

Neutral Citation No. - 2025:AHC:41991

Reserved on 20.03.2025

Delivered on 24.03.2025

Court No. - 6

Case :- WRIT - A No. - 15850 of 2024

Petitioner :- Om Ji Porwal

Respondent :- State Of U.P. and 2 Others

Counsel for Petitioner :- Dinesh Tiwari, Sr. Advocate

Counsel for Respondent :- C.S.C., Kaushlesh Pratap Singh

Hon'ble Saurabh Shyam Shamshery, J.

1. Petitioner was appointed as Assistant Teacher and was promoted as Headmaster of Primary School/ Assistant Teacher in Junior High School on 29.06.2015 and since then he is working as Headmaster in Primary School, Sikharna, Block and District Auraiya.

2. Petitioner has suffered a criminal trial and disciplinary proceedings were initiated in the year 2017 and vide order dated 25.10.2017 he was reinstated with all consequential benefits since in departmental proceedings no substance was found with regard to allegations made against petitioner.

3. It is the case of petitioner that he acted as a whistle blower and pointed out certain corruption in department on which action was taken against some employees as well as he has filed complaints with regard to irregularities committed in the office of Block Resource Centre through United Teachers Association on 04.10.2021.

4. It is the case of petitioner that in above background he was put under suspension vide order dated 05.10.2021 on allegation that on 04.10.2021 he alongwith Members of Association assaulted the then Khand Shiksha Adhikari as well as he has repeatedly committed misconduct etc. In suspension order, in all, five allegations were made.

5. It is further case of petitioner that no charge sheet was submitted for about six months and without adhering to principle of natural justice, District Basic Education Officer, Auraiya passed an order dated 02.05.2022

whereby petitioner was terminated from services, as all charges were found to be proved.

6. The aforesaid order was subject matter of challenge in Writ-A No. 9674 of 2022 filed by petitioner. Said writ petition was allowed vide order dated 25.07.2022 since impugned order was passed in violation of provisions of U.P. Government Servant (Discipline and Appeal) Rules, 1999. Relevant part of order is reproduced hereinafter:

“Thus, accepting the submission of learned Senior Counsel appearing for the petitioner that the impugned order is violative of the provisions of the Rules, 1999, the impugned order dated 02.05.2022, annexure-13 to the writ petitioner, passed by the District Basic Education Officer, Auraiya, respondent no. 3, is set aside. The matter is remanded back to the Enquiry Officer to hold the enquiry afresh in accordance with the proper procedure as prescribed under the Rules, 1999.

Accordingly, the writ petition is allowed.”

7. It is further case of petitioner that in pursuance of above order when respondents did not allow petitioner to join service, he filed a contempt application and thereafter he was allowed to join vide order dated 13.01.2023 and by a subsequent order dated 18.01.2023 his salary was also paid.

8. In pursuance of order dated 25.07.2022 an inquiry was concluded and by inquiry report dated 10.03.2023 petitioner was exonerated from all charges. It is further case of petitioner that despite petitioner was exonerated by aforesaid inquiry report dated 10.03.2023, a fresh inquiry was initiated by a two Members Committee consisting of Block Education Officer, Auraiya and Block Education Officer, Sahar and a communication was made vide letter dated 18.06.2024 to petitioner. It is further case of petitioner that due to one or another reason, petitioner was not able to appear before said inquiry committee as well as relevant documents were also not provided to him to submit any reply and by means of order dated 29.06.2024 services of petitioner was again terminated. This order is impugned in present writ petition.

9. Sri R.K. Ojha, learned Senior Advocate assisted by Sri Dinesh Tiwari, learned counsel for petitioner, submitted that in terms of Rule 9 of U.P. Government Servant (Discipline and Appeal) Rules, 1999 in case of disagreement with inquiry report, the disciplinary authority either have to remand the matter back for fresh inquiry or to conduct inquiry itself after putting delinquent employee on notice, however, said procedure was not adopted. Second inquiry was conducted in haste without giving proper opportunity to petitioner to submit his reply. Learned Senior Advocate also submitted that in impugned order the subsequent events which were not part of second charge sheet were also taken note of which was beyond the jurisdiction of inquiry committee.

