

(1993) 08 AHC CK 0009

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22926 of 1993

Committee of Management Adarsh Ram Chandra Inter
College and Another

APPELLANT

Vs

District Inspector of Schools and Another

RESPONDENT

Date of Decision : 20-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Intermediate Education Act, 1921 — Section 16G, 16G(3), 16G(5),
16G(6), 16G(7)

Citation : (1994) 2 AWC 890

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : G.K. Singh, S.N. Singh and R.N. Singh, for the Appellant; S.N. Shukla, for the Respondent

Judgement

R.R.K. Trivedi, J.—In this writ petition Sri S.N. Shukla, Advocate filed a caveat on behalf of Respondent No. 2 and accepted notice for Respondent No. 2. Counter and rejoinder affidavits have been exchanged between Petitioners and Respondent No. 2 and Respondent No. 1 is represented by learned standing counsel. All the learned Counsel are agreed that the writ petition may be disposed of finally at this stage.

2. Facts giving rise to this writ petition are that the Petitioner committee of management (here-in-after referred to as "Management") by a resolution dated 8th March, 1993 decided to suspend Respondent No. 2 from the office of the head of the institution. The resolution is Annexure-1 to the writ petition. In pursuance of the aforesaid resolution the order of suspension was passed on 10th March, 1993, which is Annexure-2 to the writ petition. Alongwith suspension order, Annexure-2, a charge-sheet and the documents which were to be relied on against Respondent No. 2 were also sent to Respondent No. 2. The allegations against Respondent No. 2 were regarding embezzlement of the amounts of the college and misuse of the efface and indiscipline of serious nature. In paragraph

No. 8 of the writ petition, it has been submitted that the committee of management after suspending the Respondent No. 2 informed District Inspector of Schools and also submitted all the relevant documents before him. All the papers and covering letter dated 8th March, 1993 was received by the District Inspector of Schools on 10th March, 1993. A true copy of the covering letter dated 8th March, 1993 has been filed as Annexure 3 to the writ petition. However a perusal of Annexure 3 shows that it was a letter addressed to the Respondent No. 2 and not to the District Inspector of Schools. By this letter again Respondent No. 2 was communicated about the order of suspension and he was asked not to leave college premises without permission of the management. He was also required to hand over charge to Maheshwar Mishra. Though a copy of this letter was sent to the District Inspector of Schools, there is also no mention of any document. There is also no request to the District Inspector of Schools to approve the order of suspension. In paragraph No. 9 of the writ petition, it has been submitted that on 15th March, 1993 some more papers were submitted before the District Inspector of Schools which could not be given earlier. Letter of the Petitioners dated 15th March, 1993 has been filed as Annexure-4 to the writ petition. In this letter it has been said that the suspension of the head of institution was reported on 10th March, 1993. However some papers could not be submitted which are being filed alongwith the application which may be accepted. The District Inspector of Schools however, in response to the letter dated 15th March, 1993, which is Annexure-4 to the writ petition, passed the impugned order dated 9th June, 1993 which is Annexure 13 to the writ petition. It has been said in the order that the proposal of the management for suspension is incomplete and is not in accordance with the provisions of the Act. It has also been stated that u/s 16-G(7) of U.P. Intermediate Education Act, 1921, here-in-after referred to as "Act", as period of 60 days has already expired the order of suspension has elapsed automatically. The Management has been thereafter called upon to pay full salary to Respondent No. 2 including arrears and allow him to work on the post. Aggrieved by this order, Petitioners have approached this Court under Article 226 of the Constitution.

3. The learned Counsel for the Petitioners has submitted that all the necessary documents were submitted before the District Inspector of Schools and he has illegally refused to accord approval without disclosing any reason as to how the proposal was incomplete and against the provisions of the Act and the Regulations. Learned Counsel has submitted that the impugned order is wholly vague and uncertain as it does not contain any reason and thus cannot be sustained in law. It has further been submitted that even though the period of 60 days had expired the District Inspector of Schools ought to have applied his mind to the proposal and ought to have passed an order disclosing reasons on which basis it was not thought fit to approve the order of suspension. The learned Counsel has submitted that the order is wholly arbitrary and suffers from manifest error of law and cannot be sustained and is liable to be quashed.

