

(1987) 04 AHC CK 0037
In the Allahabad High Court
Case No : Writ Petition No. 7172 of 1986

Brij Raj Singh

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 17-04-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Intermediate Education Act, 1921 — Section 16G
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 11, 12, 31, 35, 36

Citation : (1988) 1 AWC 498

Hon'ble Judges : U.C. Srivastava, J; D.S. Bajpai, J

Bench : Division Bench

Advocate : D.R. Sinha, for the Appellant; Parmatma Swarup, A.P. Shukla and A.K. Rai, for the Respondent

Final Decision : Allowed

Judgement

D.S. Bajpai, J.—The Petitioner, Brijraj Singh, was appointed a peon in the institution known as Shri Guru Narhari Smarak Uchta Madhyamik Vidyalaya Poore Tewari, district Gonda by an order dated 20th July, 1974. Subsequently he was confirmed by order dated 4-11-1975, annexure Ka-1 to the rejoinder-affidavit and he became a confirmed peon. The present writ petition has been filed by the Petitioner on the ground that till May, 1986 the institution in question was under single operation and payment of salary was being made by the District Inspector of Schools under the Payment of Salaries Act. The Petitioner alleges that with effect from June, 1986 the operation of the salary distribution account became joint and it was the opposite party No. 2, the Manager of the institution, who on account of malafides detailed in the writ petition stopped payment of salary to the Petitioner, from entering into the institution and performing his duties even though he was regularly present throughout the month of June, 1986 to perform his duties. The Petitioner prayed, inter alia, for a writ of mandamus commanding the opposite parties 1 and 2 to pay him the salary from the month

of June, 1986 onwards along with interest at the rate of 12% per annum and prayed for a further writ of mandamus that the opposite parties be directed to pay him salary regularly month by month and that he may not be in any way restrained from functioning and performing his duties. Subsequently the opposite party No. 2 came forward with the allegation that the services of the Petitioner had in fact been terminated by orders dated 23rd September 1986 and 2nd October, 1986 filed as annexures C-S and C-6 respectively to the counter affidavit. The Petitioner thereafter sought amendment of the writ petition and - prayed for quashing the said orders of termination.

2. We have heard learned Counsel for the parties and perused the affidavits exchanged. The services of a IV class employee serving in a recognised aided higher secondary school are governed by the provisions of U.P. Intermediate Education Act and the Regulations framed under the provisions of Section 16G of the Act. Regulation 31 of Chapter III of the Regulations framed under the Act had been amended by Notification No. 7/562/5-8 (Board, September, 1974) Allahabad dated 10th March, 1975 issued in pursuance to the approval of the State Government contained in G.O. No. 789(1)-15/(7)-75, dated March 1, 1975 and by the amendment so brought specific provisions have been made pertaining to appointment, disciplinary proceedings, appeal etc. in so far as this class of employees is concerned. Amendment to Regulation 2 provides for qualifications to be prescribed for appointment as IV class employee. Amendment to Regulation 31 lays down the power to appoint, punish and further provides for the appellate authority to hear appeal against the punishment imposed and the procedure for disposal of appeal and against the said appeal a further representation has been provided to the District Inspector of Schools/Regional Inspectress of Girl's Schools concerned. The said regulation is extracted hereunder:

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3. By provisions contained in Regulation 100 of Chapter III inserted by the said notification which is quoted hereunder Regulations 1, 4 to 8, 10, 11, 15, 24 to 26, 30, 32 to 34, 36 to 38, 40 to 43, 45 to 52, 54, 66, 67, 70 to 73 and 76 to 82 with necessary modifications have been made applicable in the case of a Class IV employee:

* * * *

Needless to say that these provisions along with the provisions of Regulation 35, also incorporated by the said notification amending Regulation 35 as below:

* * * *

leave no doubt that service conditions of a IV Class employee cannot be said to be contractual but are governed by the statutory provisions of the Act and the Regulations.

4. Under the provisions of Regulation 11 the Petitioner had already become a

confirmed peon. Regulation 11 provides:

11. Unless before the expiry of the period of probation, the service of a Headmaster, Principal or teacher is terminated or action is taken to dismiss, discharge or remove him or reduce him in rank or in the case of Headmaster or Principal the period of probation is extended under Regulation 12 following he shall be confirmed on the post and in the grade at the end of his probation.

We, as such, cannot relegate the Petitioner to seek his remedy in a civil court as contended by the learned Counsel for the Respondents, Sri Parmatma Swarup and hold that violation of any provisions of the statute would entitle the Petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution.

5. On carefully examining the impugned orders, annexures C-5 and C-6 to the counter affidavit we find no indication in these orders that any enquiry officer, who could be a senior teacher of the institution, as envisaged in Regulation 35 was appointed as Enquiry Officer much less the Petitioner being handed over a charge-sheet and afforded an opportunity to defend himself. The Petitioner was entitled in consonance of the well established principles of natural justice to get full and fair opportunity of defending himself and thereafter being supplied with the report of the enquiry officer which has not been done inasmuch as there is no averment to that effect and no material has been placed on record to indicate much less support the charge levelled against him. Even if it be assumed that the Petitioner was guilty of absence the Petitioner was entitled to get an opportunity to show cause and it was only after proper enquiry under Regulation 35 was made by the Enquiry Officer and the Petitioner given a reasonable opportunity to defend himself that the appointing authority, i.e. the Principal of the College, could pass an order terminating his services. The appointing authority having failed to follow the procedure the order of termination would be a penal order amounting to an order of removal and in the circumstances of the case there is a clear violation of Regulation 35, the Petitioner being a confirmed employee the order would become bad in law and cannot be sustained. The charge-sheet not having been served at all there is violation of statutory provisions of Regulation 36 also that the delinquent servant ought to be served with a charge-sheet indicating precise grounds on which it is proposed to take action against him and definite charges having been framed and communicated to him whereafter he had been given an opportunity to submit his defence within a period of three weeks and only then the enquiry officer could proceed. The provisions of subsequent regulations indicating the manner in which the enquiry is to be held and completed have also been carried out in non-compliance. We, as such, have no hesitation in accepting the submission of the learned Counsel for the Petitioner that the impugned orders being in violation of the statutory provisions and the Petitioner being a permanent servant his services could not be terminated on a charge of absence from duty without resorting to the statutory provisions detailed hereinabove and thus the order is ab-initio void. Besides the

violation of the statutory provisions the doctrine of giving a fair opportunity to the delinquent employee before passing any order adverse to him has been thrown to winds and the order of removal as such cannot be sustained on this ground also.,

6. For the foregoing the writ petition is allowed. The orders of removal dated 23rd September 1986 and 2nd October, 1986, contained in annexures C-5, and C-6 respectively are hereby quashed and the opposite parties are commanded to treat the Petitioner in service without break, Needless to say that as a consequence the, Petitioner shall be entitled to receive his salary. In the circumstances the Petitioner shall also be entitled to his costs of the petition.