

1. **Court No. - 35**

Case :- WRIT - A No. - 19593 of 2023

Petitioner :- Arun Kumari

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

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C., Yogesh Kumar Saxena

Hon'ble Vikas Budhwar, J.

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Jigar Khare, learned counsel for the writ petitioner, Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel who appears for respondents No. 1 to 4 and Sri Yogesh Kumar Saxena, learned counsel who appears for respondent No. 5.

2. Learned counsel for the parties have made a statement at Bar that they do not propose to file any response and the writ petition be decided on the basis of the pleadings set forth, thus, with their consent the writ petition is being decided at the fresh stage.

3. It is the case of the writ petitioner is that the fifth respondent herein had preferred Writ A No. 14106 of 2023 questioning the order dated 28.07.2023 passed by the third respondent, District Inspector of Schools, Auraiya disapproving the suspension of the writ petitioner herein. The said writ petition came to be decided on 05.10.2023.-

"Heard Sri Yogesh Kumar Saxena, learned counsel for the writ petitioner, Sri R.P. Dubey, learned Additional Chief Standing Counsel who appears for respondents no.1 & 2 and Sri V.K. Singh, learned Senior Counsel assisted by Sri Rishabh Narain Singh, learned counsel for the respondent no.3.

The case of the writ petitioner is that it is a Committee of Management, Chaudhary Raghunandan Singh Inter College, Rahatpur, Auraiya which is recognised under the provisions of the U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No. 24 of 1971 stands applicable.

As per the writ petitioner the third respondent was selected and appointed as a Lecturer in the subject Civics by U.P. Secondary Education Service Selection Board and a consequential order was passed on 22.8.2008 by the second respondent, District Inspector of Schools, Auraiya according joining and placement of the third respondent in the petitioner institution. It is the further case of the writ petitioner that there was a serious inter se dispute of

seniority between third respondent and Sri Suresh Chandra Tripathi which traveled to this Court in Writ-A No.55596 of 2017 Smt. Arun Kumari vs. State of U.P. & 5 others wherein the order dated 26.10.2017 passed by the Joint Director of Education assigning regularisation and benefits to Sri Suresh Chandra Tripathi was kept in abeyance.

Pleadings further reveal that a first information report regarding abduction of Sri Suresh Chandra Tripathi was lodged before the Police Station Auraiya, District Auraiya being FIR No.0783 on 18.10.2019 against the third respondent and others under Section 364 IPC pursuant where to the investigation is going on. Owing to certain acts and omissions unbecoming of an Officiating Principal the third respondent was placed under suspension on 28.6.2023 and thereafter on 18.7.2023 a charge sheet was also served upon the writ petitioner. The matter regarding resolution placing the third respondent under suspension at the end of the writ petitioner Committee of Management gathered attention of the District Inspector of Schools, Auraiya who after putting to the parties to notice proceeded to pass an order dated 28.7.2023 whereby it proceeded to disapprove the suspension of the third respondent.

Questioning the order dated 28.7.2023 passed by the second respondent, District Inspector of Schools, Auraiya the writ petitioner has filed the present writ petition.

The writ petition was entertained on 25.8.2023 wherein response were sought from the respondents. A counter affidavit has been filed by the learned Standing Counsel sworn by second respondent, District Inspector of Schools, Auraiya to which a rejoinder affidavit has been filed and a counter affidavit has been filed by the third respondent to a rejoinder affidavit has been filed.

Since the affidavits have been exchanged between the parties and the parties do not propose to file any further affidavit thus, the matter is being decided at the fresh stage.

