

Court No. - 35

Case :- WRIT - A No. - 19878 of 2023

Petitioner :- Committee Of Management Mahabodhi Inter College
And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Nilay Kumar Pandey, Prabhakar Awasthi

Counsel for Respondent :- C.S.C., Ratnakar Upadhyay

Hon'ble Vikas Budhwar, J.

1. Heard Sri Prabhakar Awasthi, learned counsel for the petitioners as well as Sri Dr. Santosh Kumar Shukla, learned Additional Chief Standing Counsel who appears for Respondents No. 1, 2 and 3, Sri R.K. Ojha, learned Senior Counsel who appears for the 4th respondent.

2. Questioning the order dated 31.5.2023 passed by the 1st respondent in the said writ petition insofar as it grants extension, ex-post facto, /retrospective to the 4th respondent herein and a direction to the petitioner Committee of Management to handover the charge to the 4th respondent, the writ petitioner herein preferred Writ-A No. 10269 of 2023. In sequel to the same an order dated 28.6.2023 was passed by the District Inspector of Schools, Varanasi attesting the signature of the 4th respondent which was also challenged by one Sri Praveen Kumar Srivastava in Writ-A No. 11053 of 2023. Both the writ petitioners were clubbed together and they came to be decided by virtue of an order dated 18.9.2023 which is quoted hereinunder:

"1. Since, common questions of law and facts are involved in Writ - A No. 10269 of 2023, (in short 'leading writ petition') as well as Writ - A No. 11053 of 2023, (in short 'connected writ petition'), thus, with the consent of the parties, they are being decided by a composite order.

2. For the sake of brevity, the - Writ A No.10269 of 2023 is treated as leading writ petition and Writ - A No.11053 of 2023 is treated as the connected writ petition.

3. The case of the writ petitioner in the leading writ petition, Committee of Management, Maha Bodhi Inter College, Sarnath, Varanasi (petitioner institution) is that it is recognized under the provisions of U.P. Intermediate Education Act 1921, the provisions of U.P. Act No.5 of 1982 and U.P. Act No.24 of 1971, stands applicable.

4. According to the writ petitioner institution, Dr. Beni Madho was appointed on the post of Lecturer, English on 01.12.1987 and his appointment was approved by the

District Inspector of Schools, Varanasi on 06.08.1988. Pleadings further reveal that the adhoc service/appointment of the fifth respondent, Sri Beni Madho was regularised by the Joint Director of Education, Varanasi on 07.08.1993. A post of Principal of the institution in question fell vacant on 30.06.1994, on account of the retirement of the Principal, Sri K.P. Srivastava, thus the said vacancy was notified to U.P. Secondary Education Service Selection Commission, Allahabad for making selection of a candidate, as Principal of the institution in question in the month of May, 1994 itself.

5. As per the writ petitioner institution, the fifth respondent was permitted to officiate as a Principal with effect from 30.06.1994 till further orders of the decision of the Committee of Management with regard to the appointment of adhoc/regular Principal (in case, the same got selected from the Commission) and joined the post in institution.

6. Since, no regularly selected Principal was sent by the Commission to the institution in question and the post of the Principal remained vacant for more than 60 days from the date of the occurrence of the vacancy i.e. 01.07.1994, so the Committee of Management of the institution in question proceeded to fill up the said substantive vacancy on adhoc basis under Section 18 of the U.P. Act No.5 of 1982 till the regularly selected candidate comes and joins the post of regular Principal of the institution in question. The fifth respondent was made an adhoc/acting Principal, which was duly approved by the District Inspector of Schools, Varanasi.

7. It is the further case of the petitioner institution that Dr. Beni Madho was conferred with a national award of Teachers in the year, 2014 by the Ministry of Human Resource Development, Department of School Education & Literacy, Government of India by his Excellency, the President of India on 05.09.2015. As the date of birth of Dr. Beni Madho was 31.01.1959, thus he was to attain the age of superannuation i.e. 62 years on 31.01.2021 and post extension of session benefits, he continued to work till 31.03.2021. Dr. Beni Madho preferred an application on 18.05.2020 before the petitioner, Committee of Management, for granting extension till he attains the age of 65 years i.e. 31.01.2024 on the strength of the receipt of the National Award to Teachers 2014 in view of the Government Order dated 31.12.2014.

