
(2012) 01 AHC CK 0630

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4436 of 2012

Committee of Management, Baba Raghav Das Bhagwan Das
Post Graduate College and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 35(4), 49

Citation : (2012) 4 ADJ 122

Hon'ble Judges : Sunil Ambwani, J;Manoj Misra, J

Bench : Division Bench

Advocate : R.B. Tripathi and R.R. Pandey, for the Appellant; B.D. Pandey and Girijesh Tiwari, for the Respondent

Final Decision : Allowed

Judgement

1. We have heard Shri R.B. Tripathi, learned counsel appearing for the petitioners. Learned Standing Counsel appears for respondent Nos. 1, 4 and 5. Shri B.D. Pandey has accepted notice on behalf of respondent Nos. 2 and 3. Shri G.K. Singh and Shri Girijesh Tiwari have appeared for Dr. Prabhat Kumar Pandey, Principal, Baba Raghav Das Bhagwan Das Post Graduate College, Ashram, Barhaj, Deoria-respondent No. 6. The Committee of Management, Baba Raghav Das Bhagwan Das Post Graduate College, Ashram Barhaj, District Deoria through its Secretary, has filed this writ petition against the order of the Vice-Chancellor of Deen Dayal Upadhyay Gorakhpur University, Gorakhpur (the University), cancelling its resolution dated 2.10.2011, and the order dated 3.10.2011, placing Dr. Prabhat Kumar Pandey-respondent No. 6 under suspension, in contemplation of an enquiry into the charges of financial irregularities and misconduct in exercise of its powers under Statute 17.07 of the First Statute of the University of Gorakhpur. A charge-sheet dated 15.10.2011 has been served on him.

2. The Committee of Management had earlier filed a Writ Petition No. 63617 of 2011 against the order of the Vice-Chancellor by which he had stayed the order

of suspension and had fixed the matter for hearing. The writ petition was disposed of on 9.11.2011 on the statement of Shri B.D. Pandey appearing for the Vice-Chancellor, that the final orders in the matter shall be passed by the Vice-Chancellor expeditiously, and within the time granted by the Court. The Court directed that the matter should be decided as expeditiously as possible, but not later than three weeks from the date already fixed.

3. The Vice-Chancellor of the University has cancelled the resolution of the Committee of Management, and the order of suspension on the ground, that the suspension order has been passed against respondent No. 6 without issuing a charge-sheet and without hearing him or giving him an opportunity to reply to the charges. The order, according to the Vice-Chancellor, was in violation of principles of natural justice. According to him, the ex-parte order was not justified.

4. Learned counsel appearing for the petitioner states that the Committee of Management is authorised and has the powers to suspend a teacher during the pendency or in contemplation of an enquiry into the charges against him. The order of suspension, if it is passed in contemplation of an enquiry, shall cease to operate at the end of four weeks of its operation, unless a teacher has in the meantime been communicated the charge or charges on which the inquiry was contemplated. The Statute 17.07, with reference to Section 49 (o) is quoted as below :

17.07. The Management shall have the power to suspend a teacher during the pendency or in contemplation of an inquiry into charge against him; on the grounds, mentioned in sub-clauses (a) to (e) of clause (1) of Statute 17.04 in an emergency, (in the case of a teacher other than Principal) this power may be exercised by the principal in anticipation of the approval of the Management. The Principal shall immediately reports such case to the Management. The order of suspension if passed in contemplation of an inquiry, shall cease at the end of four weeks of its operation, unless the teacher has in the meantime been communicated the charge or charges on which the inquiry was contemplated.

5. Statute 17.04 (1) and (2) providing for the grounds on which a teacher of an affiliated College may be dismissed or removed or his services be terminated, provides :

17.04. (1) A teacher of an affiliated college (other than a Principal) may be dismissed or removed or his services terminated on one or more of the following grounds;

- (a) wilful neglect of duty;
- (b) misconduct, including disobedience to the orders of the Principal.
- (c) breach of any of the terms of contract of service.
- (d) dishonesty connected with the University or College examination.

