

(1997) 07 AHC CK 0141

In the Allahabad High Court

Case No : C.M.W.P. No. 11964 of 1991, Connected with Writ Petition No. 10156 of 1981

Chhatadhari Singh

APPELLANT

Vs

Deputy Director of Education, Varanasi and others

RESPONDENT

Date of Decision : 09-07-1997

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(3)
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 21

Citation : (1998) 1 AWC 171

Hon'ble Judges : D.K Seth, J

Bench : Single Bench

Advocate : V. Singh, for the Appellant; S.C, for the Respondent

Final Decision : Dismissed

Judgement

D. K. Seth, J.—The petitioner was subjected to disciplinary inquiry on account of certain charges. After the inquiry is over, the Managing Committee by its resolution dated 22.7.1978 has resolved to dismiss the petitioner from service on account of his being found guilty of the charges in the domestic inquiry. The said resolution was sent to the District Inspector of Schools for according approval. By an order dated 19.10.1978, the District Inspector of Schools instead of according approval reduced the punishment as contended in the said order. Two appeals were filed against the said order dated 19.10.1978. One by the delinquent petitioner in Writ Petition No. 11964 of 1981 and the other by the Committee of Management being the petitioner in Writ Petition No. 10156 of 1981. The said two appeals were decided by the Deputy Director of Education on 24.6.1981. The Deputy Director of Education had also confirmed the finding of guilt but took a lenient view on humanitarian ground considering past service of the petitioner and had concurred with the reduction of the punishment by the District inspector of Schools. The said two orders have been challenged both by the delinquent employee and the Committee of Management in two separate writ petitions being

Writ Petition Nos. 11964 of 1981 and 10156 of 1981 respectively.

2. The learned counsel for the parties had addressed the Court on Writ Petition No. 11964 of 1981 when it was listed without other writ petition and contended that it is necessary to decide the matter along with the other writ petition as well.

3. In fact both the counsels concluded their argument on the case but for the purposes of listing, the matter along with the other writ petition it was directed to be listed today along with the Writ Petition No. 10156 of 1981 and accordingly, this matter is before this Court.

4. The case of the delinquent petitioner in Writ Petition No. 11964 of 1981 in his defence, whether he has been impleaded as respondent No. 3 in other writ petition or not. Similarly, the defence of the Committee of Management who is respondent No. 3 in Writ Petition No. 11964 of 1981 is their defence in Writ Petition No. 10156 of 1981. Therefore, the address in Writ Petition No. 11964 of 1981 appears to be complete in respect to both the matters.

5. Learned counsel appearing for the delinquent, petitioner has challenged the impugned order only to the extent whereby it was mentioned that the petitioner shall be entitled to salary from the date of his resuming duty and prayed that he should be paid full arrears for the entire period since the date of his suspension. Thus, it appears that the delinquent petitioner has not challenged the finding of guilt by both the authorities concurrently, he is only aggrieved with that part of the punishment. If the finding of guilt is there, the petitioner is liable to be punished.

6. Learned counsel appearing for the parties had let me through the record of the case. It appears that despite such finding of guilt in respect of the charges of misappropriation of fund, it has taken a lenient view. Admittedly, the petitioner had been holding certain amount belonging to the school in an account opened in his name as principal of the school, being separate account and not the account maintained by the school. Such an act is surely a misconduct. Inasmuch as, as the principal he is not entitled to open any separate account than that of the account maintained by the school authority. There is no resolution by the Committee of Management authorising the principal to open any separate account. Then again an account even if it is opened to operate an account in that event the account should be in the name of the school and by the authority of the management. The person entitled to operate the account has to get his signatures attested through the District Inspector of Schools. The principal cannot on its own open the account and operate the same in respect of any part of the school fund. The amount kept in the account of the petitioner is admittedly a school fund. Therefore, on the admitted position, the finding of guilt has assumed the character of concurrent finding of fact with which this Court cannot interfere in exercise of its writ jurisdiction and no perversity having been pointed out there is no escape from concluding that delinquent-petitioner is liable to be punished. The fact revealed is grave. Even, in my opinion, the punishment

awarded by no stretch of imagination can be said to be unwarranted or disproportionate. However, this Court cannot interfere with the quantum of punishment awarded. In case where the Court finds that punishment is disproportionate on the face of it, then it can remand the case back to the disciplinary authority for awarding sufficient punishment which might be proportionate to the finding of guilt. In the present case, I do not find that punishment inflicted, is disproportionate.

7. Respondent No. 3 being the writ petitioner in Writ Petition No. 10156 of 1981, namely, the Committee of Management has assailed, on the other hand, the impugned orders, to the extent, that both the orders should be quashed and approval should be accorded to the resolution of the Committee of Management dismissing the petitioner from service on the ground that the orders of the respondents were passed on extraneous consideration and had failed to exercise their power in accordance with law on erroneous basis and had altogether ignored and overlooked the interest of the institution and only the punishment of dismissal on the basis of the finding of guilt is the appropriate punishment, and there is no discretion left for the respondent to reduce the punishment. It has either to approve or to disapprove. It cannot pass any other order in between.

8. So far as the finding of guilt is concerned, that has already been found, therefore, the Committee of Management cannot quarrel with the same. All the grounds in respect of finding of guilt, therefore, cannot be taken or espoused by the Committee of Management. It can only deal with the quantum of punishment and the authority to reduce the same by the respondents.

9. So far as the question that it can only approve or disapprove and cannot pass any other kind of punishment other than that on which approval is sought for by the Committee of Management, is concerned, it appears to me to be wholly misconceived. Power to approve or disapprove envisages passing of any other order. The power is not restricted to such extent. Then again the provision relating to creating of power to approve also postulate passing of such other order. Inasmuch as Section 16G(3) of the U. P. Intermediate Education Act in clause (b) specifically provides that the Inspector may approve or disapprove or reduce or enhance the punishment. Section 16G which is saved by the proviso to Section 21 of the U. P. Secondary Education Services Commission and Selection Boards Act, 1982 clearly preserves the approving authority to pass any kind of order other than of which approval is sought for by the Committee of Management.

10. So far as the question with regard to the punishment is concerned as contended on behalf of the Committee of Management, the same has been taken by both the authorities having regard to the facts and circumstances of the case which also provides that the delinquent employee shall not receive full salary during suspension period and shall only be entitled to subsistence allowance for the said period and that he should refund the amount and in default, the same may be recovered from his salary with the above condition the delinquent has

been reinstated with the restriction that he would not hold any administrative post. I do not, therefore, find that the punishment is disproportionate or unwarranted on the basis of the fact found by both the authorities.

11. The petitioner shall be paid his salary only from the date he has joined his services debarred from holding administrative post. Since there was interim order, therefore, the petitioner cannot claim any extra benefit beyond the interim orders.

12. In the result, both the Writ Petition Nos. 11964 of 81 and 10156 of 1981 fail and are accordingly dismissed. There shall be no order as to costs.