

Court No. - 35

Case :- WRIT - A No. - 20437 of 2023

Petitioner :- Smt. Saroj

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

Counsel for Petitioner :- Samarath Singh, Sankalp Narain

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. Heard Sri Samarath Singh, learned counsel for the writ petitioner as well as Sri Pradeep Kumar Sahi, learned Additional Chief Standing Counsel who appears for Respondents 1, 2 and 3.

2. In view of the order which is being proposed to be passed, notices are not being issued to the 4th respondent.

3. The case of the writ petitioner is that on the allegations being sought to be levelled upon the writ petitioner relating to availing medical leave beyond the permissible limit during the service tenure of the writ petitioner while posted as Assistant Teacher in the 4th respondent institution, Adarsh Bharti Inter College Kalwa District Aligarh and a recovery proceeding was initiated by the 3rd respondent, District Inspector of Schools, Aligarh on 3.3.2021, followed by a consequential order dated 23.3.2021. Questioning the said orders, as per the assertions contained in paragraph no. 28, the writ petitioner preferred Writ-A No. 12793 of 2021 which came to be disposed of on 29.10.2021 by passing the following order.

"Three orders are challenged in this petition which are all in respect of same issue. By the first order the Inspector has held that petitioner has availed of medical leave in excess of her entitlement. The second order determines the liability of the petitioner on account of such extra leave availed and third order directs recovery to be made from the petitioner. These orders are challenged by relying upon a report of the Principal as per which the petitioner has availed leave only of sixty five days as against alleged recital in the impugned orders about leave of 628 days. It is also urged that petitioner has not been associated in any enquiry conducted in the matter and the determination, which is the basis of impugned recovery is factually incorrect.

Learned counsel for the Managing Committee/ Authorised Controller has tried to submit that an enquiry was conducted by the authorised controller in which the petitioner was associated and therefore, allegation of denial of opportunity is not correct.

The aforesaid contention is countered by the petitioner contending that the petitioner had merely asked the respondents to supply materials on the basis of which the calculation is being worked out against her. Thereafter the report shows nothing about petitioner's participation nor does it refer to any document/ material having been furnished to petitioner.

From the materials placed on record this Court finds substance in the petitioner's contention that an appropriate enquiry in the matter relating to availing of medical leave has not been conducted by the respondents so far. The allegation that petitioner has utilised leave in excess of her entitlement is otherwise a question of fact which ought to be determined before proceeding any further.

In the facts of the case the fourth respondent is therefore directed to conduct a fresh enquiry in which the petitioner would be given opportunity to place her version and after considering materials furnished by the petitioner the competent authority shall determine factual aspects. Such exercise would be undertaken within a period of four months from today. It shall be open for the respondents to proceed further in the matter in accordance with law on the basis of such determination. Till a fresh determination is made the respondents are restrained from effecting any recovery from the petitioner. The orders impugned in the writ petition are quashed in order to facilitate a fresh consideration of cause.

Subject to the above observations/ directions this petition stands disposed of."

4. Assertion has been made in paragraph no. 29 of the writ petition that no further orders had been passed by the District Inspector of schools, Aligarh in compliance of the order of the writ court dated 29.10.2021 in Writ-A No. 12793 of 2021 and post retirement of the writ petitioner on 31.3.2022, the writ petitioner has been made admissible to payment of provisional pension.

5. Assailing the order dated 21.6.2022 as well as the consequential order of the Committee of Management of the Institution in question dated 23.11.2023 now the present writ petition has been filed.

6. Learned counsel for the writ petitioner submits that without there being any determination done by the 3rd respondent, District Inspector of Schools, Aligarh post passing of the order dated 29.10.2021 in Writ-A No. 12793 of 2021 now the provisional pension is being paid to the petitioner.

7. He submits that propriety demanded that fresh exercise was to be undertaken after associating the writ petitioner while passing an order. He further submits that since no such exercise has been undertaken thus the orders in question cannot be sustained and are

liable to be set aside.

8. Sri Praveen Kumar Shahi, learned Additional Chief Standing Counsel, who appears for Respondents No. 1, 2 and 3 submits that as per the averments contained in paragraph no. 16 of writ petition the order dated 22.3.2021 of the 3rd respondent, District Inspector of Schools, Aligarh and the consequential order passed the Committee of Management of the Institution in question dated 23.3.2021 were challenged in the said writ petition and were set aside and thus in view of the mandate of this Court a fresh exercise ought to have been undertaken which according to the writ petitioner, as asserted in para 29 of the writ petition, has not been done. Thus, according to him the claim of the writ petitioner be considered in the light of the aforesaid facts and the orders which are impugned be not come in the way of fresh consideration. He further submits that in view of the order which is proposed to be passed, he does not propose to file any response to the writ petition.

9. Considering the submissions of the rival parties as well as stand taken by them, the writ petition stands **disposed of** in the following manner:

(a) The writ petitioner shall approach the 3rd respondent, District Inspector of School, Aligarh along with the self attested copy of the writ petition by way of an application setting out his claim by 20th December, 2023.

(b) The District Inspector of Schools, Aligarh shall put to notice to the 4th respondent institution, Adarsh Bharti Inter College Kalwa District Aligarh and after exchange of versions, a date be fixed by the District Inspector of Schools, Aligarh, 3rd respondent and orders be passed by 19.1.2024.

10. While considering the claim of the writ petitioner for full pension, the District Inspector of Schools, Aligarh has to bear in mind the following fundamental and core issues:

(a) Whether any order has been passed by the District Inspector of Schools, Aligarh and 4th respondent Institution, Adarsh Bharti Inter College Kalwa District Aligarh in compliance of order passed in Writ-A No. 12793 of 2021 (Smt. Pramod Vs. State of U.P.) dated 29.10.2021 as well as any other ancillary or incidental issues relating to the payment of full pension to the writ petitioner and also the issue as to whether the full pension could be denied in the wake of the statutory provisions in the background of the fact that

the petitioner claims that post retirement on 31.3.2022, no proceedings whatsoever could have been conducted in this regard.

(b) The order dated 21.6.2022 passed by Deputy Director of Education (Secondary), Aligarh and 23.11.2023 passed by the Manager, Committee of Management of Adarsh Bharti Inter College Kalwa, District Aligarh shall not come in the way of passing of fresh orders.

(c) The payment of full pension to the writ petitioner shall be depended upon the passing of the fresh orders by the said authority.

Order Date :- 8.12.2023

Kumar Manish.