- (e) scandalous conduct or conviction for an offence involving moral turpitude;
- (f) physical or mental unfitness;
- (g) incompetence;
- (h) abolition of the post with the prior approval of the Vice-Chancellor.

(2) A Principal of an affiliated college may be dismissed or removed, or his services terminated on grounds mentioned in clause (1) or on the grounds of continued mismanagement of the college.

6. It is submitted that the Vice-Chancellor, in exercise of his powers under subsection (4) of Section 35 of the U.P. State Universities Act, 1973, has the powers to stay, revoke or modify the suspension order pending enquiry. He may, however, pass orders in accordance with the law, and for the purposes for which the power is entrusted to him. There is no requirement in law either under the Statutes or on principles of natural justice to pass the order of suspension on any of the grounds in sub-clauses (a) to (e) of Statute 17.04, after giving the charge-sheet and upon hearing or allowing an opportunity to the delinquent teacher or the Principal as the case may be, to reply to the charges.

7. Shri G.K. Singh, learned counsel appearing for the respondent No. 6, and Shri B.D. Pandey, learned counsel appearing for the Vice-Chancellor, would submit that the Vice-Chancellor can look into the merit of the charges to find out if the charges relate to the grounds mentioned in sub-clauses (a) to (e) of Statute 17.04 and also whether they are so serious or grave in nature that the order of suspension was justified, and for that purpose it was relevant to find out whether the principal was given an opportunity of hearing. In the present case, the Vice-Chancellor has found that on the charges levelled against the respondent No. 6, he could have been given an opportunity of hearing, and thus the order of Vice-Chancellor does not suffer from any error of law.

8. We do not find that the Vice-Chancellor has set aside the resolution, and the consequential order of suspension on merits of the charges after discussing the facts, and the stand of the parties. The Vice-Chancellor has set aside the order in exercise of powers u/s 35 (4) of the UP State Universities Act, 1973 only on the ground that the order of suspension was passed without issuing charge-sheet, and without giving him an opportunity of hearing.

9. The Statute 17.07 of the Statutes of the University do not provide for opportunity to be given to the teacher/principal when the suspension is in contemplation of an enquiry on the allegations which may constitute the grounds referred to in Statute 17.04. The only restriction placed upon the life of the order of suspension is that if the charge-sheet is not served within a period of four weeks, the order will cease to be operative. In the present case the charge-sheet was served within four weeks of the order of suspension.

10. The order of suspension may be considered by the Vice-Chancellor on merit,

if he finds that the charges are trivial and vague or if the charges have nothing to do with the duties of teacher/principal of the college. The Vice-Chancellor may also interfere, where the order prima facie suffers from lack of bona fides or is not passed by the competent authority. He may also interfere if there are such serious errors on the facts and circumstances that the order is not justified at all. The Vice-Chancellor, however, where the order has been passed on the charges, which are prima facie serious and charge-sheet has been submitted within four weeks, cannot annul the resolution of the Committee of Management to suspend the teacher/principal on the ground that such teacher/principal has not been given an opportunity of hearing.

11. In the matters of suspension pending enquiry, the exercise of powers of suspension has to be found in relation to the seriousness of the charge relating to misconduct, which may result into any of the major penalties contemplated in the Statutes. It may also be relevant for the Vice-Chancellor to find out whether it was necessary on the seriousness of the charges to keep the teacher/principal under suspension. In the present case the Vice-Chancellor has not applied his mind to the conditions necessary for exercise of power of suspension in relation to the nature of charges.

12. For the aforesaid reasons, the order of the Vice-Chancellor cannot be sustained. The writ petition is allowed. The order dated 21.12.2011 passed by the Vice-Chancellor is set aside. The Vice-Chancellor is directed to pass a fresh order after hearing the parties as expeditiously as possible and preferably within two months.