Neutral Citation No. - 2024:AHC-LKO:78773

A.F.R.

Court No. - 5
Case :- WRIT - A No. - 11061 of 2024

Petitioner :- Dr. Gyanvati Dixit
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Sec. Edu. Lko. And Others
Counsel for Petitioner :- Sudeep Kumar,Avdhesh Kumar Pandey,Shreshth Srivastava
Counsel for Respondent :- C.S.C.,Ashutosh Singh,Vijay Vikram

Hon'ble Abdul Moin,J.

1. Affidavit of compliance filed by Shri Ashutosh Singh, learned counsel appearing on behalf of the respondent No.5 is taken on record.

2. Heard learned counsel for the petitioner, learned Standing Counsel for the State-respondents and Shri Ashutosh Singh, learned counsel appearing on behalf of the respondent No.5.

3. Under challenge is the order dated 09.11.2024, a copy of which is Annexure-1 to the petition, by which the petitioner has been placed under suspension.

4. Raising a challenge to the said order, the contention is that earlier the petitioner had been suspended vide order dated 04.10.2024, a copy of which is Annexure-9 to the petition.

5. A challenge had been raised to the said suspension order by filing Writ A No.9746 of 2024 In Re Dr Gyanvati Dixit vs State of U.P. & Ors. This Court vide judgment and order dated 05.11.2024, a copy of which is Annexure-2 to the petition, quashed the said suspension order. It was further directed that consequences would follow. Further, it was left open for the competent authority to pass a fresh order, if required, in accordance with law.

6. Contention of the learned counsel for the petitioner is that without reinstating the petitioner in pursuance of the order of this Court dated 05.11.2024, the petitioner again has been placed

under suspension which could not have been done by the respondents inasmuch as once the petitioner had been placed under suspension vide the earlier order dated 04.11.2024, employer-employee relationship stood suspended and without the said relationship being restored by passing of a consequential order in terms of the order of this Court dated 05.11.2024, the petitioner could not again have been placed under suspension.

7. In this regard, learned counsel for the petitioner has placed reliance on the judgment of Hon'ble Supreme Court in the case of ***Managing Director of ECIL*** *vs* ***B. Karunakar : 1993 (4) SCC 727*** (Para 31), a Division Bench judgment of this Court passed in ***Special Appeal No.305 of 2007*** In Re ***Lal Bahadur Singh vs U.P. State Roadways Transport Corporation & Ors***, judgment of Hon'ble Supreme Court in the case ***Anand Narain Shukla*** *vs* ***State of Madhya Pradesh : (1980) 1 SCC 252*** as well as a judgment of Bombay High Court in the case of ***Salma Bi*** *vs* ***Collector, Buldana & Ors : 2022 SCC OnLine Bom 273***.

8. Learned counsel for the petitioner further argues that perusal of the impugned suspension order would indicate that the petitioner has been placed under suspension in view of the provisions of Section 16G(5)(b) of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as 'Act, 1921'). However, the aforesaid provision will only be attracted and applicable in case his continuance in office is likely to hamper or prejudice the conduct of disciplinary proceedings against him, but no enquiry was initiated at the time of passing the suspension order and thus, the suspension order reflects patent non application of mind.

9. No other ground has been urged.

10. Responding to the first submission of the learned counsel for the petitioner, learned counsel appearing for respondent No.5 argues that once this Court vide judgment and order dated 05.11.2024 had quashed the suspension order dated 04.10.2024 as such the reinstatement followed automatically and there was no requirement to pass a separate order for the same. This would be

apparent from the fact that while passing the impugned suspension order dated 09.11.2024, the petitioner has been addressed as the Principal of the Institution as specifically finds place in the order.

11. Responding to the second argument of the learned counsel for the petitioner, argument of learned counsel for respondent No.5 is that a perusal of the impugned suspension order would indicate that same has been passed under the provisions of Sections 16G(5)(a) and 16G(5)(b) and even if the argument raised by the petitioner with regard to Section 16G(5)(b) is upheld yet the suspension order can still be sustained considering that the charges levelled against the petitioner are serious enough to merit her dismissal.

