
(1999) 08 AHC CK 0207
In the Allahabad High Court
Case No : C.M.W.P. No. 28101 of 1999

Committee of Management, Janta Inter College, Azamgarh and another APPELLANT

Vs

District Inspector of Schools, Azamgarh and another RESPONDENT

Date of Decision : 25-08-1999

Acts Referred:

Citation : (1999) 4 AWC 3518 : (1999) AWC 3518 : (1999) 3 UPLBEC 2342

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : Prakash Padia, for the Appellant; S.C., A.K. Panday and J.P. Singh, for the Respondent

Final Decision : Disposed Of

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certiorari for quashing the impugned order dated 9.7.1999 Annexure-20 to the writ petition and for a mandamus restraining the respondents from interfering in the affairs of the institution in question and directing the respondent No. 1 to pass a speaking order regarding its approval In respect of the suspension order of respondent No. 2 dated 15.2.1999.

2. I have heard learned counsel for the parties,

3. The dispute relates to Janta Inter College, Bazar Gosal, Harraiya Azamgarh which is a recognised Intermediate College receiving grant- in-aid. In paragraph 3 of the petition, it Is alleged that the last election was held in June 1997 and the petitioner No. 2 was elected as Manager and his signature was attested by the District Inspector of Schools. Against that, two writ petitions were filed in this Court by Sheo Shankar Singh claiming to be lawfully elected Manager in the Institution in question. The petitions were dismissed by a learned single Judge. (vide Annexure-3 to the petition) and the committee of management of the petitioner was recognised by the learned single Judge and the signature of the

petitioner No. 2 was attested by the District Inspector of Schools. Against that judgment, a Special Appeal No. 153 of 1999 was filed by Shiv Shankar Singh which was admitted and an Interim order was passed that no policy decision would be taken by the Manager without the concurrence of the District Inspector of Schools. True copy of the order dated 25.2.1999 Is Annexure-4 to the petition. Another Special Appeal No. 265 of 1999 was filed which is also pending in this Court. In paragraph 6 of the petition. it is alleged that in view of the G.O. dated 3.2.1997 the committee of management passed a resolution on 3.8.1997 in which meeting the respondent No. 2 participated and It was resolved that the account by way of development fund would not be operated by the Principal alone but jointly alongwith the manager. In paragraph 8, it is alleged that despite this resolution, the respondent No. 2 operated the development fund account singly and a huge amount of the same fund has been embezzled. In this connection, various letters were sent to various authorities concerned copies of which are Annexures-5. 6 and 7 to the writ petition. True copy of the Audit report dated 27.2.1999 is Annexure-8 to the writ petition. In paragraph 10 of the petition, it is alleged that the Joint Director of Education wrote to the District Inspector of Schools vide letter 23.4.1999 directing that the amount of development fund withdrawn by the respondent No. 2 should be directed to be deposited back with the Government fund. True copy of the said letter is Annexure-9. The District Inspector of Schools also passed an order directing the petitioner to recover the amount Illegally withdrawn by the respondent No. 2 from the development fund. True copy of the said letter is Annexure-10 to the writ petition. In paragraph 12 of the petition, it is alleged that the petitioner No. 2 immediately wrote a letter dated 2.5.1999 to the respondent No. 2 asking him to return the amount illegally withdrawn from the development fund which is more than rupees one lac. True copy of the said letter is Annexure-11 to the petition. However, no amount was returned back by respondent No. 2. Thereafter the DIOS by the order dated 19.5.1999 gave permission to take disciplinary proceeding against the respondent No. 2 for the amount illegally withdrawn and embezzled. True copy of the said letter is Annexure-12. The committee of management then passed a resolution dated 23.5.1999 suspending the respondent No. 2 vide Annexure-13 to the writ petition. "The petitioner passed an order dated 23.5.1999 to pursuance of the resolution of the committee of management suspending the respondent No. 2. True copy of the suspension order dated 23.5.1999 Is Annexure-12 to the writ petition.

4. In paragraph 16 of the petition, it is alleged that the papers were sent to the District Inspector of Schools for approval of the suspension order but no orders have been passed by the District Inspector of Schools. Subsequently, a charge-sheet has been Issued to the respondent No. 2 vide Annexure-15 to the writ petition. True copy of the letter to the committee of management and District Inspector of Schools dated 16.6.1999 alleging collusion between the Banking authority and respondent No. 2 and forgery is Annexure-16 to the petition.

5. In paragraph 20 of the petition. It is alleged that against the order dated

23.5.1999 respondent No. 2 filed Writ Petition No. 22.636 of 1999 but no Interim order has been granted and the petition is pending. In paragraph 21, it is alleged that the orders were passed by the respondent No. 1 District Inspector of Schools dated 19.5.1999 by which the petitioner was given permission to act against the respondent No. 2 for not depositing the amount illegally withdrawn from the development fund