8. Records further reveal that since no orders have been passed on the application preferred by Dr. Beni Madho with regard to the extension of his services, so he on 31.08.2020 represented before the Committee of Management, showing his inability to be conferred with the benefits of extension. Ultimately on 31.03.2021, Dr. Beni Madho preferred another application before the Committee of Management of the institution, wherein he took a summer salt while pressing his claim to be accorded extension in view of the award being granted to him.

9. Records further reveals that on 31.03.2021, Dr. Beni Madho again preferred an application to the petitioner institution, wherein he handed over the charge to the senior most Lecturer Sri Praveen Kumar Srivastava. Since, the claim of the writ petitioner for being granting extension till attainment of 65 years in view of the national award awarded to him was not acceded to, Dr. Beni Madho preferred Writ A No. 17199 of 2022 (Dr. Beni Madho vs. State of U.P.), which came to be disposed of on 21.10.2022 directing the third respondent in the said writ petition to decide the claim of the writ petitioner. The said order stood corrected on 01.11.2022. However, now an order has been passed on 31.05.2023 by the first respondent, Additional Chief Secretary (Secondary Education), U.P., Lucknow, whereby the claim of Dr. Beni Madho for being allowed to continue on extension till attainment of 65 years of age has been acceded to.

10. Questioning the order dated 31.05.2023, passed by the first respondent insofar it seeks to grant extension ex-post facto/retrospective to the Dr. Beni Madho and further a direction to petitioner, Committee of Management to hand over the charge to the fifth respondent, the present writ petition has been preferred.

11. During the pendency of the said writ petition, on 28.06.2023 another order has

been passed by the District Inspector of Schools, Varanasi attesting the signature of Beni Madho. The said writ petition on being presented, time was sought for challenging the order dated 28.06.2023, passed by the District Inspector of Schools, Varanasi and the amendment application no.2 of 2023 was allowed on 13.07.2023. Thereafter on 31.07.2023, the following orders were passed :-

"Supplementary affidavit filed today is taken on record.

Today, the present petition is listed in the list of fresh cases at Sl. No. 2. Incidentally, another petition being Writ-A No.11053 of 2023, having similar controversy is also listed in the list of fresh case at Sl. No.8.

The counsels appearing for the parties have made a joint statement that the controversy involved in both the petitions are similar and with their consent, the writ petitions are being consolidated together.

Sri V.K. Singh, learned Senior Counsel, who appears for the petitioners in the leading petition, i.e. the present petition, has sought to submit that the orders dated 31.05.2023 directing extension of the services of the ex-post facto / retrospective of the fifth respondent as well as the order dated 26.08.2023 passed by the fourth respondent, District Inspector of Schools, authorizing/ pressurizing the writ petitioner to give charge to the fifth respondent proceed on misconception of facts and law, particularly, when the fifth respondent stood superannuated and thus he could not have been granted the said benefits.

Sri V.K. Singh, learned Senior Counsel has relied upon the judgment in the case of C/M Indian Girls Inter College, Allahbad Vs. State of U.P., reported in 2004 (5) AWC 4428.

Sri Ojha, learned Senior Counsel, who appears for the fifth respondent has relied upon the Full Bench judgment in the case of Surendra Prasad Agnihotri Vs. State of U.P., 2010 (5) ADJ 1.

Since a writ of certiorari has been sought in both the writ petitions, though the counsels for the private respondents are already represented and though in the leading writ petitioner, respondent no.5 is represented, let Sri Shailendra Singh, learned Standing Counsel, who appears for the Respondents 1 to 4, may seek instructions and may file affidavit within a week.

In so far as, the connected writ petition is concerned, the Officiating Principal has filed the present writ petition, the respondent nos. 1 to 4 are represented by Sri Shailendra Singh, learned Standing Counsel as well as Respondent no.5 by Sri R.K. Ojha, along with Sri Ratnakar Upadhyay. Sri Nilay Pandey appears for the sixth Respondent. In the connected petition also, Sri Shailendra Singh may seek instructions / file affidavit before the next date fixed.