Sri Y.K. Saxena, learned counsel for the writ petitioner while assailing the order dated 28.7.2023 passed by the second respondent, District Inspector of Schools, Auraiya has submitted that the said order cannot be sustained for a single moment particularly in view of the fact that the same is bereft of any valid reason in coming to the conclusion so as to disapprove the suspension of the third respondent. According to him the order it shown to be lengthy but the first page is dedicated towards the contention of the writ petitioner, the second/third page is dedicated to the contention of the third respondent and only in short paragraph discussion and decision has been formulated. He further submits that the second respondent, District Inspector of Schools, Auraiya was swayed away from the fact that they happens to be a litigation pending at the instance of the third respondent, Writ-A No.55596 of 2017 Smt. Arun Kumari vs. State of U.P. & 5 others wherein the issue with regard to grant of benefits deceased Sri Suresh Chandra Tripathi was stayed and according to him the said aspect was totally foreign and not even worth relevance in the matter of approval/disapproval of suspension. Further submission of the learned counsel for the writ petitioner is that even in fact certain allegations which were never the part and parcel of the charge sheet regarding midday meal was injected in order to find out fault at the end of the

petitioner, Committee of Management. According to Sri Saxena, the most crucial issue which ought to have been considered while arriving at decision as to whether the suspension needs to be continued or not was the fact that already the third respondent was facing a criminal case pursuant to the lodging of the FIR under Section 364 of the IPC and in the wake of the provisions contained under Section 16G (5) a decision ought to have been arrived at as to whether the suspension could have been continued in the wake of the three contingencies provided therein. In nutshell the submission is that the writ petitioner is facing criminal case for an offence involving moral turpitude against him which is under investigation, thus in these circumstances, it was a fit case wherein approval ought to have been granted.

Sri V.K. Singh, learned Senior Counsel assisted by Sri Rishabh Narain Singh, learned counsel for the respondent no.3 while countering the submission of the learned counsel for the petitioner submits that at each and every point of time all sorts of hurdles and obstacles were being placed just in order to dislodge the third respondent to function as the Officiating Principal as even in fact there was series of writ petition preferred by the writ petitioner before this Court and a further even in fact the provisions of Section 5 of the 1971 Act were also resorted to in order to safe guard the interest of the third respondent. He further submits that the charge sheet contains false and incorrect charges which are totally non-existent and further according to him though the order in question which is subject matter of challenge is though not happily worded but it takes into account the prima facie satisfaction so accorded and arrived by the District Inspector of Schools.

Sri R.P. Dubey, learned Chief Standing Counsel has adopted the argument of Sri V.K. Singh and according to him he has nothing more to add. I have heard the learned counsel for the parties and perused the record.

Undisputedly, the third respondent is Officiating Principal of an institution which is governed under the provisions of the U.P. Intermediate Education Act, 1921. The competent authority empowered to accord approval is the District Inspector of Schools. Here in the present case as apparent from the record there happens to be a first information report against the third respondent under Section 364 of the IPC and further there happens to be a charge sheet dated 18.7.2023 containing certain charges.

This Court is oblivious of the fact that the District Inspector of Schools while approving or disapproving the suspension of a teacher is not required to go into the merits of the matter however what is required to be done is to arrive at prima facie opinion as to whether suspension needs to be continued, approved or disapproved.

Here in the present case the learned counsel for the petitioner Committee of Management had pleaded before the District Inspector of Schools that the third respondent was facing criminal charges as FIR had already been lodged against him under Section 364 of the IPC. In the opinion of the Court the District Inspector of Schools ought to have bestowed its consideration upon the charges while arriving at a prima facie opinion as to whether the suspension needs to be continued/approved or not in the light of the provisions contained under Section 16G(5) of the U.P. Intermediate Education Act, 1921. Moreover, this Court may also record that as per the parties there was

no allegation about midday meal and thus it prima facie appears to the Court that no fault could have been attributed with regard to non furnishing of any sufficient material to substantiate the said allegation upon the Committee of Management.

At this stage Sri V.K. Singh, learned Senior Counsel assisted by Sri Rishabh Narain Singh and Sri R.P. Dubey, learned Additional Chief Standing Counsel submit that the issues which are being argued and raised needs adjudication at the instance of the District Inspector of School, Auraiya thus according to them the matter be remitted back to the authorities the District Inspector of School, Auraiya to pass a fresh order.

Considering the submissions of the rival parties as well as stand taken by them, this Court at this stage is not venturing into the said aspects leaving it open to the District Inspector of School, Auraiya, second respondent to revisit the entire issues strictly in the light of the provisions contained under the U.P. Intermediate Education Act, 1921.

