

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 8636 of 2023

Applicant :- C/M Anglo Benagali Girls Inter College

Opposite Party :- Sri Dinesh Kumar, District Inspector Of Schools And Another

Counsel for Applicant :- Shri Krishna Mishra, Ajay Mishra

Hon'ble Rohit Ranjan Agarwal, J.

The writ Court on 31.05.2023 in Writ-A No.9726 of 2023 had passed the interim order, which is as under:-

"Order on Civil Misc. Impleadment Application No.NIL of 2023

Sri H.N. Singh, learned Senior Advocate assisted by Sri Ajai Kumar Tiwari, learned Advocate has sought to move an impleadment application seeking impleadment as sixth respondent to represent rival Committee of Management.

In the considered view of the Court, the rival Committee of Management has no role to play in service matters more especially in the circumstances when the petitioner Committee of Management continues to be a de facto Committee of Management and the salary is being disbursed under the signatures of the present Manager.

Accordingly, the impleadment application moved by the rival claimant is held to be not maintainable and is rejected.

Order on petition

Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Umang Srivastava, learned counsel for the petitioner, Sri V.K. Singh, learned Senior Advocate assisted by Sri Alok Dwivedi, learned counsel for the respondent no.5 and learned Standing Counsel for the State-respondents.

The submission advanced by learned counsel appearing for the petitioner is that in respect of minority institution, the District Inspector of Schools does not enjoy any authority to approve or disapprove the decision of the Committee of Management to dispense with the services of a teacher of the institution and therefore the District Inspector of Schools was not justified in passing the order dated 1.4.2023 in annulling the entire disciplinary proceedings instituted against the fifth respondent, and the consequential order dated 8.5.2023 to be void. He has placed reliance upon the authority of Supreme Court in the case of Committee of Management, St. John Later College vs. Girdhari Singh and another: (2001) 4 SCC 296.

A further submission has been advanced by learned Senior Advocate that disciplinary proceeding drawn against the fifth respondent by the

Committee of Management having culminated in the order of termination would not have been held to be void for the simple reason that in an order passed by the Regional Joint Director of Education it had been held that the term of Committee of Management had expired on 11.1.2023. It is submitted that as a matter of fact the Committee of Management elected in the year 2020 continued to remain in office with the attestation of signatures of its Manager and the fresh election having been held on 10.1.2023, the papers pending for recognition before the District Inspector of Schools, the Management is to be taken as continuing de facto and also de jure by virtue of provisions contained under the scheme of administration. Thus the order dated 19.4.2023 passed by District Inspector of Schools-II holding the disciplinary proceedings to be void ab initio is assailed on the above ground.

Per contra, it is argued by Sri G.K. Singh, learned Senior Advocate on behalf of 5th respondent that it is a fact that the term of Committee of Management has expired on 11.1.2023 and, therefore, on the date of passing of the order of termination there cannot be said to be a legally recognized Committee of Management was there in the institution and therefore the order of termination is bad for want of lawful authority.

It is further argued that the District Inspector of Schools should not be taken to be unjustified in holding a particular decision to be bad for want of authority. Learned Senior Advocate in fact sought to argue that even if there was no power vested with the District Inspector of Schools to have passed the order setting aside the termination in respect of teacher of minority institution, this Court may still refuse to exercise power under Article 226 of the Constitution, being an equitable jurisdiction, for the simple reason that the entire proceedings were vitiated for malafides. He has sought to argue that it was for one young Assistant Teacher who refused to submit to the Manager of the Committee of Management and the fifth respondent having refused to take side of the Manager, she has been axed.

Upon perusal of the order impugned and the pleadings raised in the petition as well as the legal plea taken, the arguments advanced by learned Senior Advocate for the petitioner, appears to have substance and matter requires consideration.

Learned Standing Counsel representing respondent nos.1,2,3 and 4 and Sri Alok Dwivedi, learned counsel for the respondent no.5 pray for and are granted four weeks' time to file counter affidavit. Rejoinder affidavit, if any, shall be filed within two weeks thereafter. List this case on 24.7.2023.

In the meanwhile until further order of this Court the effect and operation of the order dated 1.4.2023 and 8.5.2023 passed by the District Inspector of Schools, Agra as well as 19.4.2023 passed by the District Inspector of Schools-II, Agra shall remain stayed and shall abide by the result of the writ petition.

It is however, clarified, pendency of this petition and interim protection granted hereinabove will not preclude the 5th respondent from challenging the order of termination of her service at an appropriate forum as may be available to her in law or as may be advised."

Learned counsel for the applicant has submitted that the District Inspector of Schools, Agra instead of complying the order of the writ Court had proceeded to pass an order on 07.06.2023 permitting the respondent no.5 to join the institution.

This Court finds that the writ Court had left it open to the opposite party no.5 in the writ petition to challenge the order of termination before appropriate forum and non-challenge of the order on behalf of the respondent no.5, continuance of her service in the institution will not make out case for contempt against the opposite party.

Contempt application is misconceived and the same stands dismissed.

Order Date :- 30.11.2023

SK Goswami