
(2015) 02 AHC CK 0117
In the Allahabad High Court
Case No : C.M.W.P. No. 30268 of 2009

Akhilesh Kumar Gupta and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Citation : (2015) 5 ALJ 329 : (2015) 109 ALR 597 : (2015) 2 UPLBEC 1078

Hon'ble Judges : Yashwant Varma, J

Bench : Single Bench

Advocate : D.K. Srivastava, Vijay Bahadur Shivhare, S.K. Mishra, K.S. Rathor and A.F.S. Rathor, for the Appellant; Chandra Bhan Gupta, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Yashwant Varma, J.

1. I have heard learned Counsel for the petitioner, learned Standing Counsel for the State respondents and Sri Chandra Bhan Gupta for respondent No. 4 - Principal, Mahavir Inter College, Sami, Jalaun. This petition lays challenge to orders dated 25.4.2003/25.9.2003 made by the respondent No. 4 terminating the services of the Petitioners. Further challenge has been laid to the order dated 2.4.2009, passed by the District Inspector of Schools, approving the action of the respondent No. 4.

2. Brief facts relevant for resolution of the present writ petition are as under:- It is asserted in the writ petition that two posts in the Class IV category fell vacant in the institution in question in the year 2000 and pursuant to the same, the respondent No. 4 commenced the process of recruitment. The petitioners assert that consequent to the said exercise undertaken by the respondent No. 4, they applied for appointment and after facing a selection committee, were appointed after completion of all formalities as mandated by Regulation 101 of Chapter III under the U.P. Intermediate Education Act, 1921. Pursuant to the above, they

have said to have joined their services in the institution on 24.5.2001. The petitioners further aver that their appointments were approved by the District Inspector of Schools on 15.6.2001.

3. It appears that on 24.7.2001, the Assistant Accounts Officer attached to the Office of the District Inspector of Schools passed an order stating therein that the appointment of the petitioners have not yet been approved by the Joint Director of Education, Jhansi as required in terms of the Government Order dated 19.12.2000 and accordingly directed the Manager of the Institution to submit the salary bills of the petitioners for the month of June 2001 onwards separately. The petitioners aggrieved by the said order appear to have preferred Writ Petition No. 29366 of 2001, assailing the validity of the aforesaid order. This Court by an interim order dated 9.8.2001, after hearing the contesting parties stayed the operation of the order dated 24.7.2001.

4. It appears that consequent to the aforesaid interim order of this Court, the petitioners started getting salary. In the above situation, the petitioners filed an application dated 28.3.2003 for withdrawing the writ petition itself. This application also referred to a communication of the Head Master of the Institution in question wherein it was stated that pursuant to the interim order granted by this Court on the writ petition aforementioned, the petitioners and others have been paid salary and that they are also being paid salary for the subsequent months. Accordingly, the letter records that the Head Master felt no need further to file a counter-affidavit in the said writ petition. This application for withdrawal of the writ petition was allowed by this Court on 1.4.2003 and the writ petition was consequently dismissed as not pressed.

5. Thereafter it transpires that Writ Petition No. 21248 of 2008 came to be preferred by one Kusum Kumar Sharma. In that writ petition, the petitioner asserting himself to be the Principal of the Institution in question claimed to have cancelled the appointment of the petitioners herein and submitted that the said order had been sent for the approval of the District Inspector of Schools on 24.12.2005 and again on 26.12.2007. The petitioner therein asserted that the District Inspector of Schools had not taken any decision on the aforesaid papers as laid before him. In the aforesaid circumstances, this Court disposed of the writ petition without notice to the petitioners by providing that the District Inspector of Schools would proceed to decide the issue of approval of the order of termination after affording opportunity of hearing to all parties, including the petitioners herein.

6. The petitioners assert that it was only when the District Inspector of Schools proceeded to take action pursuant to the direction of this Court that they received notices from his office and for the first time came to know of the stand of the Management that their services had been terminated and that some writ proceedings have been initiated before this Court and upon which ex-parte orders had been passed.

