

Court No. - 6

Case :- WRIT - A No. - 5886 of 2020

Petitioner :- Sheshmani Tripathi

Respondent :- State Of U.P And 4 Others

Counsel for Petitioner :- Devansh Misra,Kartikeya Saran

Counsel for Respondent :- C.S.C.,Lokesh Kumar Dwivedi

Hon'ble Saurabh Shyam Shamshery,J.

ORAL ORDER

1. Heard Sri Devansh Mishra, learned counsel for petitioner, Sri Brijendra Mani Shukla, learned Standing Counsel and Sri Lokesh Kumar Dwivedi, learned counsel for respondents.

2. Petitioner was appointed on the post of Head Master at Sri Shakti Vidyapeeth Junior High School, Bendo, Karchhana, Prayagraj on 08.11.2008. It is not under much dispute that a due process was followed in the recruitment process.

3. During recruitment process, respondent-5 (Rajnikanth Shukla) made a complaint on 16.10.2008 that petitioner has applied in said recruitment process with a forged experience certificate and accordingly, District Basic Education Officer, Prayagraj (Allahabad) vide order dated 22.10.2008 directed Assistant Basic Education Officer to conduct an inquiry. During inquiry, objections against experience certificate were not found sufficient and his appointment was approved vide order dated 07.11.2008.

4. It is further case of petitioner that he has worked peacefully for some years when an inquiry was contemplated and a notice

dated 03.08.2011 was issued on various allegations including that his appointment in earlier school was not approved by the B.S.A. and when it was remained unanswered, he was put under suspension vide order dated 26.08.2011.

5. Subsequently, a 3 Members Committee was constituted for inquiry on as many as 28 charges. The petitioner has replied to the charge sheet vide letter dated 26.07.2012 and subsequently, an Inquiry Report dated 31.03.2013 was submitted to Manager of Committee of Management. Charges No. 1, 3, 4, 6 to 11, 15, 17 to 24, 27 and 28 were found to be proved. Charges no. 12, 25 and 26 were proved in part and no opinion was made out on charges no. 13 and 14. Relevant part of Inquiry Report is quoted below :-

“उपर्युक्त विश्लेषण से स्पष्ट है कि आरोपी पर आरोप संख्या 1, 3, 4, 6 से 11, 15, 17 से 24, 27, 28 पूर्णतः सिद्ध होता है तथा आरोप सं० 12, 25, 26 आंशिक रूप से आरोप सं० 2, 5, 16 सिद्ध नहीं होता तथा आरोप संख्या 13, 14 पर जांच समिति कोई मत व्यक्त नहीं कर रही है। जाँच सम्बन्धी सम्पूर्ण अभिलेख प्रबन्ध समिति के समक्ष प्रेषित किये जा रहे हैं।”

6. Learned counsel for petitioner refers relevant part of inquiry report so far as charges no. 21 and 28 being relevant are quoted below :-

“आरोप संख्या-21

यह आरोप आरोपी द्वारा वांछित योग्यता बी०टी०सी० या समकक्ष न धारण से सम्बन्धित है। आरोपी ने स्वीकार किया है कि वह बी०एड० है। यह भी आरोप है कि अनुभव प्रमाण पत्र असंवैधानिक है। यह स्पष्ट है कि प्रार्थी की नियुक्ति के सम्बन्ध में जिला बेसिक शिक्षा अधिकारी इलाहाबाद द्वारा किसी भी प्रकार की पूर्वानुमति या अनुमोदन नहीं है इसलिए अनुभव प्रमाण पत्र दिनांक 09.02.2008 जो इस विद्यालय की नियुक्ति के समय दिया गया था वह पूर्णतः फर्जी है तथा मान्य नहीं किया जा सकता तथा योग्यता बी०टी०सी० या समकक्ष आरोपी नहीं रखता यह भी विचारणीय है कि अनुभव प्रमाण पत्र प्रधानाध्यापक पद का है अर्थात् सीधे प्रधानाध्यापक पर नियुक्ति दिखायी है। इसलिए यह सिद्ध होता है कि अनुभव प्रमाण पत्र पूर्णतः फर्जी है एवं इस विद्यालय में प्रधानाध्यापक की नियुक्ति प्राप्त करने के लिये असंवैधानिक रूप से प्राप्त किया गया जो कि विधिमान्य नहीं है।

