

Court No. - 35

Case :- WRIT - A No. - 20044 of 2023

Petitioner :- Mewa Lal Maurya

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

Counsel for Petitioner :- Ashutosh Dwivedi, Suresh Chandra Dwivedi

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - A No. - 19044 of 2023

Petitioner :- Mewa Lal Maurya

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

Counsel for Petitioner :- Suresh Chandra Dwivedi

Counsel for Respondent :- CSC, Arun Kumar

Hon'ble Vikas Budhwar, J.

1. Instructions filed today is taken on record.
2. Since common question of laws and facts are involved in both the writ petitions, thus, they are being decided by a common/composite order, for the sake of brevity, the Writ Petition No. 20044 of 2023 (Mewa Lal Maurya Vs. State of U.P. & 5 Others) is treated as leading writ petition and Writ Petition No. 19044 of 2023 (Mewa Lal Maurya Vs. State of U.P. & 5 Others) is treated as connected writ petition.
3. Heard Sri Suresh Chandra Dwivedi, learned counsel for the writ petitioner in both the writ petitions, Sri Saurabh, learned Standing Counsel who appears for respondents No. 1 to 4 in both the writ petitions and Sri Arun Kumar, learned counsel who appears for respondents No. 5 and 6 in both the writ petitions.
4. The case of the writ petitioner is that questioning an order dated 22.02.2022 passed by the District Inspector of Schools, whereby the representation/appeal preferred by the writ petitioner herein was allowed and the order of dispensation of the services of the writ petitioner dated 13.07.2021 who have been set aside while

restoring the position which existed prior to the passing of the said order the fifth respondent Committee of Management preferred Writ A No. 4677 of 2022. In sequel to the same an order dated 30.06.2023 passed by the Joint Director of Education, Gorakhpur the writ petitioner had preferred writ A No. 11657 of 2023 and both the writ petitions were consolidated together and an order was passed on 07.08.2023 relevant extract in paras 23 and 24 is quoted hereunder.-

"23. Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being decided on the following terms; (a) the order dated 22.02.2022 passed by the District Inspector of Schools, Maharajganj in the leading writ petition is maintained to the extent insofar as it seeks to set aside the termination order dated 13.07.2021 while further providing that the delinquent shall be reinstated in service as Officiating Principal in the institution in question; (b) the delinquent teacher shall be entitled to payment of regular salary and allowances from passing of the present order in the writ petition and shall be paid current salary on month to month basis with all benefits; (c) the payment of arrears of salary and other benefits attached thereto for the period from 13.07.2021 till the passing of the order today shall be subject to the inquiry proceedings to be initiated by the Committee of Management of the institution in question; (d) in case, the Committee of Management of the institution in question proposes to hold inquiry against the delinquent teacher then it shall issue charge sheet within a period of 10 days from the date of production of certified copy of the order (e) the Committee of Management of the institution in question shall inform the DIOS, Maharajganj about holding of the inquiry and the DIOS, Maharajganj shall appoint an Inquiry Officer to hold inquiry against the delinquent teacher; (f) the Inquiry Officer shall fix date, time and venue and after affording opportunity of hearing to the delinquent teacher and the Committee of Management of the institution in question shall conclude the inquiry within a period of further two months; (g) on the receipt of the inquiry report appropriate follow-up action shall be taken by the Competent Disciplinary Authority in accordance with law; (h) the period stipulated for conducting inquiry and giving it a logical end shall be subject to cooperation of the parties in that regard; (i) in the eventuality the Committee of Management of the institution in question does not propose to hold inquiry against the delinquent teacher then the delinquent teacher shall be entitled to all benefits in that regard forthwith.

24. So far as the challenge raised in the connected writ petition to the order passed on 30.06.2023 by the Joint Director of Education Gorakhpur VII Region, Gorakhpur is concerned since agreed between the parties that the same has been passed by total non-application of mind, however, in view of the order passed in the leading writ petition the order dated 30.06.2023 passed by the Joint Director of Education has lost its efficacy and

accordingly, connected writ petition bearing No. 11657 of 2023 has become infructuous."

5. According to the writ petitioner the directions contained in the said order were not followed and further the Committee of Management which bore animosity and grudge against the writ petitioner conducted the inquiry proceedings in an ex parte manner, despite the fact that they were having the knowledge that the writ petitioner was seriously ill and also the fact that the educational authorities had appointed an Inquiry Officer, then too a retired inquiry officer was appointed by the Committee of Management that too an Officer against whom the writ petition did not have any faith of getting justice and on the basis of an ex parte inquiry report now his services have been dispensed with by virtue of the order dated 06.11.2023. He submits that even in fact the Committee of Management is under cloud as there is a serious managerial dispute going on and, thus, the questions relatable to taking action against the writ petitioner is also under cloud as it is the only a validly elected Committee of Management which can take action.

6. Sri Arun Kumar, learned counsel who appears for the Committee of Management, on the other hand, submits that this Court may not go into the said factual issues in the present proceedings particularly at this stage when there exists an alternative efficacious remedy as per the government Order dated 10.08.2021 in view of clause 9 whereby an appeal is to be preferred against the said order before the District Inspector of Schools. He though disputes the contentions raised by the learned counsel for the writ petitioner, however, he submits that he does not propose to make any argument on merits though he seriously disputes the same as, in case, this Court remands and relegates the writ petitioner to the District Inspector of Schools then any observation made on merit would become binding which obviously the writ petitioner would not also like to be done.

7. Sri Saurabh, learned Standing Counsel who appears for the State official respondents has produced before this Court the instructions under the signature of District Inspector of Schools, Maharajganj dated 20.11.2023 and while inviting attention of the Court towards para 17 of the same it is being sought to be argued that an

application preferred by the writ petitioner herein on 07.11.2023, the District Inspector of Schools has required that the writ petitioner be given an opportunity to participate in the inquiry as the writ petitioner claims to have been ill in that regard.

8. To such a submission, Sri Arun Kumar, learned counsel for the Committee of Management has raised a serious objection while arguing that it is not open for the District Inspector of Schools to have issued such type of direction that too on an ex parte basis and further the ultimate termination order has already been passed on 06.11.2023 which is also subject matter of challenge in the present writ petition.

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

10. This Court finds that there exists an efficacious alternative remedy by the District Inspector of Schools, Maharajganj against the punishment order dated 06.11.2023 so far as the challenge raised to the inquiry report and the other orders are concerned they are subject to the final orders dated 06.11.2023, since there exists an efficacious alternative remedy before the District Inspector of Schools, Maharajganj as per clause 9 of the Government Order dated 10.08.2021 coupled with the fact that in the earlier also against the order impugned dated 22.02.2022 dispensing with the services, the writ petitioner had approached the District Inspector of Schools, Maharajganj under clause 9 of the Government Order dated 10.08.2021, thus, looking into the facts and circumstances of the case, let the writ petitioner prefer an appeal before the Appellate Forum i.e. District Inspector of Schools, Maharajganj. At this stage Sri S.C. Dwivedi, learned counsel for the writ petitioner submits that the writ petitioner shall file appeal within a period of one week from today. In case, an appeal is preferred within a period of one week then the same may be decided expeditiously by 05.01.2024.

11. Sri S.C. Dwivedi as well as Sri Arun Kumar who appear for the respective parties have made a statement that they shall render full cooperation.

12. With the aforesaid observations, both the writ petitions stand disposed of.

13. It is open for the writ petitioner to annex the copy of the writ petition which according to the writ petitioner containing full details along with the appeal.

Order Date :- 6.12.2023

Rajesh