7. Pursuant to the direction of this Court, the District Inspector of Schools appears to have instituted the proceedings in which the petitioners as well as the Principal of the Institution appeared before him. In the said proceedings, the Principal asserted that the services of the petitioners had been terminated on 25.4.2003 and 25.9.2003. He further submitted before the District Inspector of Schools that the petitioners had preferred no appeal to the Management against the aforesaid order and therefore it had attained finality and remained in force.

8. The District Inspector of Schools proceeded to hold that since the petitioners had not preferred any appeal to the Management against the order dated 25.4.2003, the same continued to operate and therefore they were not entitled to any relief. He additionally held that the appointment of the petitioners did not enjoy the approval of the Regional Level Committee, as required under the Government Order dated 19.12.2000 and therefore also he was constrained to accept the proposal of the Management to terminate the services of the petitioners in terms of its orders dated 25.4.2003 and 25.9.2003. This order, which was passed by the District Inspector of Schools on 26.5.2009 is what constrained the petitioners to approach this Court by instituting the present writ petition and challenge the orders of dismissal dated 25.4.2003/25.9.2003 and the order of the District Inspector of Schools referred to above.

9. It becomes relevant to state here that the order dated 25.4.2003 made against petitioner No. 2 and order 25.9.2003 made against petitioner No. 1 records that they had obtained appointment in class IV post by concealing material facts and therefore in light of concealment of facts and misrepresentation, their appointments were being cancelled forthwith.

10. Learned Counsel for the petitioners has submitted that prior to the initiation of proceedings by the District Inspector of Schools, pursuant to the order of this Court made upon Kusum Kumar Sharma v. State of U.P and others, Writ Petition No. 21248 of 2008, the petitioners had no notice of their services having been terminated on 25.4.2003 and 25.9.2003. He further submitted that the petitioners were never served with any notice prior to the passing of the order of termination and that the entire action was taken behind their back in utter violation of the provisions of Regulations 31 to 39 of Chapter III of the Act, 1921. He has further submitted that the fact that the petitioners were never put to notice and that all proceedings have been taken ex parte against them is further evidenced by the admitted case of the respondents that the so called orders of termination dated 25.4.2003 and 25.9.2003 were sent for approval to the District Inspector of Schools only in December 2005 and the said order itself was approved only on 26.5.2009.

11. Learned Standing Counsel and Sri C.B. Gupta who have appeared for the private respondent have opposed the writ petition and have primarily submitted that the petitioners having withdrawn the writ petition No. 29366 of 2001, no relief is liable to be granted to them. They would submit that the approval of the Regional Level Committee was clearly mandated in terms of the Government

Order dated 19.12.2000 and since their appointment did not enjoy the said approval, the petitioners were not liable to be continued. Insofar as the proceedings taken against the petitioners, they would submit that the petitioners were put to notice but they chose not to participate in the enquiry.

12. This Court before proceeding further must note here that that despite repeated queries put by the Court to the respondents as to what were the facts which were concealed by the petitioners and what was the misrepresentation practiced by them, which led to passing of the orders dated 25.4.2003 and 25.9.2003, both learned Standing Counsel as well as Sri C.B. Gupta were silent on this aspect and did not urge or invite the attention of the Court to any material in proof of the grounds, which formed the bedrock of the orders of termination. No explanation was offered by the Counsel for the respondents in support of the recitals carried in the impugned order.

13. In light of the above position, this Court is constrained to record that irrespective of whether the petitioners were put to notice or not, the fact remains that the very basis upon which the impugned orders of termination were based appear to be non-existent. As noted above, the respondents failed to advert to any material or record in support of their claim that the petitioners had misrepresented/concealed facts in order to obtain appointment. In view of the above and the position which emerges from the record and submission of parties, this Court holds that the impugned orders of termination cannot be sustained.

14. It would not be out of place to notice here the nature of the proceedings taken before the District Inspector of Schools. As is evident from a reading of Regulation 31 an order of punishment made against a class IV employee can be made by the Principal of the Institution concerned. The same can thereafter be assailed before the Committee of Management of the Institution concerned. Against an order passed by the Committee of Management in such proceedings the employee is conferred a right of further representation to the District Inspector of Schools. However these provisions neither mandate nor require any approval of the Inspector before the order of punishment comes into effect. The Committee of Management as well as the District Inspector of Schools in this regard function only as Appellate authorities. The life and validity of the order of punishment is not dependant upon any stamp of approval being accorded by the above authorities.