आरोप संख्या 28

यह आरोप जांच समिति के पत्र दिनांक 07.05.2012 द्वारा आरोपी को साक्ष्य देकर निर्धारित किया गया है। आरोपी पर आरोप है कि उसने अपने नाम शेषमणि त्रिपाठी के नाम से 08.09.1994 को थोक औषधि विक्रय लाइसेन्स संख्या 20 बी-1664 एवं 21 बी-1665 प्राप्त किया था तथा लगातार इस व्यापार को कर रहा था तथा यह लाइसेन्स 31.12.2012 तक नवीनीकृत था बाद में 01.12.2008 के पत्र द्वारा व्यवसाय रोकने की सूचना दी तथा 22.03.2012 को लाइसेन्स समर्पित कर दिया।”

7. It further appears that petitioner has submitted an affidavit dated 12.07.2013 whereby he has requested not to take any action and that he will try to improve his conduct.

8. On basis of above affidavit, the Manager, Committee of Management passed an order dated 19.12.2013 whereby the petitioner be reinstated with a further direction to pay him salary for period of suspension also.

9. No action was taken on Inquiry Report dated 31.03.2013, however, it appears that after 3 years, the Committee of Management passed an order dated 11.04.2015 that due to non-cooperation of petitioner, not only he was again put under suspension but a new 3 Members’ Committee was also constituted. It was mentioned that the petitioner has without any reason, stopped result of Session 2014-15 and had made signature on attendance register, which appears to be a forged.

10. Thereafter, petitioner rushed to this Court by way of filing Writ A No. 7497/2016 against suspension order, that disciplinary proceedings were not concluded for a very long period and said writ petition was disposed of vide following order dated 26.02.2016 :-

“The petitioner is a Head Master of a Junior High School. By the impugned order he has been placed under suspension.

A perusal of the suspension order reveals that there are serious allegations against him that he has not declared the result for the academic year 2014-15 and it appears that he had made signatures on the attendance register which appears to be forged.

Heard learned counsel for the petitioner and the learned Standing Counsel.

Learned counsel for the petitioner has tried to convince the Court that the allegations are false. It is further urged that in spite of the repeated requests, documents have not been furnished to the petitioner. No other submission has been made by the learned counsel for the petitioner.

It is an explicit law that suspension is not a punishment. The employer has a right to suspend an employee in contemplation of enquiry.

The Court, ordinarily, does not interfere in the matter of suspension except when it is against the statutory rules or based on malafide. None of the said grounds has been raised by the learned counsel for the petitioner. The suspension order has been passed on 11.04.2015. The Supreme Court in the case of Ajai Kumar Choudhary v. Union of India and another J.T. 205 (2) SC 487 has held that if an employee has been placed under suspension, disciplinary proceedings should be expeditiously concluded preferably within three months and the prolonged suspension can be considered as arbitrary. In the present case, the petitioner has been placed under suspension on 11.04.2015 and the disciplinary proceedings have still not been completed.

Taking into consideration the facts and circumstances of the case, the respondents are directed to complete the disciplinary proceedings expeditiously, preferably within three months from the date of communication of this order. Learned counsel for the petitioner has assured the Court that the petitioner shall cooperate in the enquiry.

In view of the aforesaid, the writ petition is disposed of.

No order as to costs."

11. It appears that when despite above order, inquiry was concluded by 3 Members' Committee, the petitioner again approached this Court by way of Writ A No. 14338/2017 and it was disposed of vide following order dated 07.04.2017 :-

"Heard learned counsel for the petitioner and the learned Standing Counsel appearing for the State-respondents.

By means of this writ petition the petitioner has come up to this Court alleging that undue delay has happened in concluding the proceedings initiated against the petitioner by the Committee of Management by suspending the petitioner pending enquiry. The petitioner is a Head Master of privately managed institution but aided Junior High School. On certain allegations, he was suspended on 11.4.2015. Till date he continues under suspension.

Learned counsel for the petitioner has not been able to indicate any provision of law under which it governs the service condition of the petitioner.

It is to be noted that the Committee of Management is a private entity against whom no writ can be issued. But the Court cannot loose sight that the institution receives grant in aid from the State Exchequer and the management of the School has to be fair and proper. It is also to be noted that the petitioner is under suspension since 11.4.2015 and he cannot be allowed to be continuing under suspension for indefinite period.

The writ petition is disposed of with the direction to the Committee of Management to conclude the enquiry pending against the petitioner and pass appropriate orders in accordance with law expeditiously."

