

Court No. - 35

Case :- WRIT - A No. - 19815 of 2023

Petitioner :- Principal Anusuiya Mahila Uchchatrar Mahila Uchyalaya And 3 Others

Respondent :- District Inspector Of Schools And 2 Others

Counsel for Petitioner :- Indra Raj Singh, Adarsh Singh

Counsel for Respondent :- C.S.C., Ashok Kumar, Vivek Kumar Singh

Hon'ble Vikas Budhwar, J.

Supplementary affidavit filed today is taken on record.

Heard Shri Adarsh Singh, learned counsel for the writ petitioners as well as Dr. Santosh Kumar Shukla, learned Additional Chief Standing Counsel for respondent Nos. 1 and 2 and Shri Vivek Kumar Singh, learned counsel for respondent No. 3.

Two writ petitions came to be preferred one by the writ petitioners herein, Writ A No. 75605 of 2010 (Principal Anusuiya Mahila Uchchatar Madhyamik and Another Vs. District Inspector Of Schools And Others) questioning the order dated 10.12.2010 passed by the District Inspector of Schools (II), Varanasi and another Writ A No. 13655 of 2023 (Yogendra Singh Rathore Vs. State of U.P. and 7 Others) by the third respondent wherein a writ of mandamus was sought for reinstatement of the third respondent as the interim order accorded to the writ petitioner in Writ A No. 75605 of 2010 was vacated as the said writ petition came to be dismissed in default. Both the writ petitions came to be consolidated together and decided by an order dated 15.09.2023 which is quoted hereinunder:

"In Re: Delay Condonation Application No. 26 of 2020

The explanation for delay in filing the appeal is to the satisfaction of the Court.

The delay condonation application is allowed.

The delay in filing the recall/restoration application is condoned.

The recall/restoration application is treated to have been filed within time.

Office is directed to allot regular number to the recall/restoration application.

In Re: Civil Misc. Recall/Restoration Application No. 27 of 2020

Since there is no objection being raised by learned counsel for the respondents for getting to recall the order dated 18.01.2020.

The order dated 18.01.2020 is recalled.

The writ petition is restored to its original number.

Order on writ petitions

1. Heard Shri Indraj Raj Singh, learned counsel for the petitioners (in leading writ petition) and respondent nos.6 to 8 (in the connected writ petition), Shri Gaya Prasad Singh, learned Standing counsel for respondent nos. 1 and 2 (in the leading writ petition) and respondent nos.1 to 5 (in the connected writ petition) and Shri Vivek Kumar Singh, learned counsel for the fourth respondent (in leading writ petition) and petitioners in the connected writ petition.

2. Incidentally in the leading writ petition, Committee of Management of Anusuiya Mahila Uchchatar Madhyamik, Chhoti Piyari, Varanasi through its Manager has been impleaded as third respondent but since the writ petitioners in the first and second respondent happens to be the Principal of the Institution, thus, notices are waived upon the third respondent in the leading writ petition, particularly, when they support the writ petitioner, Committee of Management.

3. Since, common question of facts and law are involved in both the writ

petitions, thus they are being decided by a composite order.

4. The case of the petitioners in the leading writ petition, the Principal of Anusuiya Mahila Uchchatar Madhyamik, Chhoti Piyari, Varanasi is that the said institution question, Anusuiya Mahila Uchchatar Madhyamik, Chhoti Piyari, Varanasi is an institution recognized under the provisions of the U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No.24 of 1971 stands applicable.

5. Pleadings reveal that the fourth respondent (in short, Yogendra Singh Rathore), who was working on the post of peon in the institution in question, committed certain acts and omission, unbecoming of the staff of the institution in question pursuant to he was placed under suspension on 28.03.2009. However, the same came to be disapproved by the District Inspector of Schools, Varanasi, Varanasi on 16.01.2010. Charge sheet dated 11.05.2009 is stated to have been served upon Shri Yogendra Singh Rathore containing as many as six charges requiring him to submit him his objections / reply to the same.

