

Court No. - 17

Case :- WRIT - C No. - 9659 of 2024

Petitioner :- C/M Jai Ram Janta Junior High School, Ambedkar Nagar
Thru. Manager Smt. Meera Devi And Another

Respondent :- State Of U.P. Thru. Prin. Secy. Basic Education, Lucknow
And 3 Others

Counsel for Petitioner :- Pt. S. Chandra, Ravi Kant Mishra

Counsel for Respondent :- C.S.C., Prashant Kumar Singh, Vinod Kumar
Singh

Hon'ble Manish Kumar, J.

1. Application for impleadment seeking impleadment of Shri Paras Nath Gupta, filed by Shri K.M. Shukla, Advocate is taken on record.

2. Another application seeking impleadment of Sri Kanhaiya Verma, filed by Shri Vinod Kumar Singh, Advocate is taken on record.

3. Heard.

4. Present petition has been preferred for quashing of the impugned order dated 10.10.2024 passed by Assistant Director of Education (Basic) whereby the Authorized Controller has been appointed cancelling the earlier order dated 17.08.2023 due to which the order dated 08.06.2023 came into existence whereby the Committee of Management has been suspended.

5. Learned counsel for the petitioners has submitted that the impugned order has been passed in contravention of the statutory provisions i.e. Rule 25 (2) of the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) (Seventh Amendment) Rules, 2019 (hereinafter referred to as, the Rules, 2019) for the reason that under Rule 25 (2) of the Rules, 2019, it has been provided that prior to passing of the impugned order, a notice was to be issued to the petitioners.

6. It is further submitted that the impugned order has been passed without granting any opportunity of hearing to the petitioners and merely on the basis of report submitted by the Basic Siksha Adhikari (hereinafter referred to as, the B.S.A), the impugned order has been passed.

7. It is further submitted that the impugned order has been passed just to reinstate the Head Master of the Institution who

was suspended by the petitioner by order dated 13.06.2024. The same has been approved by the B.S.A. vide its order dated 26.06.2024.

8. It is further submitted that the petitioner is not responsible for fall in the strength of the students to 17. It is the teachers who are responsible for fall in the strength of students.

9 It is further submitted that the Assistant Director (Education) has no power to review its earlier order dated 17.08.2023 as there is no provision under the statute to review its earlier order, hence, the impugned order is without jurisdiction and in support of his submission, learned counsel for the petitioners has relied upon the judgment of Hon'ble Supreme Court in the case of ***Kalabharati Advertising Vs. Hemant Vimalnath Narichanja and others*** reported in ***(2010) 9 SCC 437***.

10. On the other hand, learned Standing Counsel has submitted that the order dated 17.08.2023 was passed in pursuance of the report submitted by the Block Education Officer whereas as per Rule 25, the action is to be taken on the recommendation/report of the B.S.A. when this irregularity was pointed out, the order dated 17.08.2023 had been recalled by passing the order dated 10.10.2024, which is impugned in the present petition. In support of his submission, he relied upon the ***judgment and order dated 26.09.2022 passed by this Court in Writ C No. 6520 of 2022 (Head Master Jairam Janta Junior High School, Ram Nagar District Ambedkar Nagar and Another Vs. State of U.P. and others)***. The relevant excerpts of the said judgment is being reproduced hereinbelow:-

"In view of the said submissions what is to be seen is whether the order dated 19.08.2021 passed earlier and has recalled by the impugned order dated 03.06.2022 was within the jurisdiction or not.

The scheme of the Regulation of 1978 framed under the Act prescribes that it is the only the Assistant Director, who can pass an order appointing an Authorized Controller on the recommendation of the Basic Shiksha Adhikari without there being any appeal. The earlier order dated 19.08.2021 was passed setting aside the order dated 09.06.2021 which had recalled the order appointing the authorized controller. No such power appears to be traceable under Regulation of 1978 which were vested in the Director to pass such an order, as such, the recall of the order dated 19.08.2021 by means of the impugned order dated 03.06.2022, only recalls the earlier order which was without jurisdiction, as such, there is no hesitation in holding that the earlier order dated 19.08.2021 passed by the

Director was being without jurisdiction was rightly recalled by the order dated 03.06.2022."