12. In aforesaid circumstances, when despite above 2 orders, disciplinary proceedings were not concluded and subsistence allowance was also not paid, the petitioner again approached this Court by way of filing Writ A No. 5517/2018 which was also

disposed of with a direction to District Basic Education Officer, Prayagraj to look into grievance of petitioner for payment of subsistence. Relevant part of said order is quoted below :-

"It is to be noted that the Committee of Management is a private entity against whom no writ can be issued. But the Court cannot loose sight that the institution receives grant in aid from the State Exchequer and the management of the School has to be fair and proper. It is also to be noted that the petitioner is under suspension since 11.4.2015 and he cannot be allowed to be continuing under suspension for indefinite period.

The writ petition is disposed of with the direction to the Committee of Management to conclude the enquiry pending against the petitioner and pass appropriate orders in accordance with law expeditiously."

In this backdrop, learned counsel for the petitioner apprises to the Court that even though the petitioner approached this Court twice but for the reason best known to them, the enquiry has not been concluded till today inspite of the categorical directions issued by this Court on 26.2.2016 in Writ A No.7497 of 2016. He further states that on 03.11.2017 the District Basic Education Officer, Allahabad directed to the Finance and Accounts Officer (Basic Education), Allahabad for payment of subsistence allowance of the petitioner equivalent to 75% of his salary. Even thereafter, on 11.11.2017 the Finance and Accounts Officer has also proceeded to direct the Manager of the Committee of Management of the institution in question for ensuring payment of subsistence allowance of the petitioner equivalent to 75% of his salary.

In the aforesaid circumstances, this Court is of the considered opinion that once the management is misleading and is not according aforesaid benefit to the petitioner inspite of the repeated reminders then the relief as has been prayed for is liable to be extended in favour of the petitioners.

In view of above, without expressing any opinion on the merits of the issue and

considering the facts and circumstances of the case and with the consent of parties, this writ petition is disposed of finally with a direction to the District Basic Education Officer, Allahabad to look into the grievance of the petitioner for payment of subsistence allowance equivalent to 75% of his salary and redress the same in accordance with Fundamental Rule 53 of U.P. Fundamental Rules within a period of two months from the date of production of a certified copy of this order before him”

13. Subsequently, the 3 Members’ Committee submitted its inquiry report dated 03.03.2018 to Manager of Committee of Management and learned counsel for petitioner has referred its relevant paragraphs which are mentioned below :-

“अतः उपर्युक्त परिस्थितियों में जाँच समिति उपलब्ध अभिलेखों तथा आरोपी द्वारा समय समय पत्र दिये गये स्पष्टीकरण पर विचार करते हुए अपनी जाँच आख्या प्रस्तुत कर रही है:-

1. यह कि पूर्व में जाँच समिति द्वारा प्रस्तुत जाँच आख्या दिनांक 31.03.2013 जो 28 आरोपों से सम्बन्धित है एवं जिसमें आरोप संख्या 4, 6, 11, 13, 15, 17, 24, 27, 28 पूर्णतः सिद्ध है। विशेष तौर से फर्जी अनुभव प्रमाण पत्र प्रधानाध्यापक पद का प्रस्तुत किया है जो जिला बेसिक शिक्षाधिकारी इलाहाबाद द्वारा अनुमोदित नहीं है तथा उसी कार्यकाल में आरोपी ने स्वयं स्वीकार किया है कि दिनांक 08.09.1994 से 31.12.2012 को लाइसेन्स समर्पित कर दिया है। दिनांक 31.03.2013 की जाँच आख्या इस जाँच आख्या का भाग है।

2. यह कि जाँच समिति ने जाँच में यह पाया कि दिनांक 01.07.1999 से 19.05.2008 तक का प्रस्तुत अनुभव प्रमाण पत्र पूर्णतः फर्जी है तथा वरिष्ठ जेल अधीक्षक केन्द्रीय कारागार नैनी इलाहाबाद के पत्र दिनांक 14.04.2015 से प्रमाणित है कि आरोपी दिनांक 18.08.2001 से 21.08.2001 तक जेल में निरुद्ध था इस समय पूर्व के विद्यालय श्रीमती राम कन्या प्राथमिक विद्यालय लोहिया नगर बजहा सोरांव इलाहाबाद बनाये गये आरोपी के हस्ताक्षर पूर्णतः फर्जी है।

उतः उक्त तथ्यों के अवलोकन व अभिलेखों के आधार पर निलम्बित प्रधानाध्यापक श्री शेषमणि त्रिपाठी दिनांक 31.03.2013 में उल्लिखित आरोप संख्या 1, 3, 4, 6 से 11, 15, 17 से 24, 27 व 28 पूर्ण सिद्ध है एवं दिनांक 23.04.2015 के द्वारा दोनों आरोप बिन्दु संख्या 2 के अनुसार पूर्णतः सिद्ध है एवं आरोपी उन आरोपों की जाँच में दोषी पाया गया है। इस जाँच आख्या के सभी मूल अभिलेख वापस किये जाते हैं।”

14. The earlier Inquiry Report dated 31.03.2013 was made part of above referred fresh Inquiry Report. On the basis of above referred two inquiry reports dated 31.03.2013 and 03.03.2018 passed after 5 years, the Committee of Management adopted a proposal dated 18.06.2018 whereby petitioner's services were proposed to be terminated and all papers were forwarded to concerned B.S.A.