6. It is further the case of the Committee of Management of the Institution in question that despite several opportunities being accorded to Shri Yogendra Singh Rathore, he did not tender his effective reply. The petitioner no.2 in the leading writ petition, Smt. Durgawati Singh, who happens to be a Principal of the Institution in question, which had issued charge sheet became the Inquiry officer and on the basis of the inquiry report, Shri Yogendra Singh Rathore's services were dispensed with by virtue of the order dated 16.03.2010.

7. Pleadings further reveal that Shri Yogendra Singh Rathore preferred an appeal before the Committee of Management of the Institution on 16.04.2010 which came to be rejected on 05.07.2010 and thereafter as per pleadings Shri Yogendra Singh Rathore preferred an appeal before the District Inspector of Schools, Varanasi against the order dispensing with his services and rejection of the appeal by the Committee of Management. On the receipt of the appeal preferred by Shri Yogendra Singh Rathore before the District Inspector of Schools, Varanasi, it appears that the District Inspector of Schools, Varanasi (II) issued a communication to the Principal of the Institution in question on 14.09.2010 fixing 20.09.2010 at 2.00 Noon for the purposes of hearing of the

matter.

8. It is a case of the Principal of the Institution in question that it requested the District Inspector of Schools, Varanasi to furnish the copy of the memo of appeal preferred by Shri Yogendra Singh Rathore but on 24.09.2010, the District Inspector of Schools, Varanasi (II) issued a communication mentioning therein that there is no provision to furnish the copy of the memo of the appeal. The Principal, the writ petitioner, thereafter again made a request. However, on the said request on 28.09.2010, the District Inspector of Schools, Varanasi (II) proceeded to issue a communication wherein, he directed the Principal of the Committee of Management to participate in appellate proceeding and issue of furnishing of the copy of the memo of appeal shall be considered on the said date. It is further the case of the Principal of institution in question to despite the fact that it requested for the copy of the memo of the appeal but the same was not provided and ultimately impugned order has been passed on 10.12.2010 by the District Inspector of Schools, Varanasi (II), whereby it has proceeded to allow the appeal preferred by Shri Yogendra Singh Rathore for reinstatement and payment of salary.

9. Questioning the order dated 10.12.2010 passed by the District Inspector of Schools, Varanasi (second Varanasi), the writ petitioner has filed the leading writ petition.

10. The said writ petition was entertained by this Court on 04.01.2011 wherein following order was passed :-

"Learned Standing Counsel has accepted notice on behalf of respondent nos. 1 and 2 while Shri D.S.M. Tripathi has entered appearance on behalf of respondent no. 4.

It appears that the respondent no. 4 was working as a peon in Anusuiya Mahila Uchchatar Madhyamik Vidyalaya, Chhoti Piyari, Varanasi a duly recognized and aided institution. However, his services were terminated vide order dated 16.3.2010 against which he preferred an appeal to the management which was also rejected vide order dated 5.7.2010. Against the said order he preferred an appeal to the District Inspector of Schools which has been allowed by the impugned order dated 10.12.2010.

Apart from several other arguments, learned counsel for the petitioner has urged that the procedure provided under Regulations 31 and 87 of Chapter III of the Regulations framed under U.P. Intermediate Education Act, 1921 was not followed inasmuch as the copy of the grounds of appeal running into one hundred pages was never supplied to the petitioner despite his demand and therefore, on this short ground the order is vitiated.

Learned counsel for the respondent does not dispute this fact but it would be appropriate to provide one opportunity to the District Inspector of Schools, Varanasi to file his reply or else the court may decide the writ petition in view of the aforesaid pleading.

Let counter affidavit be filed within three weeks.

List on 27.1.2011. Till then the operation of the order dated 10.12.2010 shall remain stayed."

11. A counter affidavit has been filed by learned Standing Counsel on behalf of the first respondent sworn by District Inspector of Schools, Varanasi (II) to which a rejoinder affidavit has been filed. Records further reveal that a counter affidavit has been filed by Shri Yogendra Singh Rathore, which is also available on record to which a rejoinder affidavit has been filed.

12. Order sheet reveals that the leading writ petition came to be dismissed on 18.01.2020. The orders passed therein is being quoted herein :

"List revised. Case called out. No one appears on behalf of the petitioners to press the writ petition. Learned standing counsel is present.