4. Learned Counsel for the Respondents, on the other hand, has submitted that the order of the District Inspector of Schools is perfectly justified in the facts and circumstances of the case. The proposal submitted was not in accordance with Regulation 39 of Chapter III of the Regulations and the District Inspector of Schools rightly disapproved the same as the proposal was incomplete and not in accordance with the provisions of the Act. As the period of 60 days had expired the District Inspector of Schools has only informed the Petitioners, legal position that the order of suspension on expiry of the 60 days has lost its effect and Respondent No. 2 is entitled to be reinstated and allowed to work on his post and he should be paid his salary including arrears. Learned Counsel has further submitted that as period of 60 days has already expired and approval has not been granted by the District inspector of Schools, no relief can be granted in this writ petition as the order of suspension has become ineffective. Substance of the submission of learned Counsel for the Respondent is that after expiry of 60 days the order of suspension cannot be approved by the District Inspector of Schools and for this reason Petitioners are not entitled for any relief from this Court. Learned Counsel for the Respondents has also submitted that as order of suspension has lost its efficacy and Respondent No. 2 is entitled to work on his post and discharge his statutory functions and the Management cannot stop Respondent No. 2 from doing so. Learned Counsel for the Respondents has placed reliance on the following cases:

(1) Bhairo Nath Uchchattar Madhyamik Vidyalaya v. Markamky Singh 1976 (2) AWC 679 Committee of Management Dayanand Inter College, Gorakhpur v. District Inspector of Schools (1980) 3 UP LB EC 168 Kisan Inter College v. Deen Dayal Gautam. 1982 UP LB EC 382 (4) Committee of Management, S.K. Memorial Inter College v. District Inspector of Schools 1985 (2) UP LB EC 1365 (5) Committee of Management, Jan Sabyogi Inter College v. District Inspector of Schools 1986 (1) UP LB EC 144 (6) Rajendra Prasad v. Kayasth Pathsala 1986 (1) UP LB EC 662 (SC) and (7) Committee of Management Vasu Dev Mishra Higher Secondary School and Another Vs. Deputy Director of Education and Others, .

5. Learned Counsel for the Petitioners, on the other hand, placing reliance on two unreported judgments has submitted that even though the period of 60 days had expired the order of suspension does not become nonexistent and the District Inspector of Schools can be directed to apply his mind and pass order of approval or disapproval in accordance with law. The judgments relied on are Civil Misc. Writ Petition No. 3713 of 1985. Committee of Management Bal Govinda Sarvajanik Inter College, Prayagpur (Kanpur), district Kanpur Dehat and Anr. v. District Inspector of Schools, Kanpur and Anr. (DB) and Civil Misc. Writ Petition No. Nil of 1992, Committee of Management, D.A.V. Inter College, City and District Aligarh and Anr. v. District Inspector of Schools, Aligarh and Ors. decided on 24th November, 1992 by learned Single Judge of this Court.

6. I have considered the rival submissions of the learned Counsel for the parties and in my opinion, the first question for determination in this writ petition is as

to whether the report submitted by the Petitioners before the District Inspector of Schools for obtaining approval u/s 16-G(6) of the Act was in accordance with law or not? Regulation 39 of Chapter III of the Regulations contains provision as to how the report regarding suspension of the head of the institution or of the teacher should be submitted to the Inspector. For better appreciation it would be appropriate to reproduce Regulation 39 of the Regulations framed under the Act:

39. (1) The report regarding the suspension of the head of institution or of the teacher to be submitted to the Inspector under Sub-section (6) of Section 16-G shall contain the following particulars and he accompanied by the following documents:

(a) the name of the person suspended along with particulars of the posts (including grades) held by him since the date of his original appointment till the time of suspension including particulars as to the nature of tenure held at the time of suspension e.g., temporary, permanent or Officiating;

(b) a certified copy of the report on the basis of which such person was last confirmed or allowed to cross efficiency bar, whichever is later.

(c) details of all the charges on the basis of which such person was suspended;

(d) certified copies of the complaints, reports and enquiry report, if, any, of the inquiring officer on the basis of which such person was suspended:

(e) certified copy of the resolution of the Committee of Management suspending such person.

(f) certified copy of the order of suspension issued to such person;

(g) in case such person was suspended previously also, details of the charges on which and the period for which he was suspended on previous occasions accompanied by certified copies of the orders on the basis of which he was re-instated,

(2) An employee other than a head of institution of a teacher may be suspended by the appointing authority on any of the grounds specified in clauses (a) to (c) of Sub-section (5) of Section 16-G.

7. Now it is to be seen as to whether Annexure-3 to the writ petition which has been relied on by the Petitioners, as the report in compliance of Section 16-G(6) read with Regulation 39 of the Act, satisfies the requirement of law or not?. In my opinion, this letter was addressed to the Respondent No. 2 and he was communicated about the order of suspension and further he was required to hand over charge to another person. At the bottom of this letter it has been averred that the resolution of the Management dated 8th March, 1993 charge-sheet and other papers are also annexed therewith. However it is not clear from this letter that all these papers were also sent to the District Inspector of Schools. The second letter relied on by the Petitioners is, dated 15th March, 1993, which is Annexure-4 to the writ petition. A perusal of this letter also shows

that it was not in compliance with the provisions of Section 16-G of the Act as required information was not given. Alongwith Annexure-4 a document has also been annexed, which contains some information with regard to Respondent No. 2 as required under Regulation 39(1)(a) but the rest of the documents filed were old document and it is not clear as to how the documents were connected with order of suspension. However from perusal of Annexure 3 and 4 there remains no doubt that the provisions of the Regulation 39 were not complied with. In the circumstances, in my opinion, the impugned order passed by the District Inspector of Schools cannot be said to be illegal or arbitrary. The letter addressed to Respondent No. 2 and sending a copy of the same to the District Inspector of Schools cannot be said to be in compliance with the Regulation 39. In fact a copy of the order of suspension should be sent alongwith other papers. The Management in this regard completely failed to furnish the requisite information and the documents required under law.