15. During aforesaid period, petitioner was reinstated by Authorized Controller vide order dated 02.11.2018 with payment of salary for suspension period with an observation that petitioner was harassed though it was clarified that inquiry shall continue. Subsequently, the B.S.A. concerned, after granting opportunity of hearing to petitioner, passed impugned order dated 30.11.2019 and approved the resolution terminating the petitioner from service and order of recovery of entire salary was also passed against the petitioner and the then Manager of Committee of Management. Relevant part of it is quoted hereinafter :-

"The issue is as to whether the experience certificate that has been so appended by the petitioner - appellant should be accepted as a valid experience certificate or not in the facts of the case as accepted position is that the experience of petitioner-appellant is from an institution that has been recognized under U.P. Act No. 2 of 1921.

Such an issue has already been answered by this Court in the case of Arun Kumar Chaturvedi Vs. State of U.P. and others 2010 (1) ALJ 467 wherein learned Single Judge of this Court has proceeded to form an opinion that teaching experience has to be from an institution that is recognized under the provisions of U.P. Basic Education Act 1972 and the experience from any other Institution will be of no avail.

View to the similar effect has been reiterated by the Special Appeal Bench of this Court in the case of Tasneem Fatima Vs. State of U.P. and others 2014 (11) ADJ 428 decided on 27.11.2014. Relevant extract of the said judgment reads as follows:-

श्री शेषमणि त्रिपाठी द्वारा जांच समिति के समक्ष अपने पत्र दिनांक 06.08.2019 के साथ साक्ष्य के रूप में अनुभव प्रमाण पत्र जो नियुक्ति/चयन के समय प्रस्तुत किया गया था उसकी स्वप्रमाणित प्रति उपलब्ध करायी गयी है। श्री शेषमणि त्रिपाठी द्वारा प्रस्तुत अनुभव प्रमाण पत्र पार्श्वंकित है, जो कि प्रबन्धक, श्रीमती रामकन्या प्राथमिक विद्यालय लेहिया नगर, बजहा, इलाहाबाद द्वारा निर्गत है। श्री शेषमणि त्रिपाठी द्वारा प्रधानाध्यापक पद पर नियुक्ति हेतु प्रस्तुत किया गया अनुभव प्रमाण पत्र प्राथमिक विद्यालय का है।

इस प्रकार श्री शेषमणि त्रिपाठी, पुत्र स्व० श्री माता प्रसाद त्रिपाठी, निवासी ग्राम व पोस्ट रामपुर, करछना, प्रयागराज की नियुक्ति विषयक शिकायती प्रकरण की जांच हेतु नियुक्त जांच समितियों द्वारा प्रस्तुत जांच आख्या एवं उसके साथ संलग्न साक्ष्यों के अनुसार श्री शेषमणि त्रिपाठी की प्रधानाध्यापक के पद पर की गयी नियुक्ति उत्तर प्रदेश मान्यता प्राप्त बेसिक स्कूल (जूनियर हाईस्कूल) (अध्यापकों की भर्ती एवं सेवा की शर्त) नियमावली 1978" की धारा 2 (ड व छ) की धारा 4 की उपधारा-2 (ग) में निहित प्राविधानों के विरुद्ध पायी गयी।

साथ ही साथ श्री शेषमणि त्रिपाठी, पुत्र स्व० श्री माता प्रसाद त्रिपाठी, निवासी ग्राम व पोस्ट रामपुर, करछना, प्रयागराज द्वारा प्रधानाध्यापक के पद पर नियुक्ति हेतु प्रस्तुत अनुभव प्रमाण पत्र ऊपर उल्लिखित याचिका संख्या 35441/2000 अरुण कुमार चतुर्वेदी बनाम उ०प्र० राज्य व अन्य में मा० उच्च न्यायालय द्वारा पारित आदेश दिनांक 14.09.2009 एवं स्पेशल अपील डिफेक्टिव 350/2016 विनोद कुमार शुक्ला बनाम उ०प्र० राज्य व अन्य में मा० उच्च न्यायालय द्वारा पारित आदेश दिनांक 18.05.2016 के विरुद्ध है।