It appears that the writ petition has become infructuous.

Therefore, it is dismissed with liberty to the petitioners to file a recall application within 30 days, if according to him cause of action still survives.

Interim order, if any granted earlier, is vacated."

13. Since, the leading writ petition was dismissed and the interim orders got vacated so the umbrella of protection accorded to the Principal of the Institution in question stood wiped of entailing circumstances giving room to

Shri Yogendra Singh Rathore to exercise his legal claim for being granted the benefits, thus, Shri Yogendra Singh Rathore preferred connected writ petition with a mandamus be issued to the third respondent, District Inspector of Schools, Varanasi Division, Varanasi to reinstate the writ petitioner in service and to accord him all benefits.

14. The connected writ petition came up for consideration before this Court on 25.08.2023, wherein the following orders were passed :-

"Since the present matter is an offshoot of the proceedings undertaken by the District Inspector of Schools-II Varanasi dated 10.12.2010 allowing the appeal of the writ petitioner which was subject matter of challenge in Writ A No. 75605 of 2010 by the respondent No. 6, Committee of Management in which initially an interim order was granted on 04.01.2011 and thereafter the writ petition was dismissed as infructuous on 18.01.2020 and according to Sri Indraj Singh who appears for the sixth and seventh respondents, a restoration application has been filed on 16.06.2020 which is pending consideration, thus, the records of 75605 of 2010 (Principal Ansuiya Mahila Uchchattar Madhyamik Vidyalaya & Others Vs. District Inspector of Schools) is required to be tagged with the present writ petition.

Since this Court does not possess jurisdiction over the Writ A matters of the year 2010, thus, the matter be posted in the week commencing 04.09.2023 after obtaining nomination from Hon'ble the Chief Justice as fresh."

15. There is an office report dated 06.09.2023, that pursuant to the current roaster and the Administrative order of the Hon'ble the Chief Justice, the matter has been placed before this Court for hearing.

16. Thus, today both the writ petitions are before this Court. Before proceeding to decide the matter on merits, this Court has made a pointed query to the learned counsel for the parties as to whether, they seek time to file any further response or not, to the said query the Court has been apprised by the learned counsels that the pleadings themselves are self sufficient for deciding disposal of the matter and thus with the consent of the parties, the writ petition is decided at this stage without seeking any further response.

17. Shri Indra Raj Singh, who appears for the Principal of the Institution in question has sought to argue that the fundamental defects and the shortcomings occasioning in the order impugned in the leading writ petition of the District Inspector of Schools, Varanasi (II) is inherent which itself vitiates the order particularly in view of the fact that against the dispensation of the services of the delinquent, Yogendra Singh Rathore, preferred an appeal before the Committee of Management, which in turn was rejected. However, without furnishing the copy of the memo of the appeal preferred by Yogendra Singh Rathore, before the District Inspector of Schools, Varanasi (II) has decided the appeal which even in fact is in violation of principle of the natural justice as the Committee of the Management and its Principal of the Institution in question were totally in dark, unaware about the inputs, which were being pressed into service against them. The submission is that had the copy of the memo of the appeal being served, the Principal of the institution would have amply demonstrated that it was not a case wherein, the delinquent Yogendra Singh Rathore was entitled to be reinstated and accorded benefits.

18. Further submission has been made that it is not a case wherein the Principal of the institution in question did not ask for the copy of the memo of the appeal, as repeated request was made but the same was being denied and one pretext or the other particularly in view of the fact that there is no provision according to the District Inspector of Schools, Varanasi (second Varanasi) to give a copy of the memo of appeal in that regard.

19. Submission is that the order impugned in the leading writ petition is set aside. Matter be remitted for fresh decision in the matter.

20. Shri Vivek Kumar Singh, who appears in both the writ petitions have argued that the present case is a classic case of illegality to its optimum particularly when the Principal of the Institution the question itself became not only a litigant but also a prosecutor and a Judge. The submission is that charge sheet was issued by the Principal of the Institution in question, she became the inquiry officer and she also proceeded to pass the order dispensing the services of the writ petitioner.

