

Court No. - 35

Case :- WRIT - A No. - 20726 of 2023

Petitioner :- Daya Shankar Sharma

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

Counsel for Petitioner :- Bheem Singh, Aalok Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. On the oral request of learned counsel for the writ petitioner, he is permitted to implead Arya Kanya Pathshala, Khurja, Bulandshahr through its Authorized Controller as the fifth respondent.

2. Heard Sri Bheem Singh, learned counsel for the petitioner as well as Sri Shailendra Singh, the learned Standing Counsel, who appears for Respondents 1, 2, 3 & 5.

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

4. The case of the writ petitioner as asserted in paragraph-5 of the writ petition is that though he was elected as a Manager in the institution in question, but an Authorized Controller has been appointed and the salary is being paid under the signatures of the Authorized Controller, though litigation is pending before this Court. The writ petitioner also claims to be the Life Member of the General Body of the Committee of Management. As per the writ petitioner, one Smt. Neelam Singh wife of Sri Harish Kumar was appointed as Assistant Teacher in the said institution died in harness on 20.05.2021. It is also the case of the writ petitioner that the fourth respondent showing himself to be the brother of the deceased preferred an application seeking compassionate appointment on the basis of the Parivar Register/ Succession Certificate dated 13.07.2021. It is also the case of the writ petitioner that the said Succession Certificate / Parivar Register came to be canceled on 06.09.2022 by the Sub-Divisional Magistrate, Ghaziabad and thereafter the District Inspector of Schools, Bulandshahar proceeded to pass an order dated 09.09.2022 stopping the salary of the fourth respondent, which was subject matter of challenge in Writ Petition No. 17251 of 2022 preferred by the fourth respondent, in which an order was passed on 21.10.2022 relevant extract is being quoted hereinunder:

"Heard Sri Prabhakar Awasthi learned counsel for the petitioner, Sri Bheem Singh learned counsel for the respondent No. 4-Committee of Management and the learned Standing Counsel for the State respondents.

Challenge has been raised to the order dated 09.9.2022 whereby petitioner's salary payment has been withheld. That order is based on another order of the SDM, Ghaziabad dated 06.9.2022. By that order, SDM Ghaziabad appears to have recalled the succession certificate granted by him to the petitioner declaring him to be a dependent of his sister Ms. Neelam Singh, who died in harness 22.3.2021.

Submission of learned counsel for the petitioner is, the entire proceeding has been drawn up both by the SDM and the District Inspector of Schools in a wholly ex parte manner without conducting any proper enquiry. As to the order of the SDM, it is further submitted that there was no power with the SDM to recall the succession certificate granted.

Whatever may be the correct facts with respect to succession certificate, insofar as the impugned order dated 09.9.2022 is concerned, it is clear, no domestic enquiry proceeding has been initiated and there is no suspension order operating against the petitioner.

In such facts, it is difficult to sustain the ex parte order withholding the petitioner's salary payment. Though, learned counsel for the Committee of Management and the learned Standing Counsel would contend, initially appointment of the petitioner was ridden with fraud and therefore, there is no interference warranted in the present petition.

That objection raised by the respondents cannot be sustained. Rule of law must ensure that such drastic orders are passed strictly in accordance with law. While it may have been open to the respondents to seek dismissal of the petitioner from service, however that course could be adopted only by initiating appropriate domestic enquiry proceedings. In absence of such proceedings having been initiated, impugned order cannot be sustained.

At this stage, learned counsel for the Committee of Management and the learned Standing Counsel state that the order may be set aside and the respondents may be given liberty to proceed in accordance with law.

Accordingly, the order dated 09.9.2022 is set aside. Let full salary payment be restored to the petitioner. However, it may remain open to the respondents to initiate disciplinary proceedings against the petitioner in accordance with law, which proceedings, if initiated may be decided on their own merits without being prejudiced by any observation made in this order.

With the above directions, present writ petition stands disposed of."

5. According to the writ petitioner, on 31.05.2023, the Deputy Director of Education, Madhyamik (2) in the office of the Director of Education, Madhyamik, proceeded to issue a communication to the District Inspector of Schools, Bulandshahr for taking action in

pursuance of the order of the Writ-Court and the writ petitioner in this regard alleging non-compliance of the order preferred Contempt Application (Civil) No.8021 of 2023, Daya Shankar Sharma Vs. Shiv Kumar Ojha, but the same was dismissed.

6. Prayer in the present petition is to take appropriate proceedings in pursuance of the order dated 06.09.2022 of the Sub-Divisional Magistrate, Ghaziabad and the communication dated 31.05.2023.

7. Sri Shailendra Singh, learned Standing Counsel submits that since the writ petitioner is not manning the Institution in question and the Authorized Controller has been appointed and the issue with regard to the Management dispute is before this Court as asserted by the writ petitioner, thus, the writ petition may not be maintainable at the instance of the writ petitioner. According to him, since the Joint Director of Education, Madhyamik (2), Education Directorate, Prayagraj has itself made a communication dated 31.05.2023, to District Inspector of Schools, Bulandshahr, thus it would take appropriate action in strictly in accordance with law. He further submits that a decision shall be taken within a period of six months after putting to notice respondent no.4, Committee of Management/ Authorized Controller of the Institution in question, as the matter involves public exchequer and necessary order shall be passed in this regard.

8. Having heard the learned counsel for the parties, this Court is of the opinion that the present writ petition at the behest of the writ petitioner is not maintainable, however, in view of the stand taken by Sri Shailendra Singh, the learned Standing Counsel that it is the policy of the State Government that the appointments should be made to the deserving candidates under Dying-in-harness Rules and the competent authority shall conduct an enquiry as per the Statute so applicable and concluded at within a period of six months, thus there is no occasion for this Court to issue mandamus.

9. Accordingly, the writ petition is **consigned to record**.

Order Date :- 15.12.2023

N.S.Rathour