उक्त के आलोक में प्रबन्धक के पत्र दिनांक 18.06.2018 के साथ संलग्न श्री शेषमणि त्रिपाठी की सेवा समाप्ति विषयक प्रबन्ध समिति का प्रस्ताव दिनांक 10.06.2018 नियमानुकूल होने के कारण, प्रबन्ध समिति द्वारा प्रस्तुत श्री शेषमणि त्रिपाठी की सेवा समाप्ति विषयक प्रस्ताव का अनुमोदित करते हुए प्रबन्धक / प्राधिकृत नियंत्रक, श्री शक्ति विद्यापीठ जूनियर हाईस्कूल, बेन्दौ, करछना, प्रयागराज को निर्देशित किया जाता है कि नियमानुसार श्री शेषमणि त्रिपाठी को सेवा से पृथक करते हुए श्री शेषमणि त्रिपाठी को वेतनादि के रूप में भुगतान की गयी धनराशि की वसूली हेतु श्री शेषमणि त्रिपाठी एवं तत्कालीन प्रबन्धक, श्री शेष नारायण उपाध्याय, श्री शक्ति विद्यापीठ जूनियर हाईस्कूल, बेन्दौ, करछना, प्रयागराज के विरुद्ध वैधानिक कार्यवाही करते हुए वसूली गयी धनराशि को वित्त एवं लेखाधिकारी, बेसिक शिक्षा, प्रयागराज के माध्यम से राजकोष में जमा कराया जाना सुनिश्चित करें।

एतद्वारा उक्तवत प्रकरण निस्तारित किया जाता है।”

16. Aforesaid order is impugned in this writ petition and this Court has passed following interim order on 29.09.2020 :-

“Supplementary affidavit filed today is taken on record.

Heard Sri Kartikeya Saran, learned counsel for the petitioner, Sri Lokesh Kumar Dwivedi, learned counsel for respondent no. 4 and learned Standing Counsel for respondent nos. 1, 2 & 3.

Learned Standing Counsel has accepted notice on behalf of respondent nos. 1, 2 & 3, Sri Lokesh Kumar Dwivedi has put in appearance on behalf of respondent no. 4. No notice is required to be issued to respondent no. 5 considering the controversy involved in this case.

The argument advanced on behalf of the petitioner is that the qualification, as per the advertisement, that was required for the post, on which the petitioner has been working, he had submitted all the requisite qualification papers, however, later on it transpired that the selection and appointment of the petitioner has been questioned on the ground that the petitioner did not submit the requisite qualification regarding teaching experience in Junior High School. The petitioner submits that he has both the experience of teaching in Primary as well as Junior High School and since as Head Master of primary school, his experience was of longer period, he had submitted that document. He also submits that as per 1978 Selection and Recruitment Rules five years teaching experience in Junior High School is required and that qualification the petitioner did possess on the date of submission of application form for the post in question. It is also argued that no charge sheet was ever served upon him by the respondents before initiating impugned action in the matter and no formal enquiry as contemplated in law was held.

From the perusal of order impugned, the contention so advanced by learned counsel for the petitioner, prima facie appears to have substance and matter requires consideration.

Let a detailed counter affidavit be filed by all the respondents represented by the learned Standing Counsel and Sri Lokesh Kumar Dwivedi within a period of four weeks. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

List this matter on 17.11.2020.

In the meanwhile, until further orders of this Court, no recovery proceedings will be initiated against the petitioner pursuant to order dated 30.11.2019."

17. Pleadings have been exchanged and matter is ripe for final hearing.

18. Learned counsel for petitioner has argued at length and summarized his arguments in following manner :-

a. Qualification of petitioner was scrutinized earlier on more than one occasion and no ambiguity or allegation of fraud or forgery was found to be true. Petitioner's experience certificate was found genuine and for that reliance is placed on an order dated 07.11.2008 passed by B.S.A. and its relevant paragraphs are quoted below :-