Put up this case as a fresh case on 10.08.2023.

Counter affidavit, if any, may be filed by 08.08.2023."

12. In the meantime, one Sri Praveen Kumar Srivastava, who had been handed over the charge of an Officiating/Adhoc Principal also preferred connected writ petition challenging the orders dated 31.05.2023, passed by the first respondent as well as the order dated 28.06.2023, passed by the District Inspector of Schools, Varanasi. The connected writ petition was tagged with the leading writ petition and the same is before the Court.

13. Today, when the matter has been taken up, Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel has made a statement at Bar, who appears for all the respondents in both the leading and the connected writ petition that he does not propose to file any response to the writ petition.

14. Sri R.K. Ojha, learned counsel, assisted by Sri Ratnakar Upadhyay, who appears for the fifth respondent in both the writ petitions has also made a statement at Bar that they do not propose to file any response to the writ petition and the writ petitions be decided without calling for any affidavit.

15. Heard Sri V.K. Singh, learned Senior Counsel, assisted by Sri Lavlesh Shukla, learned counsel for the writ petitioners in the leading writ petition as well as in the connected writ petition, Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel for respondent nos.1 to 4 in both the writ petitions and Sri R.K.Ojha, learned counsel, assisted by Sri Ratnakar Upadhyay on behalf of Dr. Beni Madho.

16. Since, already noticed that the parties do not propose to file any response, thus on the basis of the documents available on record and with the consent of the parties, the writ petition is being decided at the fresh stage.

17. Sri V.K. Singh, learned senior counsel, while assailing the order dated 31.05.2023, passed by the first respondent in the leading writ petition as well as the order dated 28.06.2023 attesting the signature of Dr. Beni Madho, passed by the District Inspector of Schools, Varanasi has sought to argue that both the orders proceeds on misconception of facts and law. He submits that besides the fact that the order in question is non speaking, unreasoned and it does not record any reasons in coming to the conclusion, it also same also skips and overlooks crucial fundamental and core issues, which are relevant for adjudication of the dispute in question. In order to buttress the said submission, it is being sought to be argued on behalf of the writ petitioner that once the writ petitioner was appointed as an adhoc Lecturer on 01.12.1987, though regularised on 07.08.1993 and was allowed to officiate as a Principal with effect from 30.06.1994 and post attaining the age of superannuation, he stood superannuated on 31.01.2021 and was extended the session benefits till 31.03.2021 and thereafter he handed over the charge of the post of officiating/adhoc Principal, then he cannot insist for being accorded benefits of the National award, so obtained by him in the wake of the Government Orders issued from time to time.

18. Submission is that though initially, Dr. Beni Madho on 18.05.2020 had sought extension of the services on the strength of the national award conferred upon him, however once he withdrew the said claim by virtue of his communication dated 31.08.2020 and handed over the charge to the petitioner in the connected writ petition, then it was not open for the first respondent to have passed the order dated 31.05.2003, granting extension till attainment of 65 years on the basis of the national Award, so conferred to him.

19. Learned Senior Counsel for the writ petitioner has sought to rely upon the decision upon in the case of Committee of Management, Indian Girls Inter College, Allahabad versus State of U.P. and Others, reported in 2004 (5) AWC 4428, Shri Nath Sahai vs. Devendra Nath Dwivedi and Others, reported in 2008 (8) ADJ 337, Dr. Murli Shyam Pathak vs. State of U.P. and Others, reported in (2019) 2 UPLBEC 1299 and Hariom Sharan Srivastava vs. State of U.P. and Others, reported in 2021 (10) ADJ 606.

20. While relying upon the aforesaid judgments, learned Senior Counsel, who appears for the writ petitioners submits that the basic reason attributable to extension of services in the wake of the Government Orders is based upon the teaching experience so gained by a teacher coupled with the national award, thus extension if any granted shall be attributable for teacher and not for officiation or adhoc Principal. He further submits that the only consideration is with regard to the fact that their should not be in any contingency wherein whereat the interest of the students, which is paramount is being jeopardized. He further submits that even in fact extension means to enlarge the term of incumbent and here in the present case once Dr. Beni Madho had superannuated and he had handed over the charge while seeking to withdrew his claim, then the Government Orders so sought to be relied upon by the learned counsel for Dr. Beni Madho would not apply in that regard. Lastly it is being sought to be argued on behalf of the writ petitioner in both the writ

petitions that the order in question is cryptic it does not take into consideration the core and the fundamental issues, which are to be taken into consideration, while arriving at a conclusion as to whether extension was really needed or not, thus according to him, the order in question be set aside, the matter be remitted back to pass fresh orders.

