

Court No. - 36

Case :- WRIT - A No. - 18808 of 2023

Petitioner :- Vajid Ali

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

Counsel for Petitioner :- Kamal Kumar Keshewani

Counsel for Respondent :- C.S.C., Jay Prakash Singh

Hon'ble Manjive Shukla, J.

1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No. 1 & 2 and Mr. Jay Prakash Singh, learned counsel appearing for the Respondents No. 3, 4 & 5.

2. Petitioner through this writ petition has challenged the order dated 20.11.2020 passed by the District Basic Education Officer, Saharanpur, whereby petitioner's services have been terminated.

3. Facts of the case, in brief, are that petitioner was appointed on the post of Assistant Teacher in a Primary School at District Saharanpur and thereafter he was promoted to the post of Head Master. Later on petitioner was posted as Assistant Teacher in Senior Basic School run by U.P. Basic Education Board.

4. Learned counsel appearing for the petitioner has submitted that petitioner suffered from Paralysis attack and therefore, he could not turn up to his school w.e.f. 03.08.2017. It has further been submitted by the learned counsel appearing for the petitioner that petitioner all along has submitted applications and prescriptions of medical treatment to the school authorities and thereby he has informed the authorities about his illness.

5. Learned counsel appearing for the petitioner has argued that without resorting to procedure prescribed under U.P. Basic

Education Staff Rules, 1973 read with U.P. Government Servant (Discipline and Appeal), Rules, 1999 petitioner's services have been terminated vide order dated 20.11.2020 as such the said order cannot sustain in the eyes of law.

6. Learned counsel appearing for the petitioner has vehemently argued that it is well settled proposition of law through catena of judgments of this court that even if a government servant is absent without sanction of leave and is not turning up on his duty, his services cannot be terminated unless procedure prescribed under U.P. Basic Education Staff Rules, 1973 read with U.P. Government Servant (Discipline and Appeal), Rules, 1999 is followed.

7. Learned counsel appearing for the petitioner has further argued that in the case of petitioner neither any charge sheet was issued nor any inquiry has been conducted and straight way District Basic Education Officer, Saharanpur has terminated petitioner's services by passing order dated 20.11.2020, therefore, the said order is liable to be quashed by this court.

8. On the other hand Mr. J.P. Singh, learned counsel appearing for the Respondents No. 3, 4 & 5 has submitted that since petitioner is absent without any sanction of leave w.e.f. 03.08.2017, therefore, petitioner was put to notice and after taking petitioner's response his services have been terminated vide order dated 20.11.2020, as such, there is neither any illegality or infirmity in the order dated 20.11.2020. Mr. J.P. Singh, learned counsel appearing for the Respondents No. 3, 4 & 5 though tried to defend the order dated 20.11.2020 but could not explain before this court as to how without resorting to the procedure prescribed under U.P. Basic Education Staff Rules, 1973 read with U.P. Government Servant (Discipline and Appeal), Rules, 1999 petitioner's services could have been

terminated by passing order dated 20.11.2020. Mr. J.P. Singh has further submitted that if this court is of the view that procedure prescribed under the aforesaid rules was mandatory in passing the order terminating petitioner's services then the order dated 20.11.2020 impugned in the present writ petition may be set aside and matter may be remanded to District Basic Education Officer, Saharanpur to pass a fresh order after following the procedure prescribed under U.P. Basic Education Staff Service Rules, 1973 read with U.P. Government Servant (Discipline and Appeal), Rules, 1999.

9. I have considered the submissions advanced by the learned counsels appearing for the parties, and I find that District Basic Education Officer, Saharanpur without following procedure prescribed under U.P. Basic Education Staff Rules, 1973 read with U.P. Government Servant (Discipline and Appeal), Rules, 1999 has passed order dated 20.11.2020 and has terminated petitioner's services. This court is of the view that it is well settled proposition of law through catena of judgments of this court that even where a teacher working in a school run by U.P. Basic Education Board is absent without sanction of leave, his services can only be terminated by initiating disciplinary proceedings against him and after following due procedure prescribed under U.P. Basic Education Staff Rules, 1973 read with U.P. Government Servant (Discipline and Appeal), Rules, 1999.

10. This court finds that in the present case neither any charge sheet was issued to the petitioner nor any inquiry as per the procedure prescribed under the rules has been conducted and District Basic Education Officer, Saharanpur straightway has passed the order on 20.11.2020 and thereby has terminated petitioner's services as such order dated 20.11.2020 cannot

sustain in the eyes of law. This court even finds that petitioner's reply to the show cause notice has also not been considered by the District Basic Education Officer, Saharanpur while passing the order dated 20.11.2020.

11. Learned counsel appearing for the petitioner has relied on judgment of this court rendered in the case of ***Hirdaya Lal Vs. State of U.P. & Ors. reported in 2006 (8) ADJ 338***, wherein it has been held that services of a government servant on the ground of unauthorized absence can only be terminated after holding disciplinary proceedings. Relevant paragraphs of the judgment of this court rendered in the case of ***Hirdaya Lal (Supra)*** are extracted as under :-

"3. Learned counsel for the petitioner submitted that he was a permanent employee in the Nagar Mahapalika and, therefore, his services could not have been dispensed with without holding any enquiry, even if he had unauthorisedly remained absent from 1st July, 1990 to 11th October, 1993 and in support of his contention he has placed reliance upon a Division Bench Judgment of this Court in the State of U.P. & Ors. Vs. Jamuna Prasad Rai, 2006 (2) ADJ 73 (All.)

4. Sri B.D. Mandhyan, learned counsel appearing for the respondents, however, submitted that in such a situation when the petitioner had remained unauthorisedly absent from duty, it must be taken that the petitioner had abandoned his service and, therefore, there was no necessity of passing any order. He further contended that in such situation, it was also not necessary to hold any enquiry against the petitioner.

5. I have carefully considered the submissions advanced by the learned counsel for the parties.

6. Sri B.D. Mandhyan, learned Senior Counsel has not placed before the Court any provision in the Act, Rules or Regulation which provides for automatic termination of services of an employee who unauthorisedly remains absent from duty. It is true that in the present case, the petitioner remained unauthorisedly absent from 1st July, 1990 to 11th October, 1993 but no order whatsoever was passed for termination of his services. This Court in the case of Jamuna Prasad Rai (supra) clearly held that even in such matters enquiry was required to be held and as there was violation of principles of natural justice, the termination order was not valid.

7. In view of the proposition of law laid down in the abovementioned decision of this Court and in view of the fact that no order terminating his services had been passed, the petitioner is clearly entitled to the relief claimed. Learned counsel for the petitioner has, however, very fairly stated that the petitioner would not press for any arrears of salary. In this view of the matter a direction is issued to the respondents to permit the petitioner to join his duty forthwith provided the petitioner submits in writing before the Nagar Mahapalika within a period of three weeks from today that he will not claim any arrears of salary."

12. In view of the aforesaid reasons, this writ petition is **allowed**. Order dated 20.11.2020 to the extent it relates to the petitioner is quashed. Matter is remanded to District Basic Education Officer, Saharanpur to pass fresh order after following procedure prescribed under U.P. Basic Education Staff Rules, 1973 read with U.P. Government Servant (Discipline and Appeal), Rules, 1999. Reinstatement of the petitioner in service shall depend on the fresh order to be passed by the District Basic Education Officer, Saharanpur.

Order Date :- 4.12.2023

Gaurav