

Court No. - 18

Case :- WRIT - A No. - 3943 of 2022

Petitioner :- Tejpal Kaushik

Respondent :- State Of U.P. Thru Secy Vocational Education And Skill Development Deptt And 4 Others

Counsel for Petitioner :- Shivam Sharma

Counsel for Respondent :- C.S.C., Pankaj Kumar Awasthi

AND

Case :- WRIT - A No. - 10017 of 2023

Petitioner :- Tejpal Kaushik

Respondent :- State Of U.P. Thru. Secy. Vocational Education And Skill Development Deptt. Lko. And Another

Counsel for Petitioner :- Shivam Sharma

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. Heard.
2. Rejoinder affidavit filed in WRIT - A No. - 10017 of 2023 is taken on record.
3. These writ petitions are being decided by this common judgment as the issue involved in these writ petitions are interconnected.
4. The WRIT - A No. - 3943 of 2022 has been filed for quashing of the charge-sheet dated 02.06.2022 and with the further prayer to direct the respondents not to give effect to the charge-sheet or to proceed against the petitioner in general and direct the respondents to allow the petitioner to work as Principal Grade I at Muradabad until his superannuation.
5. The WRIT - A No. - 10017 of 2023 has been filed for direction to the respondents to forthwith release the retiral dues of the petitioner, namely, Gratuity, Leave Encashment, GIS, Pension and salary for the period of suspension with interest at market rate from 30.06.2022 to the date of his superannuation.
6. Learned counsel for the petitioner has submitted that prior to the year 2016, the petitioner was working on the post of Principal, I.T.I. Saharanpur. While he was posted at Saharanpur, one Shri Yogendra Singh i.e. respondent no.4/then Assistant Director at Saharanpur had misbehaved with the petitioner and thereafter with the wife of the petitioner who was also posted at Saharanpur in the same department against which the petitioner

had made complaints dated 13.04.2016 and 05.02.2020 to the authorities.

7. It is further submitted that on 14.10.2016, the petitioner was sent on deputation in State Council for Vocational Training i.e. a society registered under the Societies Registration Act hereinafter referred as Council.

8. It is further submitted that on 23.05.2018, the petitioner was transferred from the Council to I.T.I. Moradabad. While he was posted at Moradabad, some complaint was made by Shri Mohar Singh, Ex-M.L.A., Saharanpur against the petitioner that he had misappropriated the government funds. It is further submitted that the Executive Director of the Council i.e. a society passed an order dated 13.01.2020 directing the Joint Director i.e. Shri Yogendra Singh/respondent no.4 to conduct an inquiry in the matter.

9. It is further submitted that when the respondent no.4 was directed to conduct the inquiry into the matter, the petitioner had made a representation on 15.01.2021 to the Council and a copy was forwarded to the State Government mentioning therein that the Executive Director of the Council has no jurisdiction to direct for any inquiry against the petitioner and prayed for changing the inquiry officer i.e. respondent no.4 as the petitioner had made complaints against him.

10. Learned counsel for the petitioner has submitted that the petitioner was a State Government Employee and had been sent on deputation on 14.10.2016 in Council and thereafter transferred to I.T.I. Moradabad i.e in his parent department. Thereafter, the Executive Director of the Council has no power or jurisdiction to direct the Joint Director/respondent no.4 to conduct an inquiry against the petitioner.

11. It is further submitted that the compliant made by Shri Mohar Singh was not supported by an affidavit which is required for entertaining any compliant as per government orders dated 01.08.1997 and 09.05.1997 and if, the complaints are not supported by an affidavit, it could not be entertained. In support of his submission, learned counsel for the petitioner has relied upon the judgment of this Hon'ble Court passed in **Writ Petition No.4372 (S/S) of 2011, Kumdesh Kumar Sharma vs. State of U.P.** It is further submitted that the petitioner had already retired from service on 30.06.2022.

12. It is further stated that on the basis of the preliminary inquiry report, the Director had sent a letter to the State Government for initiation of inquiry against the petitioner and

in pursuance thereof, the charge-sheet was issued.

13. It is further submitted that on the complaint of Shri Mohar Singh, the preliminary inquiry was conducted and the report was submitted wherein it had been found that no illegality or irregularity was committed by the petitioner.

14. It is further submitted that the petitioner had made every payment as per due process after taking acknowledgement receipt on a one rupee stamp paper and no financial illegalities and irregularities were committed by the petitioner. The action is void ab initio and hence, the charge-sheet is liable to be quashed.

