
(1995) 02 AHC CK 0079

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16639 of 1994

Chandra Bhushan Misra

APPELLANT

Vs

D.I.O.S., Daoria and Others

RESPONDENT

Date of Decision : 24-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(7)

Citation : (1995) 02 AHC CK 0079

Hon'ble Judges : R.A.Sharma, J; G.P.Mathur, J and D.K.Seth, J

Final Decision : Dismissed

Judgement

R. A. Sharma, J.—A Division Bench of this Court has referred the following two questions for decision by the Full Bench :

(1) Whether the order of "suspension of Principal or a teacher of an Intermediate College, if not approved by the District Inspector of Schools within sixty days from the date of such order, lapses or it merely ceases to operate and become effective after it is approved by the Inspector ?

(2) Whether writ petition challenging an order of the D. I. O, S. passed under Section 16G (7) of the Act becomes infructuous and no relief can be granted even if the order of the D. I. O. S. is found to be bad ?

2. Section 16G of U. P. Intermediate Education Act, 1921 (hereinafter referred to as the Act) deals with the conditions of service of head of institutions, teachers and other employees of the Intermediate Colleges. Its subsections (5), (6), (7) and (8), which provide for suspension of head of institution or a teacher of such institution are as under :

"16G: (5) No Head of Institution or teacher shall be suspended by the management, unless in the opinion of the management

(a) the charges against him are serious enough to merit his dismissal, removal or

reduction in rank ; or

(b) his continuance in office is likely to hamper or prejudice the conduct of disciplinary proceedings against him ; or

(c) any criminal case for an offence involving moral turpitude against him is under investigation, inquiry or trial.

(6) Where any Head of Institution or teacher is suspended by the Committee of Management, it shall be reported to the inspector within thirty days from the date of the commencement of the Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975, in case the order of suspension was passed before such commencement, and within seven days from the date of the order of suspension in any other case, and the report: shall contain such particulars as may be prescribed and accompanied by all relevant documents.

(7) No such order of suspension shall, unless approved in writing by the Inspector, remain in force for more than sixty days from the date of commencement of Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975, or as the case may be, from the date of such order, and the order of the Inspector shall be final and shall not be questioned in any Court.

(8) If, at any time, the Inspector is satisfied that disciplinary proceedings against the Head of Institutions or teacher are being delayed, for no fault of the Head of Institution or the teacher, the Inspector may, after affording opportunity to the Management or make representation revoke an order of suspension passed under this section."

Under subsection (5) the Management of an Institution can suspend Head of the Institution or a teacher if it is of the opinion that one of the grounds specified in clauses (a) to (c) of the said subsection exists, Subsection (6) requires the Management to submit the report regarding the suspension to the Inspector within time specified therein. Subsection (7) has laid down that no order of suspension shall remain in force for more than sixty days from the date of such order, unless approved in writing by the Inspector. Subsection (8) empowers the Inspector to revoke the order of suspension, if he is satisfied that the disciplinary proceedings against the Head or the teacher of the Institution are being delayed without any fault on their part.

3. According to subsection (7) no order of suspension shall "remain in force for more than sixty days" unless approved in writing by the Inspector. "In force" means "in operation". A statutory enactment or an order does not lapse merely because it has not come or brought into force. The only effect of an order, which is not in force is that it is ineffective and inoperative. But such an order is not obliterated and continues to exist though ineffective. Similarly when the order, which was in force, has ceased to be operative due to supervening event, will come into force again and will become effective after the infirmity caused by supervening event is removed. In view of the provisions of subsection (7), an

order of suspension of Head or a teacher of an Institution shall remain in force or a period of sixty days from the date of such order even if it is not approved in writing by the Inspector but in the absence of the approval by the Inspector such an order will cease to operate on expiry of sixty days from the date of the order, although it will continue to exist though inoperative. But if the order of suspension is approved even after the expiry of sixty days, it will come into force again and will become effective immediately on such approval. Any other interpretation will lead to serious consequences. Inaction on the part of the Inspector either deliberate or otherwise may frustrate the object of the provision itself.

4. If the Inspector has not passed any order under subsection (7) or has passed unsustainable order, this Court at the instance of the person aggrieved can under Article 226 of the Constitution pass appropriate order and issue direction to the Inspector for passing the order afresh in accordance with law. Such a writ petition does not become infructuous after the expiry of sixty days from the date of the order of suspension. This Court has the jurisdiction under Article 226 of the Constitution to pass effective order in view of the facts and circumstances of the case.

5. Decisions of this Court in *Committee of Management v. D. I. O. S.*, 1985 (2) UPLBEC 1365 ; *Committee of Management v. D. 1, O. S.*, 1986 UPLBEC 144 and *Mahila Vidya Prachar Samiti v. Regional Inspector of Girls Schools*, Writ Petition No. 61 of 1977, decided on 11/4/1978 do not lay down correct law and are, therefore, overruled.

Our answers to the questions referred as under :

(1) An order of suspension of the Head or a teacher of an institution does not lapse even if not approved by the Inspector within sixty days from the date of such order and it merely ceases to operate and becomes effective again after it is approved by the Inspectors.

(2) The writ petition filed before this Court under Article 226 of the Constitution of India against an order of D. I. O. S. passed under Section 16G (7) of the Act does not become infructuous after the; expiry of sixty days from the date of the order of suspension and this Court has full power to pass appropriate order and issues appropriate direction in such matter.

Answered accordingly.