(2005) 08 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 49402 of 2004

Acharya Narad Muni Trigunayat APPELLANT

Vs

District Inspector of Schools and Others RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 3
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A, 16B, 16G, 16G(5), 16G(6)
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 10

Citation : (2005) 6 AWC 5563 : (2006) 1 UPLBEC 140

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : S.K. Srivastava and Amar Nath Tripathi, for the Appellant; Avanish Mishra and S.C., for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Sri Amar Nath Tripathi learned counsel for the petitioner and Sri Awanish Misra for respondent no, 3. Learned Standing Counsel appears for respondents 1,2 & 4. The notice were not issued to respondents 5 & 6.

2. The Municipal Inter College, Fatehgarh, Farrukhabad is recognized and aided Intermediate College. On the superannuation of Sri Jageshwar Prasad Saxena, the then Principal of the College on 30.6,1990 Sri Suresh Chandra Misra was appointed as officiating Principal. He was suspended in March, 1993, after which the petitioner was given the charge of officiating Principal with effect from 23.3.1993. Sri Suresh Chandra Misra was selected by the U.P. Secondary Education Services Selection Board and was appointed as the Principal of the College in 1996. He retired on 30.6.2003, on which date Sri Nathu Singh Somvanshi was appointed as Officiating Principal. The petitioner challenged his appointment in writ petition No. 33412 of 2003. By an interim order dated

11.7.2003 the attestation of the signature of Sri Nathu Singh was stayed and the petitioner was given charge of officiating Principal.

3. It is contended that the Chairman of Nagar Palika Parishad did not want the petitioner to serve as Officiating Principal Audit of the school accounts was carried out in the School by Sthaniya Nidhi Lekha Pariksha, Kanpur Region, Kanpuri of the financial year 2004. In the audit inspection, certain irregularities in preparation of the salary bills, calculations and release of excess money to the college, were detected. The audit party found that Sri Ambrish Chandra Saxena, the Accountant was preparing inflated salary bills to the extent of Rs. 3,000/- from July 2001 to December, 2001 of Rs. 11,000/-, from January 2002 to February, 2003 Rs. 12,000/- from March, 2003 to September, 2003 and thereafter Rs. 13, 000/- every month from October 2003 to April, 2004 arid that a total amount of Rs. 3,33,000/- was drawn in excess, and was transferred to the personal account of Sri Ambrish Chandra Saxena. A n port was submitted by the petitioner to the Accounts Officer in the office of District Inspector of Schools, Fatehgarh on 27-5.2004. Sri Ambrish Chandra Saxena respondent No. 6, was attached to the office of Nagar Palika Parishad. The petitioner by his letter dated 3.6.2004 informed the Chairman of Nagar Palika Parishad that the salary bills were prepared by Sri Ambrish Chandra Saxena and that he had played a fraud upon the petitioner in getting his signature on these bills and cheques, and that Sri Saxena has deposited the entire defaulted amount. Sri Saxena has not cooperated during the audit, and that the disciplinary proceedings have been initiated, for the irregularities committed by Sri Saxena.

4. By an order dated 6.11.2004, the Chairman Nagar Palika Parishad, Fatehgarh placed the petitioner under suspension. The petitioner has challenged the suspension order in this writ petition. By an order dated 22,11.2004 this Court stayed the suspension order till the next date of listing. The Committee of Management of the school, filed a Special Appeal No. 14 of 2005 which was allowed on 5.1.200.5 While setting aside the interim order the Division Bench made a request to decide the writ petition on merits after hearing the parties, at an early date.