15. On the other hand, learned State Counsel and the counsel representing the State Council for Vocational Training have submitted that the Director, Training and Employment, Uttar Pradesh is the Ex-officio Executive Director of the Council i.e. a society and there is no illegality in the order passed by the Executive Director to conduct an inquiry against the petitioner for the charges alleged to be committed by the petitioner while he was posted as Principal, I.T.I., Saharanpur in his parent department. It is further submitted that the Executive Director and the Director is the one person and due to this reason, there is no illegality in the order passed.

16. It is further submitted that in the preliminary inquiry report conducted by the respondent no.4, the financial irregularities committed by the petitioner were pointed out and only thereafter, the Director has written a letter to the State Government and thereafter the regular inquiry has been initiated against the petitioner by issuing the charge-sheet hence, merely on the technicality, the petitioner could not be absolved from allegations levelled against him. It is further submitted that the representation of the petitioner dated 05.02.2020 with regard to the complaints against the respondent no.4 was never received in the office.

17. After hearing the learned counsel for the parties, and going through the records of the case and the judgment relied by the learned counsel for the petitioner, the position which emerges out in the present case is that the very basis of the regular inquiry initiated against the petitioner is the complaint of Shri Mohar Sing, Ex-M.L.A., the said complaint was not supported by an affidavit which is required as per the government orders dated 01.08.1997 and 09.05.1997. The said argument and averment made in the writ petition have not been disputed by the counsels for the opposite parties in their counter affidavit. So the very basis i.e. the complaint which is not entertainable in

pursuance of which no inquiry could be ordered.

18. The allegations alleged in the charge-sheet was of the period when the petitioner was posted in his parent department and if any action was to be initiated that was to be initiated by the parent department and not at the instance of the borrowing department i.e. by the Executive Director of the Council, which is a society registered under the Societies Registration Act, where the petitioner was posted on deputation.

19. The executive director of the Council had passed an order of inquiry in the year 2020 i.e. after the transfer of the petitioner from the borrowing department to his parent department by order dated 23.05.2018 and entrusting the inquiry to the respondent no.4 against which the petitioner had made a complaint and requested for the change of the inquiry officer which was never considered. If it is admitted that the representation of the petitioner dated 05.02.2020 was not received in the office of the respondent no.4 as they have said in their counter affidavit then at the same time answering respondents are not disputing the representation of the petitioner dated 13.04.2016 i.e. complaint against the respondent no.4 and the representation dated 15.01.2021 where the petitioner has clearly mentioned that the Executive Director has no power or jurisdiction to pass an order for initiation of inquiry and prayer for change of the inquiry officer by transferring it to some other person in place of Shri Yogendra Singh against which the petitioner had made a complaint and who is keeping grudge against the petitioner.

20. From the perusal of the documents on record, the basis of the main inquiry initiated by the State Government is based upon the preliminary inquiry submitted by Shri Yogendra Singh i.e. respondent no.4, who had conducted that inquiry on the direction of the Executive Director of the Council, the borrowing department.

21. It may though be true that the Director of the Council, who is Ex-officio Executive Director of the Council, that is to say he act in two different capacities. In the present case he acted in the capacity of Executive Director of the Council and in that capacity he was not empowered to order for initiation of proceeding against the petitioner. It is immaterial that the same person was acting in two capacities but the material fact will be in which capacity he passed the order for inquiry against the petitioner who was on deputation in the Council. More so, when complaint which was made against the petitioner was not supported by affidavit, which was necessary requirement as per government orders dated 01.08.1997 and 09.05.1997.

22. In view of the above, initiating the disciplinary proceedings at the behest of the State Council for Vocational Training as the said Council does not have any power to initiate any proceeding as there was no relation of employer or employee between the petitioner and the Council. The initiation of inquiry in pursuance of the same is bad in the eyes of law and in view of the above, the charge-sheet dated 02.06.2022 is hereby quashed.

23. The charge-sheet having been quashed as mentioned in preceding paragraph no departmental inquiry remains pending against the petitioner. The petitioner has since been retired. He is to be paid all his post retiral benefits which cannot be withheld for any reason. The Respondents are therefore, directed to make payment of post retiral dues of the petitioner without delay i.e. to say within a period of three months from the date of production of certified copy of this order. If the post retiral dues are not paid within the period as indicated above, the respondents shall also liable to pay an interest at the rate of 7% per annum till the actual payment is made. In the result, both the Writ Petitions i.e. WRIT - A No. - 3943 of 2022 and WRIT - A No. - 10017 of 2023 stand **allowed** in the terms as mentioned in two preceding paragraphs.

Order Date :- 16.1.2024

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