

**Court No. - 5**

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**Case :- WRIT - A No. - 4825 of 2021**

**Petitioner :- Sanjay Sinha**

**Respondent :- State of U.P. and Another**

**Counsel for Petitioner :- Siddharth Khare, Sr. Advocate (Ashok Khare)**

**Counsel for Respondent :- C.S.C., Abhinav Gaur**

**Hon'ble Saral Srivastava, J.**

Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Siddharth Khare, learned counsel for the petitioner and Sri Manish Goel, learned Additional Advocate General assisted by Sri A.K. Goel, learned Standing Counsel for respondents no.1 and 2.

Sri Anoop Trivedi, learned Senior Counsel assisted by Sri Sarvesh Dubey, Advocate appears for respondent no.2 submits that counsel for respondent no.2 Sri Sarvesh Dubey is a panelled counsel.

Since the notices on behalf of respondents no.1 and 2 have been received by office of Chief Standing Counsel, therefore, this Court is not inclined to call upon Sri Anoop Trivedi, learned Senior Counsel to appear on behalf of respondent no.2.

At the very outset it is noted that Director General, Basic Education U.P., Lucknow is a department under State of U.P. and office of Chief Standing Counsel has received notice on behalf of respondents no.1 and 2, therefore, in such circumstances, it is very strange that how Director General, Basic Education, U.P., Lucknow/respondent no.2 has formed a separate panel when the department is being represented by learned Chief Standing Counsel.

In such circumstances, the Court feels it proper to summon Director General, Basic Education, U.P., Lucknow/respondent no.2 to explain as to under which provision of law he has formed separate panel from office of Chief Standing Counsel. In this regard, he may file personal affidavit and explain the purpose of forming a separate panel from panel of Standing Counsel formed by State Government.

The petitioner by means of present writ petition has assailed the order dated 05.03.2021 passed by Additional Chief Secretary, U.P. Government suspending the petitioner.

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It is contended by learned counsel for the petitioner that two complaints have been submitted against the petitioner by unknown persons without any affidavit in support of those complaints. He submits that under Government Order dated 19.04.2012, it is mandatory that complaint should be supported by an affidavit of person who has made complaint. He further submits that a show cause notice was issued to the petitioner on 23.01.2020 and a detailed reply to the said show cause notice was submitted by the petitioner, copy of which is enclosed as Annexure-5 to the writ petition. He submits that frivolous charges have been levelled against him which are based upon a finding and roving enquiry by the authorities so as to make out a case for suspension against him. He submits that the petitioner has lastly been posted as Secretary, Board of Basic Education till September, 2018 and since then he has never been posted as Secretary, Board of Basic Education. All the charges levelled against the petitioner pertains to period for which he was working as Secretary, Board of Basic Education.

Thus, he submits that suspension order has been passed after about three years from the date he has been shifted from the post of Secretary, Board of Basic Education. He submits that purpose of suspension is to facilitate the conduct of enquiry and in the present case for about three years the petitioner has been posted on different posts other than Secretary, Board of Basic Education and thus, it cannot be said that the petitioner can in any way tamper the evidence to be used against him. He submits that the petitioner is at the verge of superannuation and is going to retire on 31.08.2021.

Thus, the submission is that suspension order has been passed mechanically without application of mind.

Per contra, Sri Manish Goel, learned Additional Advocate General submits that the charges levelled against the petitioner are so serious so as to award major punishment. He submits that there is every apprehension that the petitioner can tamper the evidence against him. Sri Goel has denied the argument of Sri Khare that no affidavit was filed by complainant in support of complaint.

The fact that the petitioner will retire on 31.08.2021 is not disputed by Sri Goel.

In view of the submissions of learned counsel for both the parties, matter requires consideration.

Sri A.K. Goel, learned Standing Counsel is granted two weeks time to file counter affidavit. One week time thereafter is

allowed to the petitioner for filing rejoinder affidavit.

Until further orders of this Court, operation of impugned order dated 05.03.2021 (Annexure-7 to the writ petition) passed by Additional Chief Secretary, U.P. Government shall remain stayed. However, it is made clear that enquiry against the petitioner shall continue and petitioner shall cooperate with the enquiry. It is further provided that the respondents shall endeavour to conclude enquiry expeditiously preferably within a period of two months.

Put up on 03.08.2021 as unlisted.

**Order Date :-** 19.7.2021

S.Sharma