

Court No. - 35

Case :- WRIT - A No. - 18635 of 2023

Petitioner :- Vinod Kumar Pandey

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

Counsel for Petitioner :- Grijesh Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri Grijesh Tiwari, learned counsel for the petitioner and Sri Santosh Kumar Shukla learned Additional Chief Standing Counsel, who appears for respondents 1, 2 and 3.

The case of the writ petitioner is that he was initially appointed as Class-IV employee on 20.5.1998 and was posted in Government Adarsh Vidyalaya, Azamgarh and post completion of 17 years he was promoted on the post of Junior Assistant in Government Balika Uchchatar Madhyamik Vidyalaya Kanaila, District Azamgarh on 15.9.2015. However, according to the writ petitioner by virtue of the order dated 18.1.2023 the writ petitioner has been attached by the District Inspector of Schools, Azamgarh to the office of the District Inspector of Schools, Azamgarh as Junior Assistant. It is also the case of the that on 18.10.2023 the Joint Director of Education, Azamgarh Region, Azamgarh, second respondent has proceeded to pass an order whereby the writ petitioner has been placed under suspension in contemplation of inquiry on the ground that from an audio clipping it is revealed that the writ petitioner was indulging him illegal gratification and on account of non fulfillment of the said demand heated conversation were made. Basis the same the writ petitioner has been placed under suspension.

Questioning the suspension order dated 18.10.2023 passed by the second respondent Joint Director of Education, Azamgarh Region, Azamgarh, the writ petitioner has filed the present writ petition.

This Court entertained the writ petition on 28.11.2023 while passing the following order:-

"The contention of the learned counsel for the writ petitioner is that only on the basis of the same audio clip being a conversion, the writ petitioner has been placed under suspension. He submits

that in view of the provisions contained under Section 65-B of the Indian Evidence Act, 1872 until and unless, certificate is issued finding the said version not to be doctored, no action could have been taken.

Shri Shailendra Singh, learned Standing Counsel seeks time to obtain instructions.

Put up this case as fresh on 01.12.2023."

Today instructions have been provided by Sri Santosh Kumar Shukla learned Additional Chief Standing Counsel under the signature of Joint Director of Education, Azamgarh Region, Azamgarh dated 29.10.2023 according to which the writ petitioner has been issued a charge sheet on 21.11.2023 and the writ petitioner has been required to submit his reply to the same.

Learned counsel for the writ petitioner submits that without there being any adherence to the provisions contained under Section 65B of the Indian Evidence Act, 1872 and also ascertaining the fact that the said audio clip is not doctored and it is genuine and also without according objective satisfaction which was imperative before placing the writ petitioner under suspension. He seeks to rely upon the judgement in the case of **Shyam Singh Yadav vs. State of U.P. 2008(8) ADJ 42.**

Learned Additional Chief Standing Counsel on the other hand submits that once the charge sheet has been issued then it is for the writ petitioner to give its reply and participate in the inquiry proceedings. On a specific query being made to him as to whether barring the said recital contained in the order impugned is there any other subjective satisfaction of the authorities, he could not point out anything.

In the opinion of the Court no doubt it is power vested upon the appointing authority/disciplinary authority to place the incumbent under suspension but there has to be an objective consideration which prima facie, apparently is lacking particularly when on the basis of audio clip, suspension could not have been made that too against the provisions contained under Section 65-B of the Indian Evidence Act.

Thus, this Court of the opinion the order 18.10.2023 cannot be sustained and is set aside.

Passing of the order today would not preclude placing the writ petitioner under suspension, the Disciplinary/Appointing Authority to pass a fresh suspension order strictly in accordance with law and

the order passed today may not also be construed to be expression that this Court has forestalled the holding of the inquiry as the inquiry is to be concluded within a period of two months from the date of the production of the certified copy of the order and the learned counsel for the writ petitioner at this stage submits that the writ petitioner shall cooperate with the said inquiry.

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

Instruction filed today is taken on record and marked as Appendix-A.

Order Date :- 5.12.2023

piyush