10. Per contra, Sri S. Shekhar and Sri Kaushlesh Pratap Singh, learned counsel for Respondents-2 and 3 and Sri Abhishek Srivastava, learned Additional Chief Standing Counsel for Respondent-1, referred counter affidavit filed by State that few facts were not mentioned in writ petition that inquiry report dated 09.01.2023 was considered and District Basic Education Officer has recorded its disagreement mainly on ground that subsequently a second inquiry report dated 10.03.2023 was submitted and both inquiry reports were contrary. Relevant part of report and disagreement note dated 15.09.2023 is reproduced hereinafter:

“सेवा समाप्ति की कार्यवाही से क्षुब्ध होकर श्री ओमजी पोरवाल और देवेन्द्र प्रताप सिंह मा० उच्च न्यायालय इलाहाबाद में योजित याचिका संख्या: 9674/2022 और 11111/2022 योजित की गयी। उक्त दोनो याचिकाओं में मा० उच्च न्यायालय इलाहाबाद में पारित आदेश के मुख्य अंश निम्नवत है।

Thus, accepting the submission of learned Senior Counsel appearing for the petitioner that the impugned order is violative of the provisions of the Rules, 1999, the impugned order dated 02.05.2022, annexure-13 to the writ petition, passed by the District Basic Education Officer, Auraiya, respondent no. 3, is set aside. The matter is remanded back to the Enquiry Officer to hold the enquiry afresh in accordance with the proper procedure as prescribed under the Rules, 1999.

*Accordingly the writ petition is **allowed***

मा० उच्च न्यायालय इलाहाबाद में योजित याचिका संख्या: 9674/2022 ओमजी पोरवाल और याचिका संख्या: 11111/2022 देवेन्द्र प्रताप सिंह के प्रकरण में मा० उच्च न्यायालय इलाहाबाद के द्वारा केवल जिला बेसिक शिक्षा अधिकारी औरैया के सेवा समाप्ती आदेश के सम्बन्ध में निम्नवत आदेश (order dated 02.05.2022, annexure-13 to the writ petition, passed by the District Basic Education Officer, Auraiya, respondent no. 3, is set aside.) करते हुये मा० न्यायालय के द्वारा सम्बन्धित अध्यापकों के प्रकरण में सरकारी सेवक (अनुशासन एवं अपील) नियमावली-1999 के आलोक में गठित जांच कमेटी द्वारा आरोपित बिन्दु के सापेक्ष संयुक्त जांच रिपोर्ट दिनांक 09.01.2023 को कार्यालय प्रस्तुत की गयी। यह जांच आख्या अस्पष्ट एवं बलहीन है यह भी अवगत कराना है कि जांच कमेटी द्वारा अपनी जांच रिपोर्ट दिनांक 09.01.2023 को प्रस्तुत करने के उपरान्त बिना किसी आदेश / निर्देश के पुनः दूसरी जांच आख्या दिनांक 10.03.2023 को प्रस्तुत कर दी गयी। जांच कमेटी के द्वारा प्रस्तुत जांच आख्यायें पूर्णतया विरोधाभासी हैं। ऐसा लगता है कि जांच कमेटी दबाव बस अथवा प्रलोभन में आकर ऐस कृत्य की है। विरोधाभासी एवं अस्पष्ट जांच आख्या होने के कारण सम्बन्धित प्रकरण पर निर्णय लिया जाना सम्भव नहीं है। इस तर्क हीन जांच आख्या से पूर्णतया असहमत होते हुये। मा० उच्च न्यायालय इलाहाबाद में योजित याचिका संख्या : 11111/2022 देवेन्द्र प्रताप सिंह बनाम उत्तर प्रदेश राज्य व 02 अन्य तथा योजित याचिका संख्या: 9674/2022 ओमजी पोरवाल बनाम उत्तर प्रदेश राज्य व 02 अन्य में पारित आदेश दिनांक में प्रकरण में सरकारी सेवक (अनुशासन एवं अपील) नियमावली-1999 के आलोक में पुनः नये सिरे जांच कराये जाने के निर्देश प्रदान किये गये हैं।

