(2012) 07 AHC CK 0026

In the Allahabad High Court

Case No : C.M.W.P. No. 6218 of 2012

Naresh Chandra Verma — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2013) 1 AWC 301

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Meera and Indra Raj Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Indra Raj Singh, learned counsel for the petitioner, learned standing counsel for the respondents and perused the record. The petitioner Naresh Chandra Verma, working as Principal. Shankar Anglo Vedic Inter College. Bharthana, Etawah (hereinafter referred to as "College") is aggrieved by order dated 16.1.2012 passed by District Inspector of Schools, Etawah (hereinafter referred to as "D.I.O.S.") directing for recovery of Rs. 2,14,430 from the petitioner for alleged disbursement of scholarship to 438 students, which is found to be a forged list of students and has resulted in misappropriation and embezzlement of scholarship funds to the aforesaid extent.

2. The facts, in brief, are that College is a recognized Secondary Educational Institution imparting education upto Class XII. It is governed by the provisions of U.P. Intermediate Education Act, 1921 [hereinafter referred to as "1921 Act"] and in the matter of payment of salary, it is governed by Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (hereinafter referred to as "1971 Act"). For the purpose of recruitment it is regulated by Uttar Pradesh Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as "1982 Act").

3. The petitioner was appointed as Lecturer in the College after being selected and recommended by U.P. Secondary Education Services Selection Board on 9.10.1992. It is said that erstwhile permanent Principal Sri Virendra Kumar Srivastava retired on attaining the age of superannuation on 30th June, 2003 whereafter charge was given to one Anil Kumar, senior most Lecturer in the College and he worked upto 5th March, 2010. On the one hand petitioner has pleaded in para 7 of writ petition that Sri Anil Kumar did not hand over charge of the office of Principal to anyone else though petitioner was selected and recommended for appointment as Principal of College on 6.3.2010 but simultaneously he has also not disputed of submitting salary bills of teachers of College and discharging duties of Principal, as is evident from para 9 of the writ petition.

4. A complaint was made by Sri Anil Kumar regarding forged and fictitious withdrawal of scholarship money meant for students of Classes 6, 7 and 8. The D.I.O.S. got the matter enquired through Sri Kripa Shankar Verma, Assistant D.I.O.S. cum Principal. G.I.C. Bharthana and Prem Chandra. Finance and Accounts Officer. Instead of submitting reply in respect to genuinity of students for whom scholarship alleged to have been paid in the session 2009-10 and 2010-11, the petitioner indulged in demanding copies of complaint etc. and thereby tried to delay the proceedings. The D.I.O.S., however, proceeded and issued order for recovery of embezzled amount on the basis of enquiry report dated 2.1.2012 submitted by Committee of aforesaid two officers, namely Associate D.I.O.S. and Finance and Accounts Officer, The Enquiry Committee submitted report that list of 438 students was fabricated and thereagainst, in the year 2010-11 a sum of Rs. 2,14,430 was withdrawn from the funds of District Social Welfare Department and District Backward Class Welfare Department and has been embezzled.

5. The petitioner has also filed a supplementary-affidavit placing on record Government order dated 16.8.2004 which provides that payment of scholarship shall be made to the students through bank account of nationalized bank and for such disbursement, Principal shall be the Competent Authority. The relevant provisions in paras 6 (2), 8 (b) and (c) may be reproduced as under:

(Emphasis added)

6. Sanction and disbursement of scholarships

2A. List of Government and non-Government recognised schools will be made available to District Social Welfare Officer by July 31 by District Basic Shiksha Adhikari/District Inspector of Schools,

8 (b) The amount of scholarship shall be transferred to scholarship accounts of the schools by District Social Welfare Officer on the basis of list of eligible students obtained from the Education Department. The scholarship account will be operated in nationalised bank under the joint signature of the principal of school and the senior most literate member on the basis of age of general

category of School Committee. Scholarships will be provided in cash to the students studying in classes 1 to 8 and the scholarships will be disbursed to the students studying in the classes above class 8 by transferring the amounts into their bank accounts.

(c) After the disbursement of scholarships, the list of beneficiary students with the details of amounts disbursed to them will be made available to District Social Welfare Officer by the principal and after the disbursement it will be the responsibility of the principal of school to return the remaining amount to District Social Welfare Officer.

(English Translation by the Court)

6. Para 5 of the Government order also provides if the College is in rural area, payment of scholarship to the students above class 8 would be in cash against receipt.

