

Court No. - 19

Case :- WRIT - A No. - 9767 of 2023

Petitioner :- Chandresh Kunwar Chandra

Respondent :- State Of U.P. Thru. Prin. Secy. Basic Education Lko. And 6 Others

Counsel for Petitioner :- Pradeep Kumar Shukla, Abhay Kumar, Pt. S. Chandra

Counsel for Respondent :- C.S.C., Shailendra Singh Rajawat

Hon'ble Jaspreet Singh, J.

Heard Sri Pt. S. Chandra, learned counsel for the petitioner. Notice on behalf of respondent nos. 1 and 2 has been accepted by the office of the Chief Standing Counsel and Sri S.S. Rajawat, learned counsel has put in appearance on behalf of respondent nos. 3, 4, 5 and 7.

At the outset, the learned counsel for the respondents nos. 3 to 5 and 7 Sri Rajawat has raised a preliminary objection stating that by means of the instant petition, the petitioner assails the punishment order dated 21.10.2023 passed by the respondent no. 3 and against the said order, the petitioner has a right of filing an appeal in terms of Rule 5 of the Uttar Pradesh Basic Education Staff Rules, 1973 before the Chairman of the Board who is the Appellate Authority. It is thus urged that the instant petition is not maintainable.

The learned counsel for the petitioner responding to the said preliminary objection has submitted that in the instant case, the impugned order of punishment dated 21.10.2023 has been passed in blatant violation of the principles of natural justice, inasmuch as, the petitioner was not served with any charge sheet or any show cause notice nor he was granted time to submit explanation as he was on medical leave till 07.12.2023.

It is further urged that punishment have been awarded to the petitioner which is absolutely arbitrary and the salary of the petitioner has also been stopped w.e.f. June, 2023. By means of the impugned punishment order, the petitioner has been reverted on the Basic Pay-scale of Assistant Teacher, Basic and the petitioner has also been held to be involved in embezzlement of a sum of Rs. 4,71,000/- and further directions have been issued for recovering the embezzled sum along with interest from the petitioner and he has been awarded with an adverse remark that in future the charge of the School may not

be given to the petitioner.

In is in the aforesaid circumstances where such adverse and major punishment has been awarded and that too in absolute violation of the principles of natural justice, in such circumstances, the rule of alternate remedy is not applicable which needless to say is only a self-regulated proposition and does not create an absolute bar on the exercise of jurisdiction by this Court in exercise of powers under Article 226 of the Constitution of India.

Sri Chandra, learned counsel has further urged that the petitioner was on medical leave and despite the letter issued by the respondents granting time to the petitioner for filing his response upon being fit to resume service but since the petitioner still continues to be on medical leave hence, the ex-parte inquiry which is alleged to have been conducted by the respondents is merely an eye-wash, hence, the petition deserves to be entertained.

In support of his submissions, Sri Chandra has relied upon decision of the Apex Court in ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Others JT 1998 (7) SC 243, State of Uttar Pradesh and Others Vs. Saroj Kumar Sinha; (2010) 2 SCC 772***, a Division Bench of this Court in ***Subhash Chandra Sharma Vs. Managing Director and Others; 2000 (1) UPLBEC 541*** and another Division Bench of this Court in ***M/s Unnat Hydro System Pvt. Ltd. Vs. State of U.P. and Others; 2023 (41) LCD 1917***.

The Court has heard the learned counsel for the parties on the aforesaid preliminary objections and also perused the material on record.

At the outset, it may be stated that in so far as the availability of appeal in terms of Rule 5 of the Uttar Pradesh Basic Education Staff Rules, 1973 is concerned, the same is not disputed by the petitioner, however, the entire thrust of the contention is that a major penalty has been imposed on the petitioner without following the procedure relating to inquiry is concerned, however, from the perusal of the material on record, this Court finds that the petitioner has stated in paragraph 7 of the petition that the petitioner is on medical leave upto 22.12.2023 and that he is yet not fit to resume his duties.

From the perusal of the documents annexed as Annexure No. 7 to 13, it would be found that the petitioner has stated that he has been suffering from cervical spondylitis. The medical/fitness certificate annexed at running page 49 of the paper book

indicates that he has been advised rest for 15 days from 07.12.2023 and prior thereto the similar certificates have been annexed.

The record further indicates that the medical leave of the petitioner was only approved till 25.08.2023 as evident from page 51 of the paper book.

The record further indicates that the impugned order is dated 21.10.2023 whereas the charge sheet was issued on 20th April, 2023. The record further indicates that in respect of the charge regarding embezzlement, it is stated by the petitioner that the petitioner has not embezzled rather he has paid the same to the proprietorship of A.G.L. Enterprises who was required to construct and maintain the school building.

It has further been stated in the writ petition that the agreement has been executed with one labour Mishri Lal as indicated in paragraph 13 and from the perusal of Annexure No. 6, the agreement which is alleged to have been brought on record is dated 18.11.2023 i.e. much after the punishment order has been passed.

It is also not disputed that the petitioner even prior to getting the work done had already paid the entire sum of Rs. 4,71,000/- to the proprietorship of A.G.L. Enterprises. From the perusal of paragraphs 12 to 17, it appears that the money was withdrawn from the account and without even getting the work done rather even before starting of the work.

Even though, these are tentative findings as appearing from the perusal of the writ petition, however, they have been considered only for the limited purposes of ascertaining whether the discretion can be exercised in favour of the petitioner on the basis of the averments made in the petition bypassing the statutory remedy of departmental appeal.

It is in this context, this Court finds that on one hand, the petitioner states that he has been on medical leave and yet he has stated that he did not receive any show cause notice, charge sheet and could not participate in the disciplinary proceedings but on the other hand does not indicate whether and how he received the copy of the punishment order. He also does not state that once his medical leave was not sanctioned beyond 25th August, 2023 and even the nature of the illness which has been indicated does not depict the severity which could hamper the movement of the petitioner or severally prejudice him in participating in the departmental proceedings, coupled with the fact that there is nothing to state that as to how he did not

receive the charge sheet, show cause notice especially when the same was sent to him as informed by Sri S.S. Rajawat on the basis of instructions at his correct address but was refused.

Having taken note of the decisions cited by the learned counsel for the petitioner, it is no doubt true that the rule of alternate remedy does not act as an absolute bar or clog on the exercise of powers under Article 226 of the Constitution of India but nevertheless it is a self-imposed restrictions based on sound principles.

Noticing the aforesaid as well as the facts and circumstances which has been delineated hereinabove which are disputed questions, hence, this Court is unable to persuade itself to grant indulgence to the petitioner for entertaining the aforesaid petition.

In the aforesaid facts and circumstances, this Court is not inclined to entertain the aforesaid petition. It is left open for the petitioner to avail the remedy of statutory appeal as per the rules. It is made clear that the Court has not examined the case of the petitioner on merits and any observation made hereinabove may not come in the way of the Appellate Authority while deciding the appeal as it is only for the purposes of ascertaining whether the petition may be entertained and the Appellate Authority shall not be influenced by it.

For the aforesaid reasons, the petition is ***dismissed*** and liberty is granted to the petitioner to raise all the grounds as available to him in law before the Departmental Appeal in accordance with law.

Order Date :- 19.12.2023

Asheesh