8. Next question which arises in the present case is as to whether District Inspector of Schools can pass an order of approval with regard to the suspension of the head of the institution or teacher even after expiry of the period of 60 days. Learned Counsel for the Respondents has relied on various cases as mentioned above. I have gone the facts of the cases and in my opinion, none of the aforesaid cases is applicable on the question involved in the present writ petition. The provisions of Section 16-G of the Act were amended by U.P. Act No. 26 of 1975 and Sub-sections (5)(6)(7) and (8) which relate to the order of suspension were substituted with a view to improve the service conditions of the teachers of the High School and Intermediate Colleges. Object was to prevent harassment to the head of the institution and the teachers at the hands of the Management by passing order of suspension and to keep the teachers under suspension for long period. With this object approval of the District Inspector of Schools was made necessary by Sub-section (7) of Section 16-G of the Act and it was also provided that unless approved in writing the order of suspension shall not remain in force for more than 60 days. If the aforesaid provision is considered in the background of the circumstances prevailing at the time the provisions were brought in the Statute book it is clear that the approval was made necessary with regard to the order of suspension also as it was required with regard to the order of dismissal, removal or reduction in rank etc. u/s 16-G(3) of the Act. The object of both the provisions was to improve service conditions of teachers and to prevent unnecessary harassment. Only difference is that in case of order of suspension it has been allowed to have effect for a period of 60 days and in the meantime the order of suspension could be reported to the Inspector who may pass necessary order approving or disapproving the same. However it cannot be said that in case the order of suspension was not approved or disapproved within 60 days it lost its existence. The intention of law appears to be to make it only inoperative. Even after expiry of the period of 60 days Inspector shall have to pass order in accordance with law approving or disapproving the order of suspension. The interpretation suggested by the

learned Counsel for the Respondents, if accepted shall amount to taking away the power from Management to pass an order of suspension beyond period of 60 days, which does not appear to be the intention of law. The Legislature only intended to regulate the power of suspension passed by Management and not to deprive it of the same. The disciplinary proceedings some times may not be concluded within a period of 60 days, Even under Regulation 40 the period contemplated for concluding the disciplinary proceedings is much more than period of 60 days. The nature of the case may be where suspension of the Principal or the teacher may be necessary during pendency of the disciplinary proceedings if the conditions mentioned in Section 16-G(3) of the Act, were present. If the provisions of Section 16-G(5) to (8) of the Act are considered the object of law is clear and it is to prevent unnecessary harassment to Principal and teachers at the hands of the Management, At the same time it preserves power of suspension where over necessary and desirable and the authority of approval on Inspector has to be considered in this light. In the circumstances, the approach of the District Inspector of Schools that the period of 60 days has expired and thus the order of suspension has elapsed, does not appear to be correct. He has to apply his mind to the facts and circumstances of the case and then pass a reasoned order approving or disapproving the order of suspension which shall become effective from the date of approval, if granted by the Inspector. The view expressed above is fully supported by the unreported judgments of the Division Bench and learned Single Judge mentioned above.

9. Now it has to be seen as to what relief can be granted to the Petitioners in the present case. Petitioners have sought quashing of the order dated 9th June, 1993 and have also prayed for a direction against Respondent No. 2 and restraining him from functioning as Principal and thus interfering in the peaceful functioning of the Petitioner as Management. In my opinion, as it has been found that the Petitioners failed to make a proper report of the order of suspension as required under Regulation 39, the order of District Inspector of Schools cannot be quashed. Further since the period of 60 days has already expired and order of suspension has not been approved, it has lost its effectiveness and the Respondent No. 2 cannot be restrained from functioning as Principal for which he is entitled in law may it be inconvenient to the Petitioners. This aspect of the case has already been considered by this Court in case reported in 1992 (2) UP LB EC 1323 (supra) and it has been held that if the Principal or teacher is prohibited from discharging his functions of his office it would lead to the conclusion that though there exists no lawful order of suspension against the concerned teacher, he is still under suspension. In other words, it shall amount to permitting to do an act indirectly, which cannot be done directly and the object and purpose of the provisions contains in Sub-section (7) of Section 16-G of the Act shall be frustrated. I am in respectful agreement with the view expressed in the aforesaid cases.

10. For the reasons recorded above, this writ petition is disposed of finally with the direction that in case Petitioners submit a report of the order of suspension

pasted against Respondent No. 2 In accordance with law, same shall be considered and decided by the Respondent No. 1 in accordance with law within a period of one month from the date such report is submitted before him. There will be no order as to costs.