“सहायक बेसिक शिक्षा अधिकारी, कौडिहार, इलाहाबाद ने श्री शेष मणि त्रिपाठी, श्रीमती रामकन्या प्राथमिक विद्यालय, लोहिया नगर, अटरामपुर, सोरांव, इलाहाबाद में प्रधानाध्यापक पद पर कार्यरत रहने विषयक जांच की गयी। उनके द्वारा अवगत कराया गया कि श्री शेष मणि त्रिपाठी का नाम जुलाई 1999 से प्रधानाध्यापक पद पर अध्यापक उपस्थिति पंजिका में अंकित है। इस पंजिका को श्रीमती शारदा सिंह, तत्कालीन सहायक बेसिक शिक्षा अधिकारी, होलागढ़, इलाहाबाद ने 03.03.2000 को अवलोकित किया है तथा छात्रवृत्ति का प्रेषण भी शेष मणि त्रिपाठी के हस्ताक्षर से किया गया है। इस प्रकार अध्यापक उपस्थिति पंजिका के आधार पर श्री शेष मणि त्रिपाठी का नाम प्रधानाध्यापक के पद पर जुलाई 1999 से 19.05.2008 तक अंकित है तथा तत्कालीन जिला बेसिक शिक्षा अधिकारी, इलाहाबाद द्वारा अपने पत्रांक / 635-699/2000-01 द्वारा प्राइमरी स्तर की

अस्थायी मान्यता प्रदान की गयी है जिससे स्पष्ट होता है कि श्री शेषमणि त्रिपाठी को पांच वर्ष से अधिक पढ़ाने का अनुभव है। ”

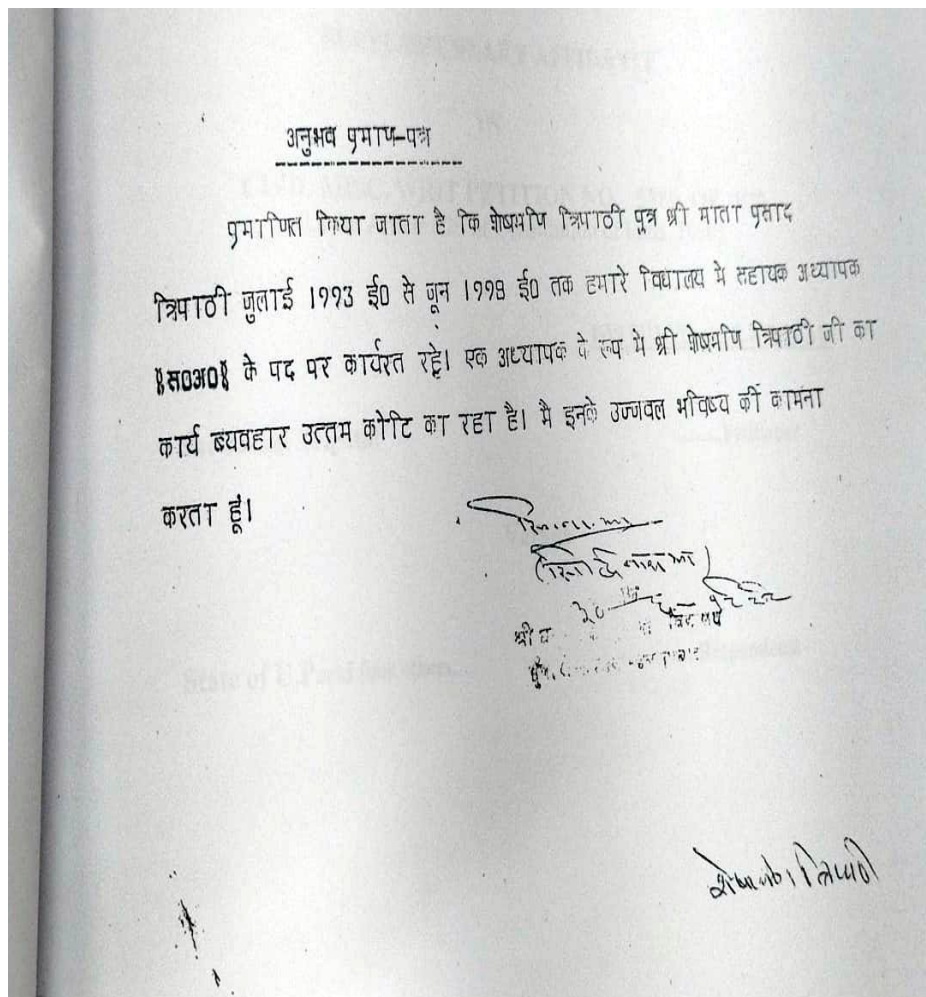
b. Allegation that petitioner having drug license which was valid from 1994 to 2012 and that in such circumstances, it was not probable for petitioner to impart teaching in other school, learned counsel submits that reply given by petitioner during above referred inquiry is sufficient which is mentioned in impugned order also and relevant part thereof is quoted below :-