15. The District Inspector of Schools in the facts of the present case has correctly found that since no appeal was preferred by the Petitioners against the order of termination to the Committee of Management, the same could not be taken up by him directly. However he also does not refer to or rely upon any material which would establish the misrepresentation or concealment of facts practiced by the petitioners. Without adverting to this aspect of the matter, he proceeds to uphold the orders of termination and pass orders for stoppage of salary to the petitioners.

16. As noticed hereinabove, all these aspects of the matter pale into insignificance in light of the abject failure of the respondents to either point but to the Court or invite its attention to any material to justify what was recorded in the orders of termination.

17. This then leaves just one other issue and that is with respect to the validity of the appointment of the petitioners.

18. The learned Counsel for the Petitioner has strenuously urged for the acceptance by this Court his contention that the appointments of the Petitioners having been approved by the District Inspector of Schools, there was no further requirement of seeking approval or consent of the Regional Level Committee in terms of the Government Order dated 19.12.2000. He would submit that on a plain reading of the aforesaid Government Order it is clear that no such obligation stood placed upon the respondents and that in any view of the matter, their appointments could not be annulled in absence of such approval.

19. This Court finds itself unable to accept the above contentions. Here are the reasons.

20. Admittedly the appointment of the Petitioners were to be made in accordance with the provisions of Regulation 101, Chapter III of the Regulations framed under the Act, 1921. The other aspect which must be borne in mind is that it was the unamended Regulation 101 which was applicable insofar as the appointment of the petitioners was concerned. The fact that the District Inspector of Schools had approved their appointments is also not disputed.

21. However on the date when the approval was accorded by the District Inspector of Schools, the Government Order dated 19.12.2000 stood already promulgated. In fact it was the issue of compliance with the provisions of this Government Order and consequent stoppage of salary which led the petitioners to institute Writ Petition No. 29366 of 2001 and challenge the order dated 24.7.2001. The point of applicability of this Government Order was directly taken and raised in this writ petition. However the Petitioners themselves got this writ petition dismissed as not pressed. If it be suggested that cause of action on this petition did not survive as the Petitioners started getting salary, the same would be incorrect inasmuch as salary was being paid to the petitioners consequent to the interim order granted by this Court on the aforesaid writ petition; Since the petitioners got this writ petition dismissed as not pressed the objection raised by them with regard to the applicability of the Government Order also died. This, therefore, is the first reason why the contention of the learned Counsel for the Petitioner cannot be accepted. Secondly and more importantly this Court finds that the Government Order in question uses the words "all matters connected with financial approval.." The words used are all encompassing and pervading. Further a reading of the Government Order itself establishes that it came to be made to check the various maladies noticed by the State Government in the administration of the powers conferred on the authorities under the Act, 1921.

Therefore its provisions must receive an interpretation which would aid and enable the remedying of the mischief and stem the malpractices noticed by the Government. That appointments of any nature would involve a financial implication cannot be doubted and therefore also the provisions of the Government Order stand attracted. This, then is the second reason which compels the Court to reject the submissions advanced on behalf of the Petitioners.

22. In view of the above this Court holds that the appointment of the petitioners was liable to enjoy the financial approval of the Regional Level Committee in terms of the Government Order aforementioned. Accordingly and in view of the above discussion, the writ petition is partly allowed. The orders dated 25.4.2003 and 25.9.2003 passed by the respondent No. 4 are hereby quashed. For the reasons set out hereinabove the order dated 26.5.2009 passed by the respondent No. 3 shall also stand set aside. The respective parties are relegated to the Regional Level Committee constituted under the provisions of the Government Order dated 19.12.2000 which will scrutinize the appointments of the Petitioner in terms of the obligation placed upon it under the Government Order referred to above and pass appropriate orders within 2 months of the production of a certified copy of the order of this Court before it. Needless to state, but it is so provided, that the Regional Level Committee will afford an opportunity of hearing to all concerned parties before making its order. The consequential relief to the Petitioners shall abide by and be subject to the decision taken by the Regional Level Committee.