21. On a specific query being upon Shri Vivek Kumar Singh, who appears for

Shri Yogendra Singh Rathore as to whether the copy of the memo of the appeal was served upon the Principal of the institution in question or representative, he submits that from the record available with him and as per his instructions, the same was not served.

22. A pointed query was also made to the learned Standing counsel, who appears for the Official respondents as to whether the copy of the memo of the appeal was served or not to which, learned Standing Counsel as per the counter affidavit filed and the document available on record has made statement that there is no positive assertion regarding the service of the memo of appeal.

23. According to Shri Vivek Kumar Singh, who appears for Shri Yogendra Singh Rathore and learned Standing counsel for the official respondents, the order impugned be set aside matter be remitted back to the authority concerned to pass a fresh order strictly in accordance with law within the time stipulated by this Court.

24. Ordinarily, in normal circumstances, this Court would have undertaken the task to decide the matter on merits. However, in view of the inherent and fundamental defects, which has occasioned, this Court is denuding itself from entering into the merits of the matter while remitting the matter back to the District Inspector of Schools, Varanasi to decide the matter afresh.

25. Accordingly, the writ petition is being decided in following terms; (a) Order dated 10.12.2010 passed by District Inspector of Schools, Varanasi (II) Region, Varanasi is set aside; (b) matter stands remitted back to the District Inspector of Schools, Varanasi (II) to decide the matter afresh; (c) parties shall appear before the District Inspector of Schools, Varanasi (II) on 09.10.2023; (d) on that date a self attested copy of the memo of appeal along with documents be handed over to the Principal of the Institution in question; (e) by 12.10.2023 written versions be submitted by the parties in question; (f) the versions be exchanged between the parties on the said dates i.e. 12.10.2023; (g) hearing be done on 16.10.2023; (h) orders be passed by 27.10.2023.

26. While deciding the issue in question post remand the following

fundamental and core issues shall be considered; (i) the issue with regard to the allegation levelled by Sri Yogendra Singh Rathore that the author of the charge sheet, the Inquiry Officer and the Disciplinary Authority were the same being Principal of the institution; (ii) issue with regard to the adherence of the procedure as per the statute for conducting the inquiry; (iii) the any other incident and for ancillary issue.

27. Since, the parties themselves are represented through their counsels thus, there is no need to inform them as the dates for conduction of the hearing by the District Inspector of Schools, Varanasi has been fixed in the presence of the parties representatives with their consent.

28. Needless to point out that the writ petition has been decided on technical issue regarding violation of principle of natural justice while not furnishing the copy of the appeal thus passing of the order may not be construed to be an expression that this Court has adjudicated on the merits of the matter and the District Inspector of Schools, Varanasi shall decide the matter strictly in accordance with law after giving opportunity of hearing to the parties concerned without being influenced and obsessed by any of the observations made herein above.

29. Resultantly, the leading writ petition is allowed.

30. In so far as the connected writ petition is concerned its fate depended upon the outcome of the leading writ petition, since the matter stands remitted back to the District Inspector of Schools, Varanasi while setting aside the order challenged in the leading writ petition thus, the relief sought in the connected writ petition becomes dependent upon the final outcome of the order passed therein.

31. With the aforesaid observations, both the writ petitions stands disposed of."

Post remand now the District Inspector of Schools (II), Varanasi has proceeded to pass an order dated 27.10.2023 disapproving the dispensation of the services of the third respondent.

Assailing the said order, the writ petitioner has filed the present writ petition.

Learned counsel for the writ petitioners submits that the order impugned in the writ petition cannot be sustained even for a single movement, particularly, in view of the fact that though the order is shown to be lengthy but there has been no consideration upon the fundamental and core issues regarding the merits of the charges which according to the committee of management stood proved culminating into the order of the suspension of the services of the third respondent. He submits that in the discussion parts, the facts have been recited and various pages have been dedicated to the same and also procedural irregularities have been pointed out and at best, in case it was a case of procedural irregularity then no order for reinstatement could have been passed, particularly, in view of the law laid down in umpteen number of decisions of the Hon'ble Apex Court and this Court that whenever the departmental proceedings are vitiated and the defects can be cured then a direction can be issued for holding of the departmental enquiry from stage when the defect crept up. He seeks to rely upon the decision in the case of Special Appeal No. 716 of 2022, C/M Muslim Inter College and Another Vs. State of U.P. and Others decided on 16.12.2022

