

Court No. - 21

Case :- WRIT - C No. - 39397 of 2023

Petitioner :- Dr. Saba Shamim

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

Counsel for Petitioner :- Akhilesh Misra

Counsel for Respondent :- C.S.C.,Nayab Ahmad Khan,Shailendra Sharma

Hon'ble Manoj Kumar Gupta,Acting Chief Justice
Hon'ble Donadi Ramesh,J.

1. On oral prayer made by learned counsel for the petitioner, he is permitted to implead respondent no.6 by name as a party respondent to the instant petition during course of the day. Respondent no.6 is Executive Officer, Nagar Palika Parishad, Mubarakpur, Azamgarh.

2. Heard Sri H.R. Mishra, learned Senior Counsel assisted by Sri Akhilesh Misra, learned counsel for the petitioner, Sri Rajiv Gupta, learned Additional Chief Standing Counsel appearing on behalf of the State respondents and Sri Ashok Khare, learned Senior Counsel assisted by Sri Shailendra Sharma and Sri Nayab Ahmad Khan on behalf of respondent no.6/7.

3. The petitioner, who is President of Nagar Palika alleges that in a meeting of Nagar Palika Parishad held on 21.7.2023, a special resolution was passed by majority of 2/3rd members constituting the Palika for transfer of respondent no.6/7 to some other Palika. It is also the case of the petitioner that the executive officer is guilty of dereliction of duties and the complaint filed against him was got enquired into by the District Magistrate through S.D.M. Sadar and the allegations were prima facie found to be correct. However, no

action has been taken on the basis of the complaint against respondent no.6/7.

4. Sri Ashok Khare, learned Senior Counsel appearing on behalf of respondent no. 7 submits that the main objection of respondent no.7 against the petitioner is in relation to discharge of functions of the office of President by the father of the petitioner. He states that the enquiry report also indicts the petitioner. He further submits that because of this tussle, respondent no.6/7 has not been paid salary for last five months. He further submits that it is not clear from the resolution as to whether it was passed by majority of 2/3rd members or not and it has also not been confirmed in the subsequent meeting.

5. Sri Rajiv Gupta, learned Additional Chief Standing Counsel appearing for the State respondents on instructions states that the entire dispute has to be examined by the State Government in terms of the provisions of the Uttar Pradesh Nagar Palika (Centralised) Service Rules, 1966 and the Uttar Pradesh Municipalities Act, 1916.

6. Rule 25 (3) of the Uttar Pradesh Nagar Palika (Centralised) Service Rules, 1966 contemplates transfer of executive officer on a special resolution of Nagar Palika by a majority of 2/3rd members. The transferring authority of executive officer, who is member of Centralised Service, is the State Government. Thus, decision on basis of the recommendation allegedly made by the Nagar Palika for transfer of respondent no.6/7 has to be taken by the State Government. Action on basis of preliminary enquiry got conducted by the District Magistrate on various complaints has also to be taken by the State Government.

7. Consequently, we dispose of the instant petition by providing that both the aforesaid aspects shall be examined by the State Government and decision would be taken by it within six weeks from the date of communication of the instant order. In respect of the charges in relation to which enquiry was held, wherein both the petitioner and respondent no.6/7 have been indicted, the State Government shall decide the future cause of action as per the procedure prescribed under law.

8. The petition stands disposed of accordingly.

(Donadi Ramesh, J.)

(Manoj Kumar Gupta, ACJ.)

Order Date :- 4.12.2023

Noman