

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 274 of 2023

Appellant :- State Of U.P. Thru. Addl. Chief Secy.Deptt. Of Food And Civil Supplies Govt. Of U.P. Lko.And Others

Respondent :- Abhay Pratap Singh

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- S M Singh Royekwar

Hon'ble Pritinker Diwaker,Chief Justice

Hon'ble Rajan Roy,J.

Order on Condonation of Delay Application No. 01 of 2023

This is an application seeking condonation of delay in filing the special appeal.

For the reasons mentioned in the affidavit in support of the application, the same is **allowed**.

Delay in filing the appeal is condoned.

Office to allot regular number to the appeal.

Order on Memo of Appeal

Heard Shri Amitabh Rai, learned Additional C.S.C. for the State-appellant and Shri Jaideep Narain Mathur, learned Senior Counsel assisted by Shri S.M. Singh Royekwar, Advocate & Shri Mudit Agarwal, Advocate for the sole respondent.

This is an appeal against an interim order of the writ Court dated 28.03.2023 passed in Writ A No. 2506 of 2023. The respondent herein had filed the aforesaid writ petition seeking the following reliefs:-

"(a) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 08.02.2023 annexed as Annexure No. 1 to this writ petition to the extent of attachment of the petitioner to the Office of the Commissioner, Food and Civil Supplies, Government of U.P., Jawahar Bhawan, Lucknow.

(b) Issue a writ of Mandamus directing the respondent no. 3 to restore the petitioner to the post of District Supply Officer, Bulandshahar where the petitioner was placed before attachment and pay him salary regularly;

(c) Issue a further writ in the nature of Mandamus directing the respondents not to interfere with the posting of the petitioner at

Bulandshahar;"

By the impugned order, the writ Court has stayed the order impugned before it, taking into consideration the submission of the respondent petitioner's Counsel that there was no post of District Supply Officer at the headquarters where the respondent petitioner had been attached during pendency of a preliminary inquiry and has further ordered that the respondent-petitioner shall be allowed to continue as District Supply Officer at Bulandshahar, that is the very place in connection with which a preliminary inquiry against him is underway.

The submission of the Counsel for the appellant before us is that by the impugned order passed by the Writ Court, final relief as prayed for in the writ petition has been granted, hence this appeal. It is his further submission that the respondent-petitioner was posted at Bulandshahar as District Supply Officer and several complaints were received against him. A preliminary inquiry was instituted and the preliminary inquiry report was submitted, based upon it, respondent-petitioner was placed under suspension. The said suspension was put to challenge in an earlier writ petition filed by the respondent-petitioner and the same was quashed on the ground that no preliminary inquiry worth the name had been conducted. However, liberty was granted to the State to proceed afresh against the respondent-petitioner. In these circumstances, the respondent-petitioner was attached with the headquarters at Lucknow so as to facilitate the preliminary inquiry which is underway. The submission is that by the impugned interim order, the writ Court has not only stayed the attachment order dated 08.02.2023 but has also directed that the respondent-petitioner shall be allowed to work as District Supply Officer at Bulandshahar till further orders which is rather incongruous as the preliminary inquiry has to be conducted with regard to his alleged misdeeds at Bulandshahar. Moreover, as already stated, this is the final relief in the writ petition and the impugned order is in the nature of final relief which could not have been granted at the interim stage.

Shri Jaideep Narayan Mathur, learned Senior Counsel appearing for the respondent-petitioner submits that attachment at the headquarters where there is no post of District Supply Officer is in itself unreasonable and is illegal. Secondly, he says that there is a personal difficulty, as, the wife of the respondent has taken admission in M.D. course in the medical college at Bulandshahar. Shri Mathur also submits that there are no allegations against the respondent-petitioner that he is interfering or would interfere in the preliminary inquiry except in the appeal and therefore, his non-reinstatement on the post of

District Supply Officer at Bulandshahar, that too, when the suspension order has been set aside and attachment at the headquarters is stigmatic.

We are unable to accept this argument. Attachment does not prejudice the respondent-petitioner in any manner and cannot be said to be stigmatic. It is only to facilitate the preliminary inquiry at Bulandshahar in view of certain allegations and complaints against him. We are also of the opinion that the impugned order grants relief which is of a final nature and could not have been done at the interim stage. The attachment of the respondent-petitioner at the headquarters does not prejudice him as he would be entitled to full salary during the period of attachment. It shall be open for the appellant herein to take or not to take work from the respondent-petitioner but they will have to pay salary during the period of attachment. If work is to be taken from the petitioner during his attachment, it has to be commensurate with his rank. So far as, personal difficulties are concerned, the respondent-petitioner can sort out the same by taking accommodation on rent.

In view of the aforesaid, the impugned interim order cannot be sustained. We accordingly **quash** the same, subject to the condition that the appellant shall conclude the preliminary inquiry against the respondent within three weeks and, during this period, the respondent-petitioner shall continue to be attached at the headquarters at Lucknow. Based on the preliminary inquiry report, the State shall take a decision within 15 days of its receipt, as to whether regular proceedings against the respondent-petitioner have to be undertaken or not and also regarding his posting. Consequences shall follow accordingly. In fact, we are also of the opinion that in view of the above, nothing survives for adjudication in the writ petition . We accordingly **dispose of** the writ petition also along with the Special Appeal in the aforesaid terms. Of course, this is without prejudice to the rights of the respondent-petitioner to approach this Court again in the event any adverse decision is taken based on the preliminary inquiry or no decision is taken in pursuance to our order within the time stipulated herein.

Order Date :- 16.5.2023

Lokesh Kumar

[Rajan Roy, J.] [Printinker Diwaker, C.J.]