8.	यह कि शेषमणि त्रिपाठी दिनांक 08.09.1994 से मेसर्स चन्द्रावती मेडिकल स्टोर के नाम से रामपुर करछना इलाहाबाद में मेडिकल स्टोर चलाते थे जिसका लाईसेंस 28.03.2012 को निरस्त हुआ है। इस प्रकार एक व्यक्ति दो कार्य कैसे कर सकता है। उक्त की छायाप्रति संलग्नक-6 है।	यह आरोप निराधार है। मेरे छोटे भाइयों द्वारा मेडिकल स्टोर चलाया जाता था। मेरी मां के नाम से चन्द्रावती त्रिपाठी मेडिकल स्टोर का नाम था जिसमें सभी भाइयों का हिस्सा था। बड़े पुत्र होने के कारण मां ने मुझे प्रोपराइटर बनाया था।
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*c. By referring contents of advertisement, learned counsel submits that therein it was provided that an experience certificate of 5 years can be provided from Junior High School/Primary School and petitioner does possess both qualifications and has submitted only an experience certificate from a Primary School. The Committee of Management is estopped to take any contrary stand even on basis of a subsequent judgment of this Court on status of school providing an experience certificate. In this regard he has placed reliance upon judgments of Supreme Court in **Parvaiz Ahmad Parry vs. State of Jammu and Kashmir and others, (2015) 17 SCC 709** and **Barun Kumar and others vs. State of Jharkhand and others, (2023) 15 SCC 660**. In regard to presence shown during the period petitioner was in jail, learned counsel submits that position was clarified by a letter dated*

17.11.2014 to the then Manager, however, said letter is not on record.

d. Last argument of learned counsel is that petitioner has possessed a experience certificate issued by Junior High School dated 30.06.1999 also, which is placed in this writ petition by way of a supplementary affidavit though it is not much denied that this document is placed for first time before this Court and since no specific allegation or charge or notice was issued in this regard, therefore, there was no opportunity to place said document when inquiry was pending before First 3 Members Committee or subsequent Three Members Committee. It can be still verified. The judgment of Arun Kumar Chaturvedi (supra) was passed subsequent to petitioner's appointment. For reference, a scanned copy of said certificate is pasted hereinafter :-



19. Learned Standing Counsel has supported impugned order and submits that petitioner was not qualified and all allegations made against him were found to be true, when first inquiry report dated 31.03.2013 was submitted, however, petitioner was granted one year's time to improve his conduct and when he was failed to do so, a new 3 Members' Committee was constituted to inquire further and accordingly, inquiry report dated 03.03.2018 was submitted making earlier Inquiry Report a part of it. Principles of natural justice were completely followed and since petitioner was not qualified in terms of judgment passed by this Court in **Arun Kumar Chaturvedi Chaturvedi vs. State of U.P. and others, 2010 (1) ALJ 467** as well as that he was in a business of drugs at relevant period, when he has allegedly got 5 years teaching experience from a Junior High School and there is no substantial material that it was either surrendered or he was not active in said business. The petitioner remained in jail from 18.08.2001 to 21.08.2001 and therefore, signature of petitioner on attendance register of Sri Dhanurdhar Jha Purva Madhyamik Vidyalaya, Mungari, Karchhana, Allahabad from where a certificate was issued for aforesaid period was a fraud. No possible reason or explanation is placed on record.

20. Learned counsel for concerned B.S.A. has also supported impugned order that it was passed after giving proper opportunity of hearing and since petitioner was not qualified in terms of Arun Kumar Chaturvedi (supra) i.e. he has not provided, requisite 5 year's experience certificate from a Junior High School either at the time of selection, during two inquiry committee or before the concerned B.S.A., proposal of termination was accepted.

21. Heard learned counsel for parties and perused the record.

22. Petitioner was appointed under a due process of selection on post of Head Master of concerned school and he was given appointment on 08.11.2008 and it was later on approved also. Petitioner has suffered an inquiry though it was on various allegations but main allegation was that he was not qualified i.e. his experience certificate was not in terms of Arun Kumar Chaturvedi (supra) and that since he was having a drugs license which was in currency during period when he has shown he has worked in school from where his experience certificate was issued as well as while he was in jail, his presence was shown in the school.

23. It is also on record that there are some inquiry reports which go in favour of petitioner and which has already been referred in earlier paragraph of this order, though I am of a view that said inquiry report will not estopp concerned respondent to conduct a fresh inquiry after giving opportunity of hearing to petitioner though earlier inquiry may have some relevance.