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

13. From the argument as raised by the learned counsel for the petitioner and from perusal of the record, it emerges that earlier the petitioner has been suspended vide order dated 04.10.2024. Upon a challenge being raised to the said suspension order this Court vide judgment and order dated 05.11.2024 had quashed the suspension order and provided that consequences would follow. However, it was left open for the competent authority to pass a fresh order, if required, in accordance with law.

14. Again the petitioner has been placed under suspension vide order dated 09.11.2024. The order has been passed under the provisions of Section 16G(5) of the Act, 1921.

15. The grounds urged by the learned counsel for the petitioner in order to challenge the said order are (a) that the said suspension order has been passed without reinstating the petitioner after the earlier suspension order had been quashed by this Court and this Court had specifically provided that consequences are to be follow; and (b) that the suspension order has been passed under the provisions of Section 16G5(b) of the Act, 1921, which order could only be passed in case disciplinary proceedings are being conducted but as no disciplinary proceeding have been initiated against the petitioner, the same

thus reflects patently non application of mind and consequently, suspension order merits to be quashed.

16. As regards the first ground i.e. the suspension order having been passed without reinstating the petitioner, suffice to state that during the period of suspension employer-employee relationship does not come to an end. The employee is only prohibited from actually offering his services and discharging his duties and further during the suspension pending enquiry the remuneration is payable to the employee concerned.

17. In this regard, it would be suffice to refer to the judgments of the Supreme Court in the case of ***The Regional Director, Employees' State Insurance Corporation vs M/S Popular Automobiles Etc : AIR 1997 SC 3956, Public Services Tribunal Bar Association vs State Of U.P. & Another : 2003 (4) SCC 104*** and ***Khem Chand vs Union Of India : 1963 AIR 687 SC***.

18. Once the employer-employee relationship continues thus in terms of Section 16G(5) of the Act, 1921, which pertains to the suspension of the head of institution or teacher and the provision under which the petitioner has been suspended, the same categorically provides that it is the head of the institution or teacher who can be suspended by the management on the grounds as contemplated under the said section. As the earlier suspension order of the petitioner had already been quashed by this Court vide judgment and order dated 05.11.2024 and even if no formal order has been passed by the respondents reinstating the petitioner, the same would not take away the fact or the suspension order itself having been quashed and consequently the petitioner cannot be said to be a suspended employee on the date of passing of the fresh suspension order, in this case as on 09.11.2024 and thus in case no formal order was passed for the reinstatement of the petitioner the same would not vitiate the suspension order on the ground as urged by the petitioner.

19. Even otherwise if no formal order was passed in the case of the petitioner reinstating him, the same would have to be seen in

the context of the prejudice that may have been caused to the petitioner.

20. This aspect of the matter has been considered by the Hon'ble Supreme Court in the case of ***Canara Bank And Ors*** *vs* ***Debasis Das And Ors : 2003 (4) SCC 557*** wherein the Hon'ble Supreme Court has held as under:-

> *"**24. Additionally, there was no material placed by the employee to show as to how he has been prejudiced.** Though in all cases the post-decisional hearing cannot be a substitute for pre-decisional hearing, in the case at hand the position is different. The position was illuminatingly stated by this Court in Managing Director, ECIL v. B. Karunakar [Managing Director, ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] (SCC at p. 758, para 31) which reads as follows:*
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> *"31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal **and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present.** The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the court/tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the state of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination*

of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

(Emphasis supplied)

21. On perusal of the judgment in the case of ***Debasis Das (supra),*** it emerges that the Hon'ble Supreme Court has propounded on the aspect of 'prejudice' that may be caused to an employee where he/she alleges some violation. In the instant case, the violation, as alleged, is non issuance of the formal order of reinstatement. The learned counsel for the petitioner neither in his arguments nor in the petition has indicated anywhere as to the prejudice that may have been caused to him on account of non issuance of the formal order of reinstatement after his suspension order was quashed. In the absence thereto, merely because no formal order was issued prior to placing the petitioner under suspension, the same, in the opinion of the Court, will not vitiate the impugned suspension order as no prejudice has been caused to him.

