

(2009) 05 AHC CK 0028

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 48800 of 2003

Awdhesh Kumar Singh

APPELLANT

Vs

Principal, Boys High School and College, Allahabad and
others

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Citation : (2009) 122 FLR 327

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : A.N. Bhargava, S.K. Dwivedi, Deoraj, K.P. Agarwal and Km. Sumati Rani Gupta, for the Appellant; A.D. Saunders and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Shri A.N. Bhargava for the petitioner, Shri A.D. Saunders appears for the respondents.

The petitioner claiming to be an illiterate persons and appointed as Gardener (Mali) in the Boys High School and College, 4 P.D. Tandon Road, Allahabad was suspended by the Manager of the school on 8.10.1998 on the ground of misconduct. He was served with show-cause notice on 19.11.1998. An enquiry officer was appointed on 12.7.2001. The petitioner denied the charges on 26.11.1998 and alleged that his services were terminated on 28.3.1999 without holding any enquiry in which he could prove his innocence.

2. The petitioner approached the Conciliation Officer/Asstt. Labour Commissioner. The matter was referred to the Industrial Tribunal and was registered as Adjudication Case No. 10 of 2000. The Tribunal has by its award dated May 27th, 2003 published on 4.9.2003 returned the reference against the petitioner-workman giving rise to this writ petition.

3. The Tribunal after referring to pleadings and the documents filed by the parties examined the workman as WW-1; Shri C.V. Innis, the Principal of the

School as EW-1 and Shri Syed A. Ahmad, the Warden of the school as EW-2 and has found that the petitioner was appointed vide letter of appointment (Ex.E-1). He was absent on 11th and 12th September, 1998 and had in fact participated in a "Dharna" in front of the school gate. He was seen in the Dharna and was asked to come to work but did not attend to his duties and misbehaved with the management. He was found abusing the Principal on microphone in filthy language and inciting other workmen, who were interested in working. He also stopped Shri Awadhesh Kumar Singh from going inside the school. He was given a show-cause notice on 19.11.1998 to which he submitted his reply and that after carefully considering his reply the management decided not to keep him in job and terminated his services.

4. The Tribunal quoted Clause-6 of the appointment and agreement (Ex.E-1) with termination Clause 6 (c) (i) (2) (x) including sub-clause (iii) of disobedience, insubordination, misconduct or inefficiency and (viii) striking work or inciting others to stop work. In the show-cause notice reproduced in Para 10 of the award, the workman was informed that he was absent from duties on 11th and 12th September, 1998 without any reasons, sufficient notice, or sanction of leave and that instead of joining duties he was seen sharing the stage/dharna organised by some outsiders in front of the college gate. The agitators had made false allegations and defamed the school saying that the school is actively involved in converting the Hindus to Christianity, knowing very well that such allegations were false and baseless. It was further stated in the notice in para 2 that the workman was the brain behind and main instigator, who misguided other servants of the college, used abusive and threatening language and forced them to join the strike organised by the agitating individuals from outside. He was called to Principal's office on 6th October, 1998 at 0900 hrs. to explain the reasons of absence. He was rude; spoke in abusive language and in loud voice and refused to obey orders.

5. In his reply dated 26.11.1998 (Ex.E-4) the workman, denied the allegations. The termination order dated 28.3.1999 (Ex.E-5) suited that his previous conduct relating his suspension for his involvement in an activity including Dharna considering the fact that he has permitted outsiders to stay in his house located in the college campus without prior permissions, were taken to be the basis to terminate the contract of his services without giving any notice of termination. In lieu of the notice he was paid three months' salary on the basis of agreement with the college authority.

6. Shri A.N. Bhargava, learned Counsel appearing for the petitioner would submit that the petitioner is an illiterate person. He was not allowed to defend himself. He had denied the charges and report against him, which was concocted and was not based upon any enquiry. He was not given any show-cause notice before terminating his services and that the Tribunal without holding that the domestic enquiry was not just and proper, proceeded to examine the witnesses in proof of the charges. The workman was waiting for the completion of domestic enquiry

but that he was not given any opportunity and was required on 15.4.1999 to vacate the quarter. He was forcibly evicted from the residence allotted to him.

7. Shri Bhargava would submit that in his reply dated 7.4.1999 the petitioner had written to the Principal that he is an old employee and was satisfied with the wages. There was no question of his participating in any dharna or demonstration. He has not allowed anyone to occupy the quarters and that he has been victimised by the order of removal of his services after 10/15 years.

8. Shri Saunders appearing for the school would on the other hand submit that the petitioner indulged in the acts of indiscipline by resorting to dharna and making wild allegations against the management. He used abusive language and was rude to the Principal. The show-cause notice was given to him to which he submitted a reply and that after holding an enquiry in which the petitioner was given an opportunity of hearing, his contract of service was terminated. There was no error of law in terminating the service contract. The action was justified and perfectly legal. The Industrial Tribunal examined the record of enquiry and that even if the Tribunal did not record any finding with regard to enquiry being just and proper and satisfied itself by allowing the parties to lead evidence, it did not commit any error in law. The dharna was staged by Bajrang Dal Party in front of the school gate. Banners and play-cards were displayed showing that the school was actively involved in converting Hindus into Christians. Microphones were set up and defamatory speeches were made against the members of Christian community. The petitioner had participated in Dharna and had openly abused to Principal and other staff members of the institution, and instigated other servants of the institution to join the Dharna. The Principal had written a letter dated 10.9.1998 to the District Magistrate, Allahabad complaining of dharna. The act of the petitioner in joining outsiders, participating in dharnas and using abusive language against the school, were sufficient grounds to terminate his contract of service. The management followed the rule of law, and allowed him an opportunity of hearing, and found no justification in condoning the gross misconduct.

9. I have perused the record and considered the submissions of the Counsels appearing for the parties, The petitioner was given a show-cause notice and that an enquiry was made before terminating his contract of service. There were no rules to give a full fledged opportunity of hearing and to allow the workman to lead evidence. The Tribunal, however, found it appropriate and allowed the management to lead evidence. The Principal and Warden of the schools examined themselves as EW-1 and EW-2 and proved the misconduct of the petitioner. They deposed in the Tribunal on oath that the petitioner had joined outsiders outside the gate of the school on 11th and 12th September, 1998 by putting tents and banners, and had made highly abusive and derogatory speeches against him as well as the Christian religion. They had also threatened that they will kill the Principal. The dharna continued for many days causing disturbance in teaching in the institution. The workman was given a warning and

thereafter a charge-sheet was served on him. He was allowed to lead evidence but that he did not participate in the domestic enquiry.

10. The petitioner's services as Mali in the school were taken on a contract of service, which clearly stipulated that his services are liable to be terminated on any act of indiscipline and misconduct. The petitioner committed an act of misconduct for which he was given warning, show-cause notice and thereafter a domestic enquiry was held giving him opportunity of hearing, which he did not avail. The Tribunal allowed the management to lead evidence and found from the statement of Principal and Warden of the school that the petitioner had participated in the Dharna and used abusive language making reckless allegations against the school, which caused disturbance in teaching. It was clearly an act of gross indiscipline, which could not have been condoned by the institution.

11. There is no legal error in the award given by the Industrial Tribunal. The petitioner was awarded full and adequate opportunity both in domestic enquiry and in the Industrial Tribunal to defend himself. The charges were proved and that the punishment is not disproportionate to the charges.

The writ petition is dismissed.