11. After hearing learned counsel for the parties and going through the record of the case as well as the judgments cited by both the parties, the position which emerges out in the present case is that as per Rule 25 of the Rules, 2019, the Assistant Director (Education) is empowered to pass an order on the recommendation of the B.S.A. whereas earlier order dated 17.08.2023 was passed on the recommendation of the Block Education Officer and not on the recommendation of the B.S.A., who is empowered to make recommendation under Section 25 hence, it has rightly been recalled by the Assistant Director (Education) by passing the impugned order dated 10.10.2024.

12. As far as submission of learned counsel for the petitioner that Assistant Director has no power under the statute to review its earlier order and the judgment on which learned counsel for the petitioner has placed reliance, does not come in aid of the petitioner for the reason that in the case of Kalabharati Advertising (supra), Hon'ble Apex Court has held that it is a settled legal principle that unless a statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders but in the present case, it is an admitted case of the learned counsel for the petitioner that the impugned order is an administrative order not a judicial/quasi judicial order .

13. On being asked from learned counsel for the petitioner as to whether there is any material or pleading in the present petition to satisfy the Court that the charges on the basis of which impugned order has been passed are frivolous and baseless, learned counsel for the petitioner has replied that the order has been passed just to accommodate the Head Master who has been under suspension and no opportunity was provided to the petitioner but unable to show any pleading or material on record to show that these charges which led to passing the impugned order are baseless or frivolous rather, it is not denied on behalf of the petitioner that presently the strength of the students on the Institution has fallen down to only 17 students. Besides the position as stated above, the other charges are also of serious nature.

14. In the given circumstances, the question before this Court is as to whether in exercise of its extraordinary discretionary jurisdiction this Court should interfere or not. The law in this regard is very well settled. In a catena of judgments, both of this Court and Hon'ble Supreme Court have emphasised that while

exercising discretionary jurisdiction under Article 226, the High Court must ensure that justice is done, equity be upheld and injustice is eliminated. In ***Jodhey vs State***, reported as ***AIR 1952 All 788***, this Court considered the discretionary and equitable jurisdiction of the High Court and the manner in which the same ought to be exercised. Relevant portion of the same reads:-

"There are no limits, fetters or restrictions placed on this power of superintendence in this Clause and the purpose of this Article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein. "(emphasis supplied)

15. In ***Gadde Venkateswara Rao v. Govt. of A.P.***; ***AIR 1966 SC 828***, a three judges Bench of the Supreme Court affirmed the judgment of the Andhra Pradesh High Court where it refused to interfere into a matter on merit **even when the appellant alleged violation of principles of natural justice.** The Supreme Court observed that if the impugned order passed by the Government would have been set aside by the High Court, it would have restored an illegal order. Paragraph 19 of the judgment reads:-

"19. The result of the discussion may be stated thus: The Primary Health Centre was not permanently located at Dharmajigudem. The representatives of the said village did not comply with the necessary conditions for such location. The Panchayat Samithi finally cancelled its earlier resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently at Lingopalem. Both the orders of the Government, namely, the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed: the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power under Section 72 of the Act to review an order made under Section 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case." (emphasis supplied)

16. In *Mohammad Swalleh v. Third Additonal District Judge, Meerut*; (1988) 1 SCC 40 the Supreme Court dismissed an appeal against an order passed by the High Court wherein the High Court refused to interfere with the order of the District Court which had no jurisdiction to entertain an appeal from the Prescribed Authority under the scheme of the Act on the ground that setting aside District Court's order would mean restoring the erroneous order of the Prescribed Authority. Paragraph 7 of the above referred judgment of the Supreme Court reads:-

