

Court No. - 35

Case :- WRIT - A No. - 20344 of 2023

Petitioner :- Indresh Kumar

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

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- CSC, Bajrang Bahadur Singh, Satya Prakash Singh

Hon'ble Vikas Budhwar, J.

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Parasar Pandey, learned counsel for the writ petitioner as well as Sri Ratan Deep Mishra, learned Standing Counsel who appears for Respondents No. 1, 2 and 3 and Sri R.K. Ojha, learned Senior Counsel assisted by Sri S.P. Singh, who appears for the 4th respondent.

2. The case of the writ petitioner is that 4th respondent, Sri Bhagirathi Vidang Inter College, Ramghat, Dibai, Bulandshahar is an institution at the intermediate level as Vitt Vihin and till the high school level it receives grant-in-aid and this is an institution within the preview of U.P. Act No. 24 of 1971.

3. It is also the case of the writ petitioner that he was appointed as an Assistant Teacher in LT grade in the institution in question on 5.12.2011 and consequent to death of one Sri Virendra Singh, Officiating Head Master, on 3.1.2019, the writ petitioner was assigned the charge of Officiating Principal on 16.11.2019 and signatures were also attested on 31.1.2019.

4. According to the writ petitioner on the basis of certain allegations he was placed under suspension on 9.9.2023 by the Committee of Management of the Institution in question followed by a charge-sheet dated 16.9.2023.

5. The matter with respect to the approval of the suspension of the writ petitioner in the capacity of an Officiating Head Master came before the District Inspector of Schools, Bulandshahar, 2nd respondent. Thereafter as per the writ petitioner by virtue of a communication dated 4.10.2023, on 16.10.2023 was a date fixed by the District Inspector of Schools, Bulandshahar for the purposes of hearing and submission of their versions.

6. It is stated that the writ petitioner and the Committee of

Management in question submitted their versions and the same were exchanged and a date was fixed on 25.10.2023. on 25.10.2023 the supplementary versions by both the parties were submitted after exchange.

7. It is also the case of the writ petitioner that on 16.11.2023 the Committee of Management of the institution in question submitted certain documents before the 2nd respondent, District Inspector of Schools, Bulandshahar bring to his knowledge that the inquiry stood concluded post appointment of inquiry officer and service of the charge sheet charges came to be proved and also the fact that the Committee of Management of the institution in question had reverted the writ petitioner from the post of the officiating Principal to the Assistant Teacher LT grade.

8. On the basis of the said facts on 20.11.2023, the District Inspector of Schools, Bulandshahar, the 2nd respondent has proceeded to hold that the charges stood proved against the petitioner and since the writ writ petitioner has been reverted from the post of Officiating Principal to the Assistant Teacher LT grade, thus there was no occasion to continue the writ petitioner under suspension.

9. In the light of the order dated 20.11.2023 of the 2nd Respondent, District Inspector of Schools, Bulandshahar, the 4th Respondent Institution proceeded to issue a communication dated 23.11.2023 requiring the writ petitioner to assume the charge while addressing him as an Assistant Teacher LT Grade.

10. Questioning the order dated 20.11.2023 passed by the District Inspector of Schools, Bulandshahar 3rd respondent as well as communication dated 23.11.2023 treating the petitioner to be an Assistant Teacher instead of an Officiating Principal at the end of the Manager of the Institution in question, the present writ petition has been filed.

