

Court No. - 5

Case :- WRIT - A No. - 9746 of 2024

Petitioner :- Dr. Gyanvati Dixit

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Secondary Edu. U.P. Lko.
And 4 Others

Counsel for Petitioner :- Sudeep Kumar, Avdhesh Kumar Pandey, Radhika Varma

Counsel for Respondent :- C.S.C., Vijay Vikram

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner, learned Standing counsel appearing on behalf of the respondents no. 1 to 4 and Sri Ashutosh Singh, Advocate who files his Vakalatnama today in Court on behalf of the respondent no. 5 which is taken on record.

2. With the consent of learned counsel appearing on behalf of the contesting parties, the instant writ petition is being disposed of at the admission stage.

3. Under challenge is the order dated 04.10.2024 passed by the respondent no. 5 namely Sri Anil Kumar, Authorized Controller, Shri Dayanand Rameshwar Prasad Hansrani Arya Kanya Inter College, Sitapur whereby the petitioner has been placed under suspension.

4. Contention of learned counsel for the petitioner is that the petitioner while working on the post of Principal of an Institution namely Shri Dayanand Rameshwar Prasad Hansrani Arya Kanya Inter College, Sitapur has been placed under suspension by means of the order impugned.

5. Contention is that the suspension of the head of the institution or a teacher is governed by Section 16 (G) of the Uttar Pradesh Intermediate Education Act, 1921 (hereinafter referred to as "Act, 1921").

6. Sub Section (5) of Section 16 (G) of the Act, 1921 categorically provides that no head of Institution shall be suspended by the Management, unless in the opinion of the Management (a) the charges against him are serious enough to merit his dismissal, removal or reduction in rank or (b) his continuance in office is likely to hamper or prejudice the conduct of the disciplinary proceedings against him.

7. Placing reliance on the judgment of this Court in the case of **Smt. Shobha Saxena Vs. District Inspector of Schools, Bareilly and ors** reported in **2009 (2) AWC 1711**, contention is that this Court has held the provisions of sub Section (5) of Section 16 (G) of the Act, 1921 to be mandatory inasmuch as it has been held that the said provision

casts a mandatory obligation on the management to consider the gravity of the charge or the charges levelled against the head of the institution and that the management must form an opinion, namely, that the charges are so serious that eventually, if it is found to be correct, it will merit dismissal, removal or reduction in rank or alternatively the management has to consider that the continuation of the teacher or the head of the institution would likely hamper or prejudice the conduct of the disciplinary proceedings against the head of the institution or the teacher, as the case may be.

8. Argument is that a perusal of the order impugned dated 04.10.2024 would indicate there is no opinion which has been formed by the management, (in this case the Authorized Controller) with regard to the mandatory provisions as provided under sub Section 5 (a) & (b) of Section 16 (G) of the Act, 1921 whereby vitiating the order and thus it is prayed that the said suspension order be set aside.

9. Responding to that, learned Additional Chief Standing counsel as well as Sri Singh, learned counsel for the respondent no. 5 raise a preliminary objection that as the suspension order has been approved by the District Inspector of Schools vide order dated 29.10.2024 as such, the suspension order stands merged with the approval of the order dated 29.10.2024 and consequently, the petitioner would now be required to challenge the said order.

10. Further contention is that a perusal of the impugned suspension order would indicate that various allegations have been levelled against the petitioner pertaining to the irregularities committed by her and the same would itself be indicative of the fact that the charges are serious enough to merit dismissal, removal or reduction in rank of the petitioner and even if the same has not been recorded categorically in the order impugned, the same would not result in the impugned suspension order being vitiated in the eyes of law.

11. Heard the learned counsel appearing on behalf of the contesting parties and perused the records.

12. From a perusal of record it emerges that the petitioner who was working on the post of Principal has been placed under suspension vide order impugned dated 04.10.2024. The suspension order has been approved by the District Inspector of Schools vide order dated 29.10.2024.

13. The preliminary objection as raised on behalf of the respondents is that as the suspension order has been approved by the District Inspector of Schools consequently, the initial suspension order would now stand merged with the approval order as passed by the District Inspector of Schools and as such, the petitioner would have to challenge the approval order also.

14. The said preliminary objection is found to be patently misconceived considering the fact that sub Section (7) of Section 16 (G) of the Act, 1921 provides that no order of suspension unless approved in writing by the Inspector shall remain in force for more than 60 days meaning thereby that the said suspension order would come into effect as soon as it is passed but would not continue beyond 60 days unless it is approved by the District Inspector of Schools. Thus, the suspension order of the petitioner came into force immediately as it being passed by the Authorized Controller and its approval by the Inspector would have to be seen in that context.

15. Further, this Court in the case of **Smt. Shobha Saxena (supra)** has also held that where the very basis of the suspension order does not exist, the mere approval by the Inspector would also fall through.