7. It is not the case of the petitioner that College in question is situated in rural area. It is further stated that there are two sections of classes 6, 7 and 8 having capacity of 75 students in each section and therefore, total 450 students were there in the session 2010-11. The petitioner prepared a list of 438 students out of 450, eligible and entitled for disbursement of scholarship and forwarded the same to D.I.O.S., who after making verification forwarded the same to District Social Welfare Officer (hereinafter referred to as the "D.S.W.O.") to sanction the amount of scholarship to 438 students. The D.S.W.O. in his turn released the sanctioned list and amount of scholarship to State Bank of India, Branch, Bharthana Etawah, He also forwarded the approved list of 438 students to the College.

8. Learned counsel for petitioner submitted that all the documents are also audited by the office of Accountant General. There are various checks and measures hence petitioner cannot be solely made responsible for the alleged recovery.

9. The recovery in question relates to alleged bogus payment of more than Rs. 2 lacs meant for scholarship to the students of Classes 6, 7 and 8. Government order dated 16.8.2004 does not talk of disbursement of scholarship to all the students but it is applicable to students belong to poor class, i.e., below poverty line. This scholarship is not confined to the students who are Scheduled Caste and Scheduled Tribe but to all the students who are below poverty line. The petitioner admitted that in Classes 6, 7 and 8 there were 450 students in the college and out of that 438 were recommended for disbursement of scholarship under the aforesaid Government order meaning thereby more than 97% students in Classes 6, 7 and 8 in the College were all below poverty line students entitled for the aforesaid scholarship. This itself raises serious doubt and is a matter of inquiry. However, I do not intend to rest here.

10. Learned counsel for petitioner admitted that amount of scholarship was not

disbursed to the students by bank account but the entire amount was withdrawn by petitioner from bank and thereafter disbursed in cash to the students. This itself was illegal and in breach of the Government order dated 16.8.2004. Besides, list submitted by petitioner alongwith names of some students as under:

11. Though common names are quite possible but same, parents having two issues with a gap of two month is slightly unbelievable and uncommon. Here Priyanshu Yadav and Aditya Yadav have common parents and address is also same. Both have date of birth with difference of just two months. The list apparently creates reasonable doubt. When this Court made query, learned counsel for the petitioner could not say anything and simply argued that the list having been approved by D.I.O.S, and D.S.W.O., they should also be asked to explain it and the petitioner solely cannot be held responsible.

12. Recovery of amount is from Principal. It is he who is instrumental in preparation of such a list and also in alleged distribution of scholarship which was withdrawn from the bank and paid in cash in violation of Government order. This clearly shows his direct involvement. Therefore, considering from legal or equitable or from any other angle, also besides as discussed above, I do not find it a fit case where this Court should exercise its discretionary and equitable extra ordinary jurisdiction under Article 226 of Constitution.

13. In my view, however, involvement of officers of Education and Social Welfare Department cannot be ignored or condoned. The list submitted by petitioner has been counter signed by D.I.O.S. as also D.S.W.O. They had responsibility of making a self verification, which it appears, has not been done. I do not propose to express any final opinion on the responsibilities of these officers since in my view this matter require further investigation and actual physical verification about students, whose names are mentioned in the list. If, on such physical verification, it is found that they were all or some or mostly bogus and the two officers approved it without verification, appropriate civil, criminal and departmental action shall also be initiated against them, who were responsible collectively and individually, both, to protect loitering of public funds being the custodian of public exchequer. They were bound to take steps for cross check and verification of the claim set up by educational institutions and their officials demanding public funds for use of public welfare but they failed to discharge their duties and this may have been in collusion with petitioner making convenient for actual misuse of the fund by the petitioner.

14. It is a fit case where criminal action must also be initiated forthwith and matter should be investigated through C.B.C.I.D., who shall proceed for investigation with due expeditiousness so as to book the guilty persons without any delay. It is only when the persons found guilty of such crime, if are punished in a reasonably expeditious manner, it will give a message causing deterrence to others and simultaneously leave a message of good governance to public at large.

15. I, therefore, direct Secretary, Secondary Education to take immediate steps

by lodging a first information report at P. S. Bharthana, Etawah and request competent authority to transfer investigation of the case to C.B.C.I.D. so as to complete its investigation expeditiously and in any case, within three months from the date of such assignment to C.B.C.I.D.

16. Besides, matter also need be investigated on departmental side as to how and in what manner such fictitious payment has been made.

17. Till then I also provide that amount sought to be realized from the petitioner shall be kept in a separate account bearing interest and in case it is found that some other persons are equally responsible, liability shall be shared proportionately by all subject to refund of extra amount received from petitioner.

18. A compliance/progress report shall be submitted to this Court on 20th November, 2012. The office shall list this case on that date under the heading "For Perusal of Compliance/Progress Report".

19. The Registrar General shall forthwith forward a copy of this order to the Secretary. Secondary Education for information and compliance. With the aforesaid direction/observations, the writ petition is dismissed.