11. Sri Ashok Khare, learned Senior Counsel for the writ petitioner submits that the entire proceedings sought to be resorted to by the 3rd Respondent, District Inspector of Schools, Bulandshahar is not only novel and foreign to the service jurisprudence but it is also per se illegal and the impugned order cannot be sustained in any manner whatsoever. Elaborating the said submission he submits that the issue which was engaging the attention before the District Inspector of Schools, Bulandshahar 2nd Respondent was the matter to be said to be approval/disapproval of the suspension of the writ petitioner and thus the 2nd Respondent was supposed to

have bracketed itself while according consideration to the issue of suspension. However, on the basis of the inputs sought to be submitted by the 4th Respondent that too behind the back of the writ petitioner on 16.11.2023 holding the charges proved against the writ petitioner coupled with the punishment inflicted upon the writ petitioner by reverting him from Officiating Head Master to Assistant Teacher the same could not have been endorsed and the writ petitioners should not have been reverted while according him the status of Assistant Teacher LT Grade instead of Officiating Principal which he was holding prior to the passing of the said order. He thus submits that the order in question be set aside as the inputs which were sought to be pressed into service are behind the back and are in violation of principle of natural justice.

12. Sri R.K. Ojha, learned Senior Counsel who appears for the 4th Respondent on the other hand submits that might be the proceedings before the District Inspector of Schools, Bulandshahar, 2nd Respondent was relatable to suspension of the writ petitioner but now in the wake of the enforcement of U.P. Act No. 15 of 2023 it is the District Inspector of Schools, Bulandshahar who has to accord approval to the suspension as well as ultimate punishment sought to be inflicted by Committee of Management. He, however, could not dispute the fact that the proceedings were of suspension and in view of the conduct of the business as well as propriety, proceedings of punishment could not have been addressed to by the District Inspector of Schools, Bulandshahar.

13. Sri Ratan Deep Mishra, learned Standing Counsel who is appearing for the official respondent could not also dispute the fact that the entire proceedings relatable to reversion of the writ petitioner is in violation of the principle of natural justice as neither the writ petitioner was put to notice nor it was the occasion whereby the proceedings in that regard could have been initiated and further there has been no application of mind.

14. On a specific query being made to the learned counsel for the respondent, Sri Ratan Deep Mishra as well as Sri R.K. Ojha as to whether they propose to file any response according to them they do not seek to file any responses, the writ petition be decided on the basis of the document available on record.

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

16. The facts of the case are not in dispute. The only bone of

contention between the parties is as to whether the proceedings wherein approval has been sought by the 4th Respondent Committee of Management for suspension, whether that issue of ultimate punishment could have been gone into that too behind the back of the writ petitioner and without there being any consideration over the same.

17. In the opinion of the Court, the order impugned in the writ petition passed by the District Inspector of Schools, Bulandshahar 2nd Respondent dated 20.11.2023 and the communication dated 23.11.2023 of the Committee of Management addressing and treating the writ petitioner to be an Assistant Teacher are patently illegal besides in violation of principle of natural justice and excess of jurisdiction. The Court further finds that once the proceedings were for approval of suspension then a separate proceedings ought to have been initiated for approval or disapproval of the ultimate punishment order that too putting the notice the parties and having the say of the writ petitioner.

18. The order dated 20.11.2023 passed by the District Inspector of Schools, Bulandshahar, 2nd Respondent as well as the communication dated 22.11.2023 of the 4th Respondent, Manager of Committee of Management, Shri Bhagirathi Vedang Inter College, Ramghat, Dibai, Bulandshahar are liable to be set aside.

19. Accordingly, the writ petition is **allowed**. The orders dated 20.11.2023 passed by the District Inspector of Schools, Bulandshahar, 2nd Respondent and communication dated 23.11.2023 of the 4th Respondent, Manager of Committee of Management, Shri Bhagirathi Vedang Inter College, Ramghat, Dibai, Bulandshahar are set aside. Matter stands remitted back to the competent authority to pass fresh orders within a period of six weeks from the date of production of certified copy of the order.

20. At this stage Sri R.K. Ojha, Senior Counsel who appears for the 4th Respondent Committee of Management submits that a direction be issued to the competent authority to pass appropriate orders with regard to the approval of the ultimate punishment being inflicted upon the writ petitioner. However, in the opinion of the Court, it is always open for the competent authority to pass appropriate orders in that regard.

Order Date :- 7.12.2023/Kumar Manish.