21. Sri R.K. Ojha, learned counsel, assisted by Sri Ratnakar Upadhyay, who appears for Dr. Beni Madho on the other hand submits that the order passed by the first respondent in the leading writ petition, which is impugned in the writ petition is perfectly valid and in accordance with law, no fault whatsoever can be attributed in this regard. He further submits that the conduct of the Committee of Management is to be seen as it is not in dispute that on 18.05.2020, Dr. Beni Madho had even preferred an application seeking extension post conferring of national award. However, the said claim was not processed, then out of utter frustration, Dr. Beni Madho on 31.08.2020 proceeded to withdrew his claim, which even otherwise could not have been denuded of, as the said claim was in pursuance of the Government Order and the scheme of the State Government, which is within the realm of the U.P. Act No.1921.

22. While inviting attention towards page no.61 of the leading writ petition, it is being sought to be further contended that Dr. Beni Madho being the officiating/adhoc Principal owing to non disposal of his claim just as a honest citizen and a devoted teacher handed over the charge, but the handing over the charge cannot partake the character of waving his rights. He further submits that even in fact there happens to be a full bench decision of this Court in the case of Surendra Prasad Agnihotri vs. State of U.P., reported in 2010 (5), ADJ 1, which even in fact takes into account the contingency, wherein even an incumbent, who was officiating or made an adhoc Principal was also entitled to session benefits and salary. He thus submits that Dr. Beni Madho is entitled to all the benefits in that regard.

23. Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel, who appears for the official respondents on the other hand supports the order impugned, as according to him in the wake of the Government Orders issued from time to time and statutory provisions being Regulation - 21 of Chapter III of the U.P. Intermediate Education Act, 1921, an exercise has been undertaken by the first respondent and it has proceeded to accord benefits and according to him in the case of Dr. Beni Madho he had granted the award prior to his retirement and thus he is entitled to the said benefits may be on account of lethargy or apathy on the part of the State Government in not furnishing in not processing the claim of the writ petitioner.

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

25. Undisputedly, the institution in question, is recognised under the provisions of U.P. Intermediate Education Act, 1921, U.P. Act No.5 of 1982 and U.P. Act No.24 of 1972 stands applicable. It is also not in dispute that Dr. Beni Madho was appointed on adhoc basis on 01.12.1987, regularised on 07.09.1993 and consequent to arisen of the vacancy on account of superannuation of the Principal, Sri K.P. Srivastava, on 30.06.1994, Dr. Beni Madho was allowed to officiate with effect from 01.07.1994, as the Principal.

26. Parties are also in agreement that Dr. Beni Madho was awarded national award in the year, 2014 and he became entitled for extension of services till 65 years. It is also not in dispute that the writ petitioners date of retirement was 31.03.2021 and he was granted session benefits on 31.03.2021. The bone of contention between the parties is as to whether in view of the conferring of the national award, Dr. Beni Madho is to be allowed to officiate as a Principal for the extended term or he is to work as a Lecturer in that regard. The said aspects depend upon the Government Orders issued from time to time and the judicial interpretation, so bestowed by the courts of law.

27. It is not in dispute and rather admitted to the parties that Dr. Beni Madho, on 18.05.2020 sought extension of his services on the strength of the national award.

However, he on 31.08.2020, sought withdrawal of his claim that he does not want extension of his services. Thereafter, on 01.03.2021, again the writ petitioner staked claim for extension and he handed over the charge to the writ petitioner in the connected writ petition on 31.03.2021. Admittedly the date of retirement of Dr. Beni Madho computing it from the date of birth, 31.01.1959 was 31.01.2021 after completion of 62 years, however he obtained session benefits and worked till 31.03.2021.