24. A factor which makes this case different is that inquiry report dated 31.03.2013 whereby relevant charges were found to be proved, still, no proposal was adopted rather petitioner was granted time to improve his conduct and later on, a new 3 Members' Committee was constituted after a period of about 3 years. None of respondents has able to show under which provision, a new 3 Members' Committee was constituted specifically when earlier an inquiry report was submitted. No fresh or supplementary charge sheet was submitted.

25. Nevertheless, petitioner was given opportunity to place his case before newly constituted 3 Members' Committee and finally second inquiry report dated 03.03.2018 was submitted and as referred above, it was mainly on 2 issues that experience certificate was a forged document as well as from 18.08.2001 to 21.08.2001, petitioner was confined in jail and presence shown in other school for said period was a fraud.

26. On basis of aforesaid two reports, Committee of Management adopted a proposal dated 10.06.2018 and papers were forwarded by letter dated 18.06.2018 to District Basic Education Officer, Prayagraj. Petitioner was provided opportunity to place his case before said respondent, however, without looking how two inquiry committees were constituted, said respondent has concentrated only on an issue that the experience certificate submitted by the petitioner from a primary school cannot be accepted in terms of Arun Kumar Chaturvedi (supra). At this stage, Court also takes note that an experience certificate from an Junior High School was not placed since it was not a ground for rejection of earlier experience certificate either of both inquiry reports.

27. On basis of above discussion, following irregularities are evident in impugned order :-

(a). There is no procedure prescribed in relevant Rules that after an inquiry report is submitted, it could be kept in abeyance for 3 years and thereafter it continued like a fresh or supplementary inquiry. It shows that at one stage, petitioner and Committee of Management was

having a good and cordial relation, which became sour after 3 years.

(b).Reasons assigned in impugned order by B.S.A. concerned was that petitioner was not qualified in terms of provisions and Arun Kumar Chaturvedi (supra) that his experience certificate from a primary school was not sufficient, however, as discussed above, it was for the first time considered at the stage of approval of proposal and it was not the allegations or grounds to unsuit the petitioner during first inquiry or extended inquiry. The allegation was that the petitioner's appointment as Principal at earlier school was not approved by the B.S.A.

(c).In this regard, Court takes note that an experience certificate is placed on record which is scanned and pasted in preceding paragraph no. 18(d). From its bare perusal, it appears that it has some defect such as it was not issued on letterhead of concerned school as well as stamp of school is also not very clearly visible. Otherwise also, it was not placed for scrutiny either in first inquiry or in second inquiry.

28. At this stage, Court also takes note that petitioner is out of service from 30.11.2019 and when this writ petition was filed in 2020, he was 56 years old and, therefore, at present he must be around 60-61 years, therefore, he has left with a very short period of service. A reference is also taken of a Office Memorandum dated 19.02.2020 issued by Deputy Director of Education (Basic) wherein presence of appointment of the

petitioner was found legal and once way back in the year 2008, such allegations were rejected, therefore, there is no fresh ground to unsuit the petitioner. This Office Memorandum was passed on a subsequent complaint dated 15.11.2018 submitted by respondent-5.

29. Court also takes note of rival submissions on issue of drug certificate. Copy of said certificate is not on record. There may be a possible explanation that petitioner was not active or he was not taken care of said family business, if any, and it may be a case that during said period, he was imparting education in school, however, Court also takes note that for a period from 18.08.2001 to 21.08.2001, petitioner was in jail which is not disputed and he has shown his presence in attendance register, which is also not much disputed, an explanation to it does not inspire confidence. Communication to the then Manager dated 17.11.2014 is also not on record.

30. In aforesaid circumstances, Court is of opinion that due process as required under law for conducting disciplinary proceedings was not followed, still, considering that no prejudice is caused to petitioner since on basis of experience certificate submitted at the time of selection, he could not be considered eligible and other experience certificate placed by supplementary affidavit has never seen light of the day. So far as disciplinary proceedings are concerned, it continued for six years i.e. 2013 to 2019 as well as this Court by interim order has stayed part of impugned order so far as recovery is concerned.

31. Therefore, Court is of view that impugned order could be interfered only to the extent that no recovery shall be made.

32. In these circumstances, matter can be sent for fresh inquiry also but considering petitioner has left with a very short period of service, therefore, no such order is passed. The Court can not ignore other adverse factors also, such as marking presence during a period, when the petitioner was in jail, effect of drug license, etc.

33. Writ petition is **disposed of** with above observations and directions.

Order Date :- 26.5.2025

N. Sinha

[Saurabh Shyam Shamshery, J.]