

(1999) 09 AHC CK 0239
In the Allahabad High Court
Case No : C.M.W.P. No. 10011 of 1997

Abdul Quadeer alias Abdul Quadir

APPELLANT

Vs

Committee of Mangement, Bharat Bhakt Samaj, Uchchar
Madhyamik Vidyalaya, Beonja, Banda and others

RESPONDENT

Date of Decision : 21-09-1999

Acts Referred:

Citation : (1999) 4 AWC 3229 : (1999) AWC 3229

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : W.H. Khan, J.J. Munir and I.A. Siddiqui, for the Appellant; V.K. Shukla, Rakesh Kumar, Janardan Sahai, P.K. Gupta and Miss Ainakshi Sharma, for the Respondent

Final Decision : Allowed

Judgement

V. M. Sahai, J.—The petitioner was appointed as peon in Bharat Bhakt Samaj Uchchar Madhyamik Vidyalaya. Beonja, district Banda. He was a confirmed peon. He absented himself from duty with effect from 1.3.1986. He was paid his salary till April. 1986. His salary was not paid for May 1986. He moved an application before the Principal of the institution for payment of his salary. He also filed a representation before the Deputy Director of Education. Jhansi Region, but nothing was done and the salary of the petitioner was not paid. He filed the instant writ petition claiming salary. This Court by its judgment dated 20.4.1995 allowed the writ petition and directed payment of salary to the petitioner. The Committee of Management moved an application for recalling the judgment dated 20.4.1995 on the ground that the petitioners services have been terminated by order dated 1.9.1986 and since the termination order has not been challenged by the petitioner the order dated 20.4.1995 be recalled. This Court on 22.9.1995. recalled its judgment dated 20.4.1995. The petitioner thereafter filed an amendment application challenging the termination order to which a detailed counter-affidavit was filed by the respondents. The amendment

application was allowed.

2. I have heard Sri I. A. Siddiqui, learned counsel for the petitioner, Sri V. K. Shukla, learned counsel appearing for respondent Nos. 1 and 2, Miss Ainakshi Sharma, learned standing counsel, appearing for respondent Nos. 3 to 5 and Sri Rakesh Kumar, learned counsel appearing for respondent No. 6.

3. Learned counsel for the petitioner urged that petitioner's services were never terminated by the respondents and the entire proceedings were fabricated by the respondents. He further urged that the petitioner was a permanent employee and the entire disciplinary proceedings were carried out behind the back of the petitioner contrary to principles of natural justice. Lastly, he urged that the petitioner's services have been terminated on 20.8.1986 on the basis of the report of the inquiry officer. The inquiry officer has not recorded any reason to show that the charge against the petitioner was proved. On the basis of such an inquiry report, the petitioner's services could not be terminated. On the other hand, learned counsel for the respondents have vehemently urged that since the petitioner did not participate in the disciplinary proceedings, there was no option left with the inquiry officer but to proceed ex parte. Since there was no defence from the side of the petitioner, no reasons were required to be recorded by the inquiry officer in support of his finding.

4. The Apex Court, time and again, has held that it is not sufficient for the inquiry officer to hold that the charges against the delinquent is proved. He has to record the reasons in support of the charge framed against the delinquent and discuss the evidence available on record and then record his finding about the guilt of the delinquent. Earlier there were two principles of natural justice, one that no one can be Judge of his own cause and the other audi alteram partem. The third principle that has been evolved is procedural fairness. The procedure adopted by the inquiry officer was required to be fair and he could not have acted arbitrarily. The report of the inquiry officer which has been filed as Annexure-C.A, 9 to the counter-affidavit demonstrates that he has found the petitioner guilty without recording any reason and without discussing the evidence which was against the petitioner. The report of the inquiry officer was in flagrant violation of principles of natural justice and the termination of petitioner's service on the basis of such an inquiry report cannot be maintained and the termination order is liable to be quashed. In view of the findings recorded by me above, it is not necessary to decide the other questions raised by learned counsel for the petitioner.

5. Sri V. K. Shukla, learned counsel for the respondents has pointed out that the date of birth of the petitioner is 1.8.1930 and the petitioner, in any case, would have superannuated after attaining the age of 60 years on 31.7.1990. Therefore, the relief of reinstatement in service cannot be granted to the petitioner. His argument appears to be correct. Therefore, the petitioner is entitled to all consequential benefits of service and arrears of salary.

6. In the result, the writ petition succeeds and is allowed. The order dated 1.9.1986 terminating the services of the petitioner passed by the respondents and the order dated 27.12.1986 passed by the District Inspector of Schools approving the termination of the petitioner from service are quashed. The petitioner shall be paid all consequential benefits of service. Since the petitioner has retired on 31.7.1990, therefore, his entire arrears of salary and post retiral benefits shall be calculated by the respondents and paid to him, within a period of three months from the date a certified copy of this order is produced before respondent No. 3.

7. There shall be no order as to costs.