अतः आपसे अनुरोध है कि सम्बन्धित प्रकरण में पुनः जांच कराये जाने हेतु खण्ड शिक्षा अधिकारी के साथ संयुक्त रूप से नयी जांच कमेटी गठित करने का कष्ट करें जो पूर्व में आरोपित 05 बिन्दुओं के परिप्रेक्ष्य में विस्तृत जांच आख्या कार्यालय जिला बेसिक शिक्षा अधिकारी औरैया को उपलब्ध करायी जायेगी। जिस पर सम्यक विचारोपरान्त विहित प्रक्रिया अनुसार अग्रिम कार्यवाही करते हुये मा० उच्च न्यायालय इलाहाबाद को ससमय अवगत कराया जा सके। कृपया उपरोक्त से सहमत होने की दशा में हस्ताक्षर करना चाहें।

उपरोक्त आख्या से सहमत होते हुए मा० उच्च न्यायालय इलाहाबाद द्वारा दिनांक 25.07.2022 को दिये गये आदेश के पूर्व नामित जाँच कमेटी तथा उसके द्वारा की गयी सम्पूर्ण कार्यवाही को शून्य/निरस्त करते हुए मा० न्यायालय के उक्त आदेश के अनुपालन में पुनः सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999 में विहित प्रक्रिया द्वारा नयी जाँच कमेटी दो सदस्यी-

1- खण्ड शिक्षा अधिकारी - बिधुना

2- खण्ड शिक्षा अधिकारी- औरैया ग्रामीण को नामित किया जाता है।”

11. Learned counsel for respondents also submitted that not only the petitioner repeatedly put on notice but a press note was also issued on 24.06.2024 whereby petitioner was directed to appear on 28.06.2024 at

11.30 AM, however, he has not appeared. They also submitted that nature of allegations against petitioner are very serious. Petitioner alongwith members of association repeatedly misbehaved with Senior Officers and extended threats also. Learned counsel lastly submitted that provisions of Rule 9 of Rules, 1999 were substantially complied with.

12. I have heard learned counsel for parties and perused the material available on record.

13. Nature of charges against petitioner are very serious that he has repeatedly misbehaved with Senior Officers as well as despite repeated notices he has not appeared before second inquiry committee.

14. I have also perused the disagreement note and contents of it are sufficient to initiate fresh inquiry specifically in pursuance of direction passed by this Court whereby termination order passed earlier was set aside with liberty to conduct inquiry in accordance with law adhering to principle of natural justice.

15. After referring the aforesaid facts, Court takes note that there is a reference of two inquiry reports in disagreement note. Firstly dated 09.01.2023 which is on record, however, the second report dated 10.03.2023 is not on record, therefore, the Court is not aware, whether the ground that both were contrary is sustainable or not and since it was the main ground for disagreement and it was never confronted to petitioner also, therefore, Court is of the opinion that due process was not followed.

16. In view of above, impugned order dated 29.06.2024 is hereby set aside and respondents are directed to provide inquiry report dated 10.03.2023 to petitioner and a last opportunity be granted to petitioner to submit his reply and for that he is directed to appear before two Members Inquiry Committee on 28th March, 2025 and the said Committee will submit its report within two weeks thereafter. In case petitioner fails to submit his reply within aforesaid period, the Committee can proceed to conclude inquiry on basis of material available and thereafter the appointing authority will proceed

further in accordance with law on basis of inquiry report. For a period of six weeks from today, petitioner will be attached with the office of District Basic Education Officer, Etawah since there are allegations that he tries to influence Members of the Committee also and extends threats.

17. Any observation made in this order shall be considered only for the purpose of adjudication of this writ petition and inquiry will be conducted without being influenced by any observations made in this order.

18. The writ petition is accordingly disposed of.

Order Date :- 24.03.2025

AK