*"7. It was contended before the High Court that no appeal lay from the decision of the prescribed authority to the District Judge. The High Court accepted this contention. The High Court finally held that though the appeal laid (sic no appeal lay) before the District Judge, the order of the prescribed authority was invalid and was rightly set aside by the District Judge. On that ground the High Court declined to interfere with the order of the learned District Judge. It is true that there has been some technical breach because if there is no appeal maintainable before the learned District Judge, in the appeal before the learned District Judge, the same could not be set aside. But the High Court was exercising its jurisdiction under Article 226 of the Constitution. The High Court had come to the conclusion that the order of the prescribed authority was invalid and improper. The High Court itself could have set it aside. Therefore in the facts and circumstances of the case justice has been done though as mentioned hereinbefore, technically the appellant had a point that the order of the District Judge was illegal and improper. **If we reiterate the order of the High Court as it is setting aside the order of the prescribed authority in exercise of the jurisdiction under Article 226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the prescribed authority has been set aside, no objection can be taken.**" (emphasis supplied)*

17. In *Roshan Deen vs. Preeti Lal*; (2002) 1 SCC 100, the Supreme Court while setting aside an order passed by the High Court observed that the High Courts while exercising power of superintendence under Article 226 and 227 should ensure that such exercise must ensure that justice is done and at the same time injustice is eliminated. Paragraph 12 of the same reads:-

"12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non-suited him in exercise of a supervisory and extraordinary jurisdiction

envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it (vide *State of U.P. v. District Judge, Unnao* [(1984) 2 SCC 673: AIR 1984 SC 1401]). The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law,"

18. A Division Bench of the Supreme Court in the case of ***Ramesh Chandra Sankla and Others vs. Vikram Cement and Others and other connected matters, reported as (2008) 14 SCC 58*** has considered, affirmed, and reiterated all the aforesaid judgments and held in paragraphs 98 that:-

"98. From the above cases, it clearly transpires that powers under Articles 226 and 227 are discretionary and equitable and are required to be exercised in the larger interest of justice. While granting relief in favour of the applicant, the Court must take into account balancing interests and equities. It can mould relief considering the facts of the case. It can pass an appropriate order which justice may demand and equities may project. As observed by this Court in *Shiv Shankar Dal Mills v. State of Haryana*, (1980) 1 SCR 1170, ***Courts of equity should go much further both to give and refuse relief in furtherance of public interest. Granting or withholding of relief may properly be dependent upon considerations of justice, equity and good conscience.***" (emphasis supplied)

19. The law repeatedly settled by the Supreme Court is that the High Court should exercise its discretionary jurisdiction in such a manner which would advance end of justice and uproot injustice. It should exercise power conferred under Article 226 and 227 of the Constitution of India in a manner that provides complete and substantial justice to parties. The Supreme Court in *Shangrila* (supra) has held that ***"One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party, priorly, before invoking the jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief."*** From the law settled by the Supreme Court it is clear that while exercising power under Article 226 and 227 of Constitution of

India, the Court must give and refuse relief in furtherance of public interest. Granting or withholding of relief must be dependent upon considerations of justice, equity and good conscience.

20. In view of the facts of the present case, it is apparent that the petitioner is not performing its duties, which is expected from the petitioner and due to non performance of duties, the very purpose of running a School/Educational Institution is jeopardized. The charges are serious and the whole picture of mis-management is clear, apart from other charges, number of students in the institution dwindled only to 17 students which is no way serving the purpose of running an educational institution. It itself indicates the quantity and quality of the education, which is being imparted under the management i.e. petitioners immensely suffered.

21. Any interference in the writ jurisdiction will not serve the interest of the institution rather it will suffer more.

22. Again by quashing the impugned order, it would amount to restoring an order dated 17.08.2023 which should have been based on the report of the B.S.A. whereas recommendation made by an unauthorized officer namely, Block Education Officer. Such wrong order cannot be restored or implemented by exercising powers under Article 226 of the Constitution of India.

23. In view of the discussion made hereinabove, the writ petition is devoid of merit hence, dismissed.

Order Date :- 20.11.2024
Ashish