16. The other aspect of the matter would be that once the suspension order may itself be found vitiated in the eyes of law consequently, even if it is approved then in case the edifice goes, the super structure would collapse meaning thereby that even if the said suspension order has been approved, the same would not validate the initial suspension order which may be found to be illegal in the eyes of law.

17. Considering the aforesaid, the preliminary objection is rejected.

18. So far as the provisions of sub Section (5) of Section 16 (G) of the Act, 1921 is concerned, for the sake of convenience, the same is reproduced below:-

"(5) No Head of Institution or teacher shall be suspended by the management, unless in the opinion of the management:

(a) the charges against him are serious enough to merit his dismissal, removal or reduction in rank; or

(b) his continuance in office is likely to hamper or prejudice the conduct of disciplinary proceedings against him; or

(c) any criminal case for an offence involving moral turpitude against him is under investigation, inquiry or trial."

19. This Court in the case of **Smt. Shobha Saxena (supra)** has considered the aforesaid provisions of the Act, 1921 wherein this Court has held as under:-

*"10. A perusal of the aforesaid provisions indicates that no Head of Institution or teacher shall be suspended unless in the opinion of the management the charges against the head of the institution or the teacher are serious enough to merit his dismissal, removal or reduction in rank. **The said provision casts a mandatory obligation on the management to consider the gravity of the charge or the charges levelled against the head of the institution or the teacher, as the case may be, and must form an opinion, namely, that the charges are so serious that eventually if it was found to be correct, it will merit dismissal, removal or reduction in rank. The management, alternatively, has to consider that the continuation of the teacher or the head of the institution would likely to hamper or prejudice the conduct of the disciplinary proceedings against the head of the***

institution or the teacher, as the case may be.

11. *In the present case, the certified copy of the extract of the resolution of the Committee of Management dated 29.11.2008 has been annexed as Annexure-1 to the counter-affidavit of the District Inspector of Schools. A perusal of the resolution of the Committee of Management does not indicate that the Committee has formed any opinion on the gravity of the charges levelled against the petitioner. The resolution indicates that on the basis of certain charges, the petitioner is being suspended with immediate effect. The resolution, however, records the words 'prima facie', The use of the words 'prima facie' does not indicate anything with regard to the opinion of the management that was formed on the gravity of the charges levelled against the petitioner.*

12. *In my opinion, in the absence of a definite opinion being formed by the Committee of Management, no suspension order could have been passed against the petitioner. The resolution issued by the Committee of Management dated 29th November, 2008 suspending the petitioner is against the provisions of Section 16G (5) of the Act. This Court is of the opinion that the provision of Section 16G (5) is mandatory and is compulsorily required to be followed meticulously by the Committee of Management. Since no opinion on the gravity of the charges was formed by the Committee of Management, the resolution of the Committee of Management could not be sustained. Since the very basis of the suspension of the petitioner did not exist, the consequential approval of the suspension order made by the Inspector also falls through and cannot be sustained. In any case, the Court in Satya Pal Singh's case (supra) has held that a bare minimum opportunity of hearing was required to be given by the Inspector to the petitioner before approving or disapproving the order of suspension, which, in the present case, admittedly, had not been done. Consequently, on this ground also, the order of approval passed by the District Inspector of Schools under Section 16G (7) cannot be sustained."*

(emphasis by the Court)

20. From a perusal of the aforesaid judgment in the case of **Smt. Shobha Saxena (supra)** it clearly emerges that this Court has held the provisions of sub Section (5) of Section 16 (G) of the Act, 1921 to be mandatory meaning thereby that this Court has held that the said provision casts a mandatory obligation on the management to record that the charges are so serious that eventually if found to be correct it would merit dismissal, removal or reduction in rank and that in the alternate the management would have to consider that the continuation of the teacher or the head of the institution would likely to hamper or prejudice the conduct of the disciplinary proceedings.

21. Bare perusal of the order impugned dated 04.10.2024 would indicate that the authorized controller has failed to record the opinion that the charges against the petitioner are serious enough to merit her dismissal, removal or reduction in rank or that her continuation in office is likely to hamper or prejudice the conduct of disciplinary proceedings pending against her.

22. As per the respondents, the charges as levelled in the said suspension order are extremely serious but then in the absence of the

opinion of the management/authorized controller, the said charges may *per se* not themselves render the suspension order to be in consonance with the provisions of sub Section (5) of Section 16 (G) of the Act, 1921 more particularly when this aspect of the matter has been considered threadbare by this Court in the case of **Smt. Shobha Saxena (supra)**.

22. Keeping in view the aforesaid discussion, the writ petition is allowed. The order impugned dated 04.10.2024, a copy of which is annexure 1 to the writ petition is quashed.

23. Consequences to follow.

24. However, it would be open for the competent authority to pass a fresh order, if required, in accordance with law.

Order Date :- 5.11.2024

Pachhere/-