

Court No. - 32

Case :- WRIT - A No. - 1959 of 2022

Petitioner :- Basharat Ullah

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Arun Kumar Misra, Sanjay Kumar Singh

Counsel for Respondent :- C.S.C., R.B. Singh

Hon'ble Siddharth, J.

Heard Sri R. K. Ojha, learned Senior Advocate, assisted by Sri Arun Kumar Mishra, learned counsel for the petitioner and Sri Shailendra Singh, learned counsel appearing on behalf of respondent nos.1 to 6.

This writ petition has been filed praying for quashing of the order dated 08.09.2021 passed by Special Secretary, Uttar Pradesh Sashan, Lucknow / respondent no.2 and also the order dated 06.12.2021 passed by Registrar / Inspector U.P. Education Madrasa Education Board Lucknow / respondent no.4. Further prayer has been made to direct the respondents to not disturb peaceful functioning of the petitioner as Principal and pay his arrears of salary and month to month salary as and when due.

There is Madrasa in the name and style of "Madarsa Darul Uloom Ahle Sunnat Badrool Uloom at District Basti" which is under the grant-in-aid list of the State Government. The petitioner was appointed on the substantive vacancy created on the post of Principal on account of superannuation of earlier incumbent on 01.04.2019. Earlier he was Assistant Teacher in Alia in Darul Uloom Ahle Sunnat, Anwarul Raza Gaura Chowki, Post Babhanjeet, District Gonda from 29.09.2011 to 29.01.2016.

On the basis of aforesaid experience he applied for the post of Principal in the Madarsa. After following due procedure he was selected and appointment letter was issued in his favour. Petitioner joined his duties on 01.10.2019 and on 05.10.2019 the Committee of Management forwarded the papers for grant of approval to his appointment. Complaint was made against appointment of the petitioner and the State Government directed inquiry into the allegations which led to passing of the order dated 23.07.2020 by respondent no.4. The District Minority Welfare Officer, Basti verified the experience of the petitioner as Assistant Teacher from District Minority Welfare Officer, Gonda and certified the same.

A local Member of Legislative Assembly sent a letter to the Chief Minister of the State alleging that the conditional order of

approval of appointment of the petitioner dated 23.07.2020 is against the Rules and should be cancelled.

On the letter of the M.L.A the impugned order dated 08.09.2021 was passed by the Special Secretary, Uttar Pradesh Shashan, Lucknow / respondent no.2 and by the impugned order dated 06.12.2021 the aforesaid order was given effect by the respondent no.4.

Learned Senior Advocate appearing on behalf of the petitioner has submitted that both the impugned orders are grossly illegal and have been passed by the State Government without any notice or opportunity of hearing. The approved appointment of the petitioner could not have been cancelled without holding inquiry and proving the allegations against the petitioner before the inquiry officer by leading reliable evidence. The impugned orders are absolutely arbitrarily and have been passed on the dictate of Member of Legislative Assembly.

Counter affidavit has been filed on behalf of respondent nos. 1 to 5, wherein it has been submitted that in pursuance of two letters dated 03.09.2020 and 05.10.2020 sent by Sri Sanjay Pratap Jaiswal, M.L.A and Sri Swami Prasad Maurya, Labour and Employment Minister, the Secretary / Executive Officer, Haj Committee conducted an inquiry regarding the appointment of the petitioner and it was found to be against the rules and hence the approval granted to the petitioner regarding his appointment was withdrawn by the impugned order. It has further been stated that one, Jalaluddin Khan, has filed a writ petition before the Lucknow Bench of this court praying for quashing of the appointment of the petitioner, which is still pending. It has further been submitted that in the inquiry the petitioner was given full opportunity of hearing and the respondent no.4 after considering the material on record had withdrawn the approval granted to the appointment of the petitioner on the post of Principal. Hence vide order dated 23.07.2020 it was withdrawn by respondent no.2.

After hearing the rival contentions it is clear from the order dated 23.07.2020 that respondent no.2 only considered the complaint made by Sri Sanjay Pratap Jaiswal, local MLA and Sri Swami Prasad Maurya, Minister of Labour and employment U.P. and got some exparte inquiry report from Secretary / Executive Officer of Haj Committee and thereafter took the decision of cancelling the approval of appointment of the petitioner since he was required to communicate his decision to the State Government.

It is deplorable that the representative of the public compel the

public servant to pass illegal orders and the public servant comply their illegal dictates without any demur. The illegality in the conduct of the respondents is apparent from the material on record. The impugned orders have been passed in gross violation of Article 14 of the Constitution of India and are hereby quashed.

The petitioner is directed to be reinstated in service forthwith and his arrears of salary shall be paid to him within six weeks from today. The period during which the petitioner was forced out of employment shall not be considered to be break in his service. His month to month salary shall be paid to him from this month.

In case of delay in payment, as directed hereinabove, the petitioner would be entitled to get 9 percent simple interest per annum on the amount due to be paid to him from the date it fell due to the date of actual payment.

The State Government would be free to recover the interest paid to the petitioner from the public servant/servants found responsible for the delay.

The writ petition is allowed.

Order Date :- 5.5.2022

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