5. Sri Amar Nath Tripathi, learned counsel for the petitioner submits that the charge sheet dated 22.12.2004 was served upon the petitioner alleging two charges namely, (1) that when the petitioner was working as Principal of Municipal Inter College, Fatehgarh, he submitted incorrect salary bills of Rs. 91,000/- from October, 2003 to April, 2004 which were transferred after the payment to the account of Sri Ambrish Chandra Saxena working under administrative supervision of the petitioner and had embezzled this amount, which is violative of the provisions of Section 16-A, 16-B and Regulation 10 of Chapter I of the U.P. Intermediate Education Act, 1921, and (2) that when the petitioner was functioning as Principal of the college from October, 2003 to the date of his suspension, he gave a reply to the Chairman Nagar Palika Parishad on 22,7.2004 in response to the notice dated 14.7.2004, alleging that the Head

Clerk Sri Saxena used to prepare and disclose correct amount in the salary bill to be signed by the petitioner, and thereafter inflated the amount in the invoice of salary distribution list, which also bears the signature of Chairman Nagar Palika Parishad and the Accounts Officer; the reply was incorrect as the petitioner had signed the bill from September 2003 to April, 2004 with mistakes in calculation; the false statement of the petitioner serving on the important post of Principal is in violation reflects upon his integrity of the conduct Rules.

6. Sri Amar Nath Tripathi, learned counsel for the petitioner submits that the preparation of salary bills u/s 3 of the U.P. High School and Intermediate Colleges (Payment of Salary of Teachers and Other Employees) Act, 1971, is the job of the management of the institution and not the Principal. He submits that the suspension order has been passed by the Chairman, Nagar Palika Parishad in her individual capacity. The petitioner u/s 16-G of the U.P. Intermediate Education Act, 1921 can be suspended only by the management which means the Nagar Palika Parishad. The Parishad has not passed any resolution in this regard. The relevant documents were not communicated to the District Inspector of Schools as the charges were not finalized against the petitioner upto 22.12.2004. Sub-section (5) of Section 16-G of the Act provides that the Mead of the Institution or teacher shall not be suspended unless in the opinion of the management, the charges against him arc serious enough to merit his dismissal, removal or reduction in rank and that his continuation in office is likely to hamper or prejudice the conduct of the disciplinary proceedings against him.

7. In the present case where as the suspension order refers to the embezzlement the charges in the charge-sheet are only with regard to lack of supervision, and integrity, and thereby inputing misconduct. The first charge indicts the petitioner for signing the bills without verifying the contents. The amount in question was actually embezzled and transferred by Ambrish Chandra Saxena in his personal account. The second charge is only with regard, to the reply given by the petitioner, to the show cause notice in which he has reminded the Chairman Nagar Palika Parishad that she had also signed the bills,

8. Sri Tripathi further submits that the main culprit Sri Ambrish Chandra Saxena was attached to Nagar Palika Parishad, and that by order dated 16.7.2005 he has been reinstated on the basis of an enquiry report dated 14,7,2005, whereas the departmental enquiry has not yet began against the petitioner. He submits that taking into consideration the audit report and the nature of the charges. Once Sri Ambrish Chandra Saxena is exonerated, the charges can not be established against the petitioner. Sri Saxena has admitted the transfer of the amount in his own account, and has thereafter returned the entire amount by depositing it in the account of the school. In substance Sri Tripathi submits that the charges as leveled are not made out against the petitioner, and in any case they are not serious enough to merit his dismissal, removal or reduction in rank, and thus the suspension was wholly illegal and unwarranted.

9. Sri Awanish Misra appearing for the management states that serious financial

irregularities were detected by the audit party which carried out the audit from 15.5.2004 to 29.6.2004. The petitioner did not cooperate in the audit inspection. It was found that the college was inflating the salary bill and withdrawing the amount much in excess to the grant and entitlement. The defalcation took place between July, 2001 to April, 2004 and that the petitioner was officiating Principal between October, 2003 to April, 2004, He did not have proper supervision and control over the financial affairs of the College. The suspension was approved by the District Inspector of Schools on 5.1.2005. The petitioner is not cooperating the disciplinary enquiry. Sri Misra has relied upon the judgment of Supreme Court in State of Orissa Vs. Bimal Kumar Mohanty, and Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, , in support of his submission that where suspension is pending enquiry into charges of embezzlement and fabrication of records and a criminal trial is pending, the judicial review of suspension order is very limited. He also submits that on 21.12.2004 when the members of the enquiry committee reached the School, the petitioner without any authority closed the school prior to its regular time, to stall the

