
(2011) 07 AHC CK 0119

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No.38260 of 2011

C/M Standard Inter College, Mauaima, Allahabad and Another	APPELLANT
Vs	
State of U.P.and Others	RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Citation : (2011) 07 AHC CK 0119

Hon'ble Judges : V.K.Shukla, J

Judgement

V.K. Shukla, J.—In the present case, the petitioners have approached this Court, questioning the validity of order dated 22.06.2011 passed by the Finance and Accounts Officer, Office of the Basic Shiksha Adhikari, Allahabad, directing payment of salary but by way of single operation, till dispute to the office of Manager was resolved.

2. Brief background of the case, as disclosed in the writ petition, is that Standard Inter College, Mauaima, Allahabad is a society registered under the provisions of Societies Registration Act, 1860. Said society in question established an educational institution known as Standard Inter College, Mauaima, Allahabad. Originally, it was a Junior High School. As a Junior High School, the institution has been receiving grantinaid from the State Government. Subsequently, it was granted Vitta Vihin recognition up to Intermediate level, and no grantinaid is paid by the State Government with regard to members of the staff at High School and Intermediate level. Payment of salary to the members of the staff at Junior High School level is made from the State Exchequer through the Basic Shiksha Adhikari. The institution is minority institution being established and administered by Muslim Community. It has its own byelaw and scheme of administration duly approved by the Deputy Director of Education, Allahabad vide order dated 09.09.1986. Under the said scheme of administration the Committee of Management of the institution is to be managed for a term of five years. The last elections of the Committee of Management were held on 25.12.2006 and therein Mohd. Hasim and Gulam Rabbani were elected as President and Manager

respectively. Said election was duly recognized by the District Inspector of Schools, Allahabad by attesting the signature of petitioner No.2 as Manager. The term of the Committee of Management is to continue till December, 2011. The office bearers of the committee of management would be entitled to function for an additional period of four months. Salary bills to the teaching and nonteaching staff of the institution have been passed under the signature of petitioner No.2 in the capacity of Manager till the month of February, 2011. With regard to salary bill for the months March, 2011 and onwards, Principal of the institution has not been obtaining signature of the Manager. For such misconduct on the part of the Principal of the institution, Mohd. Yunus, has been placed under suspension by the Committee of Management, and an officiating Principal has been appointed. Petitioner submits that some papers have been submitted before the Assistant Registrar, Firms, Societies and Chits, claiming that petitioner no.2 has been removed from the office of the Manager. Based on the said papers, the Assistant Registrar has issued notice. Petitioners have stated that thereafter order impugned has been passed, which is subject matter of challenge in present writ petition.

3. Sri Ashok Khare, Senior Advocate, assisted by Sri Sidharth Khare, learned counsel for the petitioners, contended with vehemence that there was no occasion or justification for passing order of single operation, as has been done in the present case, specially when till date no adverse order in black and white has been passed by the authority concerned, holding therein that petitioner No.2 has ceased to function as Manager of the Institution, and in this background, writ petition deserves to be allowed.

4. Countering the said submissions, learned standing counsel as well as Sri C.N. Tripathi as well as Sri P.S. Baghel, Senior Advocate, assisted by Sri Pradeep Upadhyaya, Advocate, on the other hand, have contended that valid resolution has been passed for removing petitioner No.2 as Manager of the Committee of Management of the institution and further the general body of the society has been pleased to dispense with him from the membership. It has been stated that once such is the factual situation that valid resolution has been passed, papers have been transmitted, enquiry is ongoing with regard to the validity of the said resolution, as such petitioner No.2 cannot be permitted to function as Manager, as such no interference should be made.

5. After respective arguments have been made, the factual position on which there is no dispute and which is acceptable to petitioners as well, is that in the capacity of Manager salary bill had been submitted by the petitioner No.2, and this is accepted position that the said salary bill has been passed til February, 2011, and the petitioners have taken stand that the Principal of the institution was responsible for non submission of salary bill since March 2011 onwards, as such the petitioner could not have been penalized on the said score. From the side of respondents, it has been sought to be contended that it was conspiracy hatched by petitioner No. 2 that the salary bill could not be passed. The fact of

the matter is that after February, 2011, salary bill has not been passed and thus, bringing situation that teaching and nonteaching staff of the institution have been deprived of their salary, which they were otherwise entitled to get. The Committee of Management has come up with precise case that on 26.04.2011 resolution had been passed for removing petitioner No. 2 as Manager of the Committee of Management and one Mazid Ullah has been shown to have been elected as Manager for the remainder period. Papers have been submitted to the Assistant Registrar, Firms, Societies and Chits as well as to the District Inspector of Schools on 07.05.2001, who in his turn, after receipt of the said papers on 18.06.2011 has issued notice to petitioner No.2 as well as Mohd. Hashim fixing 28.06.2011 requiring them to appear before him along with original records, copy of agenda, the list of members and office bearers, who were present in the meeting, list of valid members and any other papers. The fact of the matter is that the District Inspector of School is examining this aspect of the matter as to whether valid resolution had been passed or not. Since the matter was engaging attention on the said facet of the matter, directives have been issued for ensuring payment of salary to the teaching and nonteaching staff by way of single operation, so that they should not be made to suffer of such ongoing dispute.

6. The idea under the provisions of U.P. Act No.6 of 1979 is to ensure regular salary to the teaching and nonteaching staff of the institution by 20th day of each calendar month, and once it had been found that there was serious dispute as to who should be allowed to continue as Manager of the institution and in the said direction in between till the clouds were not cleared, decision has been taken for ensuring salary by way of single operation. In view of the peculiar characteristic of the case when continuance of the petitioner No.2 is under cloud and the issue is to be judged as to whether the petitioner No.2 has been validly removed or not, then petitioners insistence before this Court that till the issues are not judged and order is not passed against him, he should be permitted to function as Manager. The authority of removal of an elected office bearer vests in the Committee of Management. Once Committee of Management has passed resolution for removing petitioner No.2, inducting another incumbent as Manager and validity of which is to be judged by a competent authority, then unless and until the position is cleared, the decision taken with regard to payment of salary by way of single operation cannot be faulted and this Court cannot come to rescue of the petitioners, inasmuch as there appears to be a serious dispute, which is to be resolved. Unless and until the petitioner No. 2 returns with finding in his favour, he cannot be permitted to operate the account. In such a situation and in this background, no interference is being made at this stage. However, the District Inspector of Schools is directed to conclude the proceedings undertaken in pursuance of letter dated 18.06.2011, within next two months from the date of receipt of a certified copy of this judgment. Needless to say that full opportunity of being heard be afforded to petitioner No.2 as well as Mohd. Hashim and reasoned decision be taken.

7. Writ petition stands disposed of accordingly.