28. Reliance has placed on upon the judgment in the case of Committee of Management, Indian Girls Inter College, Allahabad versus State of U.P. and others (supra), Shri Nath Sahai vs. Devendra Nath Dwivedi and Others (supra), Dr. Murli Shyam Pathak vs. State of U.P. and others (supra), and Hariom Sharan Srivastava vs. State of U.P. and others (supra), so as to canvas the argument that even if Dr. Beni Madho is granted the benefits of extension on the basis of the award granted to him, then it would be on the post of Lecturer and the same cannot be on the post of officiating or adhoc Principal.

29. On the contrary, reliance has been placed upon by Sri Ojha, upon the judgment of the full bench in the case of Surendra Prasad Agnihotri (supra), wherein this Court even for the period of session benefits had accorded benefits to the adhoc/officiating Principal conferring the benefits in that regard.

30. Though counter allegations have been levelled by the counsel for Dr. Beni Madho that once it is not in disputed that Dr. Beni Madho was conferred with national award and he had staked his claim for extension of services, then mere non processing of the same would not be to the detriment of Dr. Beni Madho, as according to him, a benefit which was prolonged and taken away for a particular time cannot be a ground to shut the claim for time immemorial.

31. Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel, who appears for the State respondents and Sri R.K. Ojha, learned counsel, who appears for Beni Madho have made a statement at bar that since crucial questions have not been addressed in the order impugned, thus order impugned be set aside and the matter be remitted back to the first respondent, Additional Chief Secretary (Secondary Education), U.P., Lucknow for passing a fresh order. He submits that various contentions which Dr. Beni Madho also seeks to raise may be considered.

32. Sri V.K. Singh, learned Senior Counsel further submits that he has no objection that in case the order in question is set aside and the matter be remitted back to the authorities to pass a fresh order in accordance with law dealing with all the issues in question.

33. At this juncture, Sri V.K. Singh, learned Senior Counsel for the writ petitioners in both the writ petition, Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel as well as Sri Ojha, learned counsel, who appears for Dr. Beni Madho has submitted that the orders be kept in abeyance till passing of the fresh orders.

34. Normally, in ordinary circumstances, the Court would have addressed to the claim of the rival parties, however, in view of the specific stand taken by them, the writ petition is being decided in the following terms :-

(a) The Committee of Management, Maha Bodhi Inter College, Sarnath, Varanasi, Dr. Beni Madho shall appear before the first respondent on 03.10.2023, along with their written versions;

(b) On 03.10.2023, the parties shall exchange their versions;

(c) Hearing be done in the third week of October, 2023 not later than 23.10.2023;

(d) Final orders be passed by 31.10.2023,

35. *The first respondent shall while deciding the issues consider the following fundamental and core aspects :-*

(i) The issue with regard to the claim of Dr. Beni Madho for being granted extension on the strength of National Award of the year, 2014.

(ii) The applicability of the Government Orders issued from time to time enabling extension of service inconfirmit and conjunction with Regulation - 21, Chapter -

III of U.P. Intermediate Education Act;

(iii) The import and the impact of the claim set up by Dr. Beni Madho in his request letter dated 18.10.2020 for extension;

(iv) The import and the impact of the letter of the writ petitioner dated 31.08.2020;

(v) The import and the impact of the letter of Dr. Beni Madho to the Manager of the institution in question dated 01.03.2021 and the letter dated 31.03.2021 issued by the Dr. Beni Madho to the Manager of the institution in question;

(vi) The applicability in the case of Committee of Management, Indian Girls Inter College, Allahabad versus State of U.P. and others (supra), Shri Nath Sahai vs. Devendra Nath Dwivedi and Others (supra), Dr. Murli Shyam Pathak vs. State of U.P. and others (supra), Hariom Sharan Srivastava vs. State of U.P. and others (supra) and Surendra Prasad Agnihotri vs. State of U.P. (supra);

(vii) Any other ancillary or incidental issue.