Shri Vivek Kumar Singh, learned counsel for the respondent no. 3 submits that the order in question is perfectly valid in accordance with law and no fault whatsoever can be attributed in this regard particularly for the reason being that each and every contention so raised by the respective parties have been considered in right perspective followed by the fact that there has been procedural infirmity in holding inquiry. He submits that writ petitioner is out

of employment for a long span of period and in case, the matter stands remitted back while directing for further inquiry then without there being any time framed provided therein it would amount to denude the third respondent of his legal benefits for time immemorial in that regard.

Dr. Santosh Kumar Shukla, learned Additional Chief Standing Counsel has supported the argument of Shri Vivek Kumar Singh and he submits that he has nothing more to add, except the fact that the order in question is perfectly valid strictly in accordance with law.

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

The order impugned dated 27.10.2023 passed by the District Inspector of Schools (II), Varanasi has been annexed as Annexure 1 at page 17 of the paper-book which is in 13 pages, one and a half pages from where the order commences are dedicated to the facts then from the second page, the contentions and the submissions of the third respondent is recapitulated thereafter the contentions of the principal has been recapitulated and thereafter of Smt. Durgawati Singh retired principal. The discussion parts starts from page 9 to page 13 and then the order. The Court finds that there has been virtually no discussion on the merits of the charges, possibly for the reason being that the District Inspector of Schools (II), Varanasi was of the opinion that there was procedural infirmity. Now a question arises that once there is a procedural infirmity in conducting departmental proceedings then what would be the next course of question would be adopted in said cases. There are two options available, first is to set aside the order and accord reinstatement and consequential benefits to the delinquent and the

second option would be for holding of inquiry from the stage when the defect occurred. Here the Court finds that there are certain charges which according to the learned counsel for the committee of management are of serious nature which would dis-entitle to the delinquent to be reinstated. However, on the contrary, Shri Vivek Kumar Singh who appears for the third respondent submits that the said charges are baseless besides being a brain child of the committee of management.

At this juncture, this Court does not find it appropriate to delve into the said charge. Particularly, when a regular inquiry is conducted strictly in accordance with law. More so, the Court finds that the order passed by the District Inspector of Schools (II), Varanasi while the disapproving the suspension order dated 28.03.2009 and termination order dated 06.03.2010 has accorded reinstatement of the third respondent. In the opinion of the Court, the said order requiring reinstatement could not have been passed.

At this stage, Shri Vivek Kumar Singh, learned counsel for the respondent no. 3, Yogendra Singh Rathore submits that in case the matter stands remitted back to the disciplinary authority to conduct inquiry then the same should be within the time bound period strictly in accordance with law in that regard.

On a specific query being raised to learned Standing Counsel as well as Shri Vivek Kumar Singh whether they proposes to file any response, they have made a statement that the order in question be set aside, matter be remitted back and they do not propose to file any response.

Accordingly, the writ petition is being decided in the following manner:

- a). The order dated 27.10.2023 passed by the District Inspector of Schools-II Varanasi set aside.
- b). The matter stands remitted back to the disciplinary authority/inquiry officer to conduct the inquiry proceedings and concluded the same within a period of three months from the presentation of the certified copy of the order.
- c). The third respondent, Ragvendra Singh Rathore shall be made admissible to substances allowances, arrears and current as per the Rules.
- d). The inquiry proceedings shall be conducted strictly in accordance with law after putting to third respondent, Ragvendra Singh Rathore to notice.
- e). The reinstatement of the writ petitioner and the payment of consequential benefits shall be subject to the outcome of the inquiry proceedings which would be taken against the writ petitioner.

Since the writ petitioner as well as the third respondent is represented through their counsels thus they shall appear on the next date fixed by the disciplinary authority/inquiry officer.

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

Order Date :- 8.12.2023

A. Prajapati