10. I have gone through the records and considered the respective submissions. The petitioner had officiated as, Principal of the College from 23.3.1993 to 1996 and was thereafter given ''charge as the senior-most teacher in pursuance of the interim order of this Court dated 11.7.2003 passed in writ petition No. 33413 of 2003. There were some differences between the Chairman Nagar Palika Parishad, and the petitioner. The audit report reflected that the salary bills were inflated from July, 2001. When the petitioner took over as officiating Principal in October, 2003 the bills were already inflated by Rs. 12000/- in each month. The salary and dearness allowances, were further increased to Rs. 1000/- from October, 2003. During all this period Sri Ambrish Chandra Saxena was preparing the bills and was transferring the excess amount to his own account. The petitioner was suspended on account of the irregularities detected in the audit report. The suspension order was stayed on 22.11.2004. Instead of forwarding the entire documents along with the charge-sheet to the District Inspector of Schools for approval the management sat over the matter for a long time. Though, it is stated that the petitioner was not cooperating in the enquiry and did not accept the charge-sheet, I find that the charge-sheet was prepared only on 22.12,2004. It was not prepared and signed within seven days of the date of the order of suspension, to be sent the Inspector, violating the procedural requirement of sub section (6) of Section 16-G of the Act. The bills were prepared by Sri Ambrish Chandra Saxena and were required to be counter-signed both by the Principal and the Manager of the Institution. It was found by the audit party that Sri Ambrish Chandra Saxena was committing these irregularities for a long period of time much prior to the taking over of the petitioner as Officiating Principal, and was diverting the excess amount to his own account. The fact that the Chairman Nagar Palika Parishad has re-instated him on 16.7.2005, takes away the entire sting of the charges against the petitioner.

11. In Rajendra Prasad Srivastava v. State of U.P. and Ors., 1989 (1) UPLBEC 143, a Division Bench of this Court held that sub section (5) of Section 16G requires that before a person is suspended the charges must be framed against him, and must be so serious, so as to lead to his dismissal, removal or reduction in rank. In the present case, a perusal of charge sheet dated 22.12.2004 shows that the management has proposed to proceed against the petitioner for lack of supervision and for giving a false reply to the Chairman, Nagar Palika Parishad. Although the allegations in charge No. 1, input that that the petitioner was equally responsible for embezzlement, the substance of the allegation is that the petitioner violated the rules/regulations under the Intermediate Education Act and thus he did not have proper administrative control over Sri Ambrish Chandra Saxena. The second charge refers to alleged false reply regarding the signatures of Chairman and Accounts Officer on salary bills. These charges even if established, are not such which are likely to result in any major penalty against the petitioner. The management as such was not justified in suspending the petitioner, more so, when admittedly there were differences between the Chairman Nagar Palika Parishad and Principal with regard to officiation of the petitioner as Principal of the College.

12. In paragraph 11 of the rejoinder affidavit, the petitioner has explained the reasons for closing the college at 3.15 P.M. instead of 4.30 P.M. On 22.11.2004, the Principal, some teachers and clerks were required to attend the office of the District Inspector of Schools, and thus the petitioner took a decision to close the college, half an hour before the scheduled time. Although this explanation does not appear to he, satisfactory, the issue is not so serious to be taken into, consideration for denying any relief to the petitioner in this writ petition.

13. In the cases cited by Shri Avanish Misra, counsel for the Nagar Palika Parishad, the delinquent employees were charged with embezzlement and fabrication of records, and that the Courts/Tribunal had not interfered on the grounds of delay. Shri Misra, however, could not explain MS to why on these principles of have relied upon by him the main accused Shri Saxena, who admittedly deposited the entire misappropriated amount was firstly attached to Nagar Palika Parishad, and was thereafter reinstated.

14. For the aforesaid reasons, the writ petition succeeds and is allowed. The suspension order dated 6.11.2004 passed by the respondent No. 3 suspending the petitioner is set aside. The inquiry, however, may proceed, and shall be concluded expeditiously in accordance with law.