36. *Sri V.K. Singh, learned Senior Counsel for the Committee of Management and for Praveen Kumar Srivastava has made a statement at Bar that though the signature of Dr. Beni Madho had been attested but he is not performing the duties on the post of officiating /ad hoc Principal.*

37. *On the other hand, Sri Ojha, who appears for Dr. Beni Madho has made a statement at Bar that consequent to the attestation of the signature/approval, the writ petitioner is functioning in the institution in question. However, this Court in the present proceedings is not going into the said issue of the matter leaving it open for the parties to raise the said question before the first respondent, Additional Chief Secretary (Secondary Education), U.P., Lucknow."*

3. Post remand now the first respondent, Additional Chief Secretary, Second Education, U.P. at Lucknow has proceeded to pass an order dated 10.11.2023 negating the claim of the writ petitioner on the premise that there was no subsequent circumstances which warranted consideration of the claim of the writ petitioner, Committee of Management.

4. Assailing the said order dated 10.11.2023 and order earlier passed dated 31.5.2023 and for quashing the order dated 2.6.2023, 7.6.2023, 9.6.2023, 19.6.2023, 28.6.2023, 26.6.2023 and 28.6.2023 the writ petitioner herein has filed the present writ petition seeking following reliefs:

(i) issue a writ, order or direction in the nature of Certiorari calling for the records of the case and to quash the impugned orders dated

31.5.2023 and 10.11.2023 passed by the State Government (Annexures No. 17 and 21 to the writ petition).

(ii) issue a writ, order or direction in the nature of Certiorari calling for the records of the case and to quash the impugned orders dated 02.06.2023, 07.06.2023, 09.06.2023, 19.06.2023, 20.06.2023, 26.06.2023 and 28.06.2023 passed by the District Inspector of Schools, Varanasi (Annexure No.11 and 18 to the writ petition).

(iii) issue a writ, order or direction in the nature of mandamus commanding the respondent not to impel and compel the Committee of Management to continue with the services of respondent no.4 either on the post of Officiating Principal or as Lecturer.

5. This Court entertained the writ petition on 1.11.2023 by passing the following order:

"Heard learned counsel for the petitioner-applicant and the learned Standing Counsel for the State respondents.

For the facts stated in the correction application, correction application is allowed.

Description of respondent appearing in third line of fifth paragraph of the order dated 21.10.2022 as "3" be deleted and replaced with "1".

6. Today Sri R.K. Ojha, learned Senior Counsel has appeared on behalf of the 4th Respondent.

7. Sri Prabhakar Awasthi, learned counsel for the writ petitioner submits that the order in question is bereft of any reasons in coming to the conclusion and virtually there has been total non application of mind even the mandate of this Court in the earlier spell of litigation was even not considered at all.

8. Sri Santosh Kumar Shukla, learned Additional Chief Standing Counsel on the other hand on the basis of the documents submits that the order in question appears to have skipped and over looked crucial and fundamental fact which needed to be addressed by the authority concerned.

9. Sri R.K. Ojha on the other hand has tried to justify the order passed which is impugned in the writ petition but on a pointed query being raised to him as to whether the impugned order contains any reasons in coming to the conclusions as per the directions of the Court in the earliest litigation. He submits that the

order skips crucial and fundamental facts.

10. On a specific query being made to Dr. Santosh Kumar Shukla, learned Additional Chief Standing Counsel as well as Sri R.K. Ojha, learned Senior Counsel who appears for the 4th respondent whether they would like to file any counter affidavit response to which they have made a statement that do not propose to file any response and the order impugned in the writ petition is set aside and the matter is remitted back to the authority to pass fresh order.

11. Accordingly, the writ petition is decided in the following manner:

(a) The order dated 10.11.2023, passed by the Additional Chief Secretary, Secondary Education U.P. at Lucknow is set aside.

(b) Matter stands remitted back to the Ist Respondent, Additional Chief Secretary, Secondary Education, U.P. at Lucknow to pass a fresh order after hearing the writ petitioner and the Committee of Management of the institution strictly in accordance with law say, by 31st December, 2023.

(c) The order dated 31.5.2023 passed earlier by the Additional Chief Secretary Secondary Education, U.P. at Lucknow shall be subject to the final orders to be passed pursuant to the order passed today in the present writ petition.

12. With the aforesaid observations, the writ petition stands disposed of.

Order Date :- 7.12.2023

Kumar Manish.