

Court No. - 35

Case :- WRIT - A No. - 20661 of 2023

Petitioner :- Chandra Shekhar

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Samarath Singh, Hritudhwaj Pratap Sahi

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

Heard Sri Aditya Vikram Bisen holding brief of Sri Samarath Singh, learned counsel for the petitioner and Sri P.K. Shahi, the learned Addl. Chief Standing Counsel, who appears for Respondents 1 and 2.

In view of the order, which is being proposed to be passed today, notices are not being issued to the 3rd respondent.

According to the writ petitioner, the third respondent, Sri Satya Narayan Intermediate College, Shamli is a recognized under the provisions of U.P. Intermediate Education Act, 1921. However, in view of the provisions contained under Section 7AA of the U.P. Intermediate Education Act, 1921 it is 'Vitta Vihin', thus according to the writ petitioner, the Government Order dated 10.08.2001 would apply. It is the case of the writ petitioner that he was engaged as Assistant Teacher on 01.09.1999. Thereafter on 01.03.2001, he was accorded permanency. He further claims that he had been promoted as a Lecturer (Geography), averments whereof has been given in paragraphs-10 and 11 of the writ petition. As per the writ petitioner, he was assigned the duty of the evaluation of the answer-books of the year 2016 referable to High School/ Intermediate Examination, however, when he again tried to assume the charge, the same was resisted which compelled the writ petitioner to prefer applications before the respondents. It is also alleged that honorarium was not being paid and in the meantime the writ petitioner was placed under suspension. However, the District Inspector of Schools, issued an order dated 16.06.2016 requiring the management of the Institution to forthwith ensure joining to the writ petitioner, which was subject matter of challenge in Writ-A No. 29502 of 2016, in which on 05.07.2016, the following orders were passed: -

"The case of the petitioner is that the petitioner's institution though is recognized by the U.P. Board but is not on the grant in aid list and the salary of its employees are not paid from Government funds. It is the case of the petitioner that the respondent no. 3 who is working as lecturer geography in the institution and the respondent no. 4 who is working as an assistant clerk

in the institution were suspended vide order dated 6.6.2016 pursuant to the resolution of Committee of Management. It has been submitted that by order dated 16.6.2016, the District Inspector of Schools, Shamli has directed the petitioner to ensure that the respondents 3 and 4 are allowed to sign the attendance register and paid salary without any delay. It has been submitted that the said power has been exercised under the belief that termination of a part time teacher has to be approved by the DIOS.

The submission of learned counsel for the petitioner is that since the institution is not on the grant in aid list, the provisions of section 16 G(7) of the U.P. Intermediate Education Act, 1921 would not be applicable and, therefore, the order of suspension does not require any approval. It has been submitted that the order dated 16.6.2016 passed by DIOS, Shamli interferes with the right of the management to suspend its employees which inheres in an employer who has power to appoint. Reliance has been placed on a decision of this Court in the case of Bhimrao Ambedkar Shiksha Samiti Vs. State of U.P. (2005) (61) ALR, 101 in which it has been held that power to appoint includes power to suspend. In the said decision, the Court had also observed that the conditions of service of part time teachers are to be governed by the Rules made in that regard and for that the State Government had framed Rules vide Government order dated 10.8.2001.

Learned counsel for the respondents have submitted that the DIOS by the order impugned has not interfered with the suspension order but has directed the management to ensure payment of honorarium to the part time teacher/employee, which is required to be paid under section 7AA (5) of the U.P. Intermediate Education Act.

The matter requires consideration.

Learned Standing Counsel has accepted notice on behalf of respondents 1 and 2. Sri Ajit Kumar Singh and Sri Rajesh Kumar Srivastava have accepted notice on behalf of respondents 3 and 4. They pray for and are allowed three weeks time to file counter affidavit. Two weeks thereafter shall be for filing rejoinder affidavit.

List this case after expiry of five weeks.

In the meantime, it is provided that if the petitioner pays the stipulated honorarium to the respondents 3 and 4, the respondent no. 2 shall not interfere in the management of the institution pursuant to the order dated 16.6.2016."

In paragraph-33 of the writ petition, it has been further asserted that in pursuance of the interim order passed in the said writ petition, the honorarium was paid to the writ petitioner. However, in paragraph- 37, it is further asserted that till date, no adverse orders have been passed, though post issuance of charge sheet and appointment of the enquiry officer. The writ petitioner claims that the honorarium which was paid to him from 05.07.2016 was abruptly stopped on 30.11.2018, averments whereof have been

given in paragraph-11 of the writ petition. The writ petitioner claims to have approached the third respondent as well as the Institution in question on 03.07.2018. It is also the case of the writ petitioner that the District Inspector of Schools, Shamli, second respondent took notice of the claim of the writ petitioner and thereafter issued communication to the Management/ Principal of the Committee of Management of the Institution and according to the writ petitioner, same was also replied by the Committee of Management. The writ petitioner submits that now the Committee of Management of the Institution is taking a plea of 'No Work No Pay' in that regard.

Prayer in the present petition is to ensure payment of current honorarium to the writ petitioner and to take work from writ petitioner, and also arrears of the honorarium from 01.04.2016 onwards.

Sri P.K. Shahi, learned Addl. Chief Standing Counsel submits that one it is the case of the writ petitioner that the matter is engaging attention before the District Inspector of Schools, Shamli, second respondent, as per the Government Order dated 10.08.2001, thus let the said authority take a decision. He does not propose to file any response to the writ petition.

Considering the submission of the rival parties as well as the stand taken by them, the writ petition is being disposed off granting liberty to the writ petitioner to approach the second respondent, District Inspector of Schools, Shamli, along with a comprehensive representation accompanied with self-attested copy of the writ petition, who shall, on the receipt of the same, put to notice the third respondent and take a decision as per law within three months from the date of production of certified copy of the order.

Needless to point out that the decision so taken shall be reasoned and speaking and shall deal each and every aspect of the matter.

Since the writ petition is being decided without seeking any response from the respondents, thus passing of this order may not be construed to an expression that this Court has adjudicated the matter on merits.

With the aforesaid observations the writ petition stands **disposed off**.

Order Date :- 14.12.2023 /N.S.Rathour