be passed by 22.12.2023.

Order Date :- 28.11.2023/A. Prajapati