22. Non passing of a formal order of reinstatement can also be seen in context of 'Useless Formality Theory' as enunciated by the Hon'ble Supreme Court in the case of ***M.C. Mehta vs Union Of India & Ors : 1997 (2) SCC 353***.

23. The reason as to why the said principle may be attracted in the facts of the instant case is that once the petitioner had only been placed under suspension vide order dated 04.10.2024 which suspension order had been quashed by the writ court vide judgment and order dated 05.11.2024 consequently the petitioner can be deemed to have been reinstated in service. Thus merely because a formal order of his reinstatement was not passed prior

to he again being placed under suspension by means of the order impugned the same would clearly fall within the ambit of Useless Formality Theory as per the judgment of the Hon'ble Supreme Court in the case of ***M.C. Mehta (supra)***.

24. Even otherwise considering the law laid down by the Hon'ble Supreme Court in the case of ***Gadde Venkateswara Rao vs Government Of Andhra Pradesh And Others : 1966 AIR 828 SC*** wherein the Hon'ble Supreme Court has held that unless there is a failure of justice, the Court may refuse to exercise the extraordinary jurisdiction with which it is vested, as such, this Court is of the view that merely because a formal order of reinstatement was not passed prior to the petitioner being placed under suspension, there has been no failure of justice and as such, this court refuses to exercise the extraordinary jurisdiction.

25. As already indicated above, once the earlier suspension order of the petitioner had been quashed consequently even if the respondents failed to pass a formal order of reinstatement, the same will not and cannot take away the power of the respondents to again place the petitioner under suspension as has clearly been done in the instant case. Thus, the aforesaid ground does not appeal to the Court and is accordingly rejected.

26. So far as judgment of the Hon'ble Supreme Court in the case of ***Anand Narain Shukla (supra)*** is concerned, the same has no applicability of the facts of the instant case inasmuch the Hon'ble Supreme Court has considered the reversion of the employee concerned to be one of reinstatement while in the instant case the petitioner had been placed under suspension.

27. So far as judgment of this Court in the case of ***Lal Bahadur Singh (supra)*** is concerned, the said judgment was a case of dismissal order having been quashed leaving it open to the respondents to conduct a fresh enquiry. In those circumstances, this Court had held that a fresh enquiry could only be conducted after the employee concerned was reinstated in the services and without reinstatement the enquiry could not have been conducted. In the instant case again it is not a case of the petitioner having

been dismissed or removed from the service rather he had only been placed under suspension and thus the said judgment would have no applicability to the facts of the instant case.

28. So far as the judgment of the Bombay High Court in the case of ***Salma Bi (supra)*** is concerned, the same would have no applicability to the facts of the instant case inasmuch as the same is a case pertaining to an election dispute while the instant case pertains to a service matter.

29. So far as the judgment of the Supreme Court in the case of ***B. Karunakar (supra)*** is concerned, para 31 pertains to a reinstatement of an employee, which again would have no applicability to the facts of the instant case.

30. As regards ground (b), suffice to state that perusal of the suspension order would indicate that the same had been passed both under the provisions of Section 16G(5)(a) and (b). Even if for the sake of the argument, the aforesaid ground as urged by the petitioner is considered to be valid that suspension could not have been ordered without an enquiry been initiated as provided under Section 16G(5)(b) of the Act, 1921 yet a perusal of the suspension order would indicate that the same has also been passed under the provisions of Section 16G(5)(a) of the Act, 1921 also and thus once the charges are serious as such the suspension order would squarely be covered by the provisions of Section 16G(5)(a) of the Act, 1921 and thus the petitioner has correctly been placed under suspension in terms of the aforesaid provisions.

31. The Court would like to add that it has not expressed any opinion with regard to provisions of Section 16G(5)(b) of the Act, 1921 that without issuance of a charge-sheet the suspension order cannot be passed and the said question is left open to be considered in an appropriate case.

32. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the writ petition stands ***dismissed***.

Order Date :- 27.11.2024/prateek