Accordingly, the writ petition is being decided in following terms:((a) order dated 28.7.2023 passed by the District Inspector of School, Auraiya, second respondent is set aside (b) the matter stands remitted to the District Inspector of School, Auraiya to pass fresh orders (c) since Committee of Management as well as the third respondent stands represented through their counsels thus they need not be given further information (d) post remand the matter be placed before the District Inspector of School, Auraiya on 12.10.2023 (e) on that date the Committee of Management and the third respondent shall submit their version, (f) hearing be done in the third week of October, 2023, (g) order to be passed by the 31.10.2023.

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

Though according to the third respondent 60 days period has lapsed however this Court is not going into the said issue as natural and legal consequences as per law would follow."

4. Post remand, now an order has been passed by the District Inspector of Schools, Auraiya, third respondent on 27.10.2023 approving the suspension of the writ petitioner.

5. Questioning the said order, the writ petitioner has filed the present writ petition.

6. Sri Ashok Khare, learned Senior Counsel for the writ petitioners has argued that the resolution of the Committee of Management of the institution in question dated 26.05.2023 placing the writ petitioner under suspension is not only on non-existent ground but also per se illegal particularly in view of the fact that a vindictive attitude had been sought to be meted to her right from the joining of the writ petitioner as though the writ petitioner was appointed as a Lecturer of Civics on 27.08.2008 on the recommendation of the

U.P. Secondary Education Service Selection Board but in order to block her chances to officiate as Principal of the institution in question being senior-most Lecturer she was not accorded officiation as Principal which entailed the writ petitioner to approach the District Inspector of Schools, Auraiya on 10.01.2017 and 27.01.2017 directed the fifth respondent Committee of Management to handover the charge of Officiating Principal to the writ petitioner and the said order was subject matter of challenge at the instance of the Committee of Management of the institution in question, fifth respondent in Writ A No. 7050 of 2017 which came to be disposed of on 14.02.2017 requiring the fifth respondent Committee of Management to prefer a representation before the District Inspector of Schools and thereafter an order was passed by the District Inspector of Schools, Auraiya on 22.04.2017 making the writ petitioner Officiating Principal and side-tracking the claim of Suresh Chand Tripathi, the said order has been challenged in Writ A No. 20134 of 2017 (C/M, Chaudhary Raghunandan Singh Inter College Vs. State of U.P. & Others) by the fifth respondent, Committee of Management. It is also the case of the writ petitioner that on 12.05.2017 the signature of the writ petitioner as Officiating Principal was attested. He further submits that the Committee of Management of the institution in question, fifth respondent on being unable to obtain any positive orders in its favour resorted to a co-lateral proceedings while getting lodged a first information report against the writ petitioner and 4 others before the Police Station Auraiya, District Auraiya FIR No. 0783 of 2019 on 18.10.2019 under Section 364 regarding abduction of one Sri Suresh Chand Tripathi who was an Ad hoc Lecturer. He submits that an order was passed on 26.10.2017 by the Regional Regularization Committee according regularization of Sri Suresh Chand Tripathi, however the said order was challenged by the writ petitioner in Writ A No. 55596 of 2017 (Smt. Arun Kumari Vs. State of U.P. & 5 Others) in which an interim order was passed on 22.11.2017, however, despite the fact that the status of Sri Suresh Chand Tripathi, was of an Ad hoc Lecturer, however, the writ petitioner was forced by the District Inspector of Schools vide communication dated 06.05.2022, 16.09.2022, 01.11.2022, 31.12.2022 and 02.06.2023 to accord benefits towards GPF and other dues. The writ petitioner in this regard when resisted the said action of the District Inspector of Schools then the fifth respondent Committee of Management proceeded to pass a resolution dated 25.06.2023 constituting a preliminary inquiry committee and also suspending the writ petitioner from service. An order to the said extent was passed on 26.08.2023 and the writ petitioner has been placed under suspension with effect from 01.07.2023. He submits

that on the matter being taken cognizance by the District Inspector of Schools, he disapproves the suspension order dated 28.07.2023 it was subject matter of challenge in Writ A No. 14106 of 2023 wherein the order in question was set aside and the matter was remitted back. The submission of the learned counsel for the writ petitioner is that the entire action of the Committee of Management of the institution in question is not only vindictive but it is on account of settling scores. He submits that there was no occasion to place the writ petitioner under suspension particularly when from the perusal of the resolution dated 25.06.2023 for the purposes of holding preliminary enquiry, directions have been issued and simultaneously the writ petitioner has been suspended. He further submits that once only first information report has been lodged the same would not denude the writ petitioner of benefits till date no criminal charge sheet has been submitted and she has not been arrested. He, thus, submits that the order impugned in the writ petition is liable to be set aside as it omits to consider each and every aspect of the matter.

7. Sri Yogesh Kumar Saxena, learned counsel who appears for the fifth respondent Committee of Management submits that once the writ petitioner is facing investigation/inquiry relating to an offence involving moral turpitude then the provisions contained under Section 16G(5)(c) would come into play and rightly she has been placed under suspension. Further submission is that a departmental charge sheet has been served upon the writ petitioner in which besides allegations referable to criminal offences there are other allegations regarding submission of forged medical certificate, non-adherence or disobedience of orders. He, thus, submits that a conscious decision has been taken by the Committee of Management of the institution in question placing the writ petitioner under suspension which stands endorsed by the District Inspector of Schools in right perspective.

8. Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel has adopted the submission of the learned counsel for the fifth respondent and he submits that he has nothing to add and the order impugned is perfectly valid.

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

10. The facts of the case are not in dispute. It is not disputed that the writ petitioner is facing a criminal inquiry pursuant to lodging of the first information report No. 0783 of 2019 under Section 364 I.P.C. regarding abduction of Sri Suresh Chand Tripathi.

11. The bone of contention between the parties is as to whether mere lodging of a first information report involving moral turpitude which is under investigation the writ petitioner could have been placed under suspension or not. Section 16G(5) of the U.P. Intermediate Education Act, 1921 provides the contingencies wherein a head of institution or a teacher can be placed under suspension which also includes pendency of an investigation, inquiry or trial with respect to any criminal charge for an offence involving moral turpitude.

12. Notably, there happens to be a first information report dated 18.10.2019, F.I.R. No. 783 of 2019 under Section 364 I.P.C. The said offence if found to be proved against the writ petitioner would amount to an offence involving moral turpitude.

13. Sri Khare, learned Senior counsel for the writ petitioner submits that no criminal charge sheet has been submitted before the competent court of law and the writ petitioner was not arrested but in the opinion of the Court the same are not of any relevance particularly when the statute itself provides for suspension of a teacher when the criminal offences relating to moral turpitude are under investigation/inquiry or trial. As regards the submission of the learned Senior Counsel that the writ petitioner has been victimized at each and every point of time and on its resistance not to extend pensionary benefits to Sri Suresh Chand Tripathi pressure was exerted not only by the District Inspector of Schools but by the Committee of Management and when the writ petitioner did not succumb to the said pressure he has been placed under suspension is concerned, the same is also not liable to be gone at this stage particularly when none of the persons against whom allegations have been levelled are impleaded as a party respondent in private capacity, thus, it would not be appropriate in this Court to delve into the said issues that too at a stage wherein the order which is subject matter of challenge is an order approving the suspension of the writ petitioner. There is another reason for not interfering with the order impugned that is relatable to the fact that the writ petitioner is an Officiating Principal who is facing criminal investigation. Basically, once the writ petitioner is facing criminal charges and the investigation is going on then it would neither be proper nor in the interest of the institution to allow the writ petitioner to assume the charge as Officiating Principal.

14. Accordingly, in the opinion of the Court, the writ petitioner is not entitled to any relief.

15. With the aforesaid observations, the writ petition is dismissed.

16. However, the dismissal of the writ petition would not preclude the writ petitioner to claim subsistence allowance which is admissible to him as per the rules.

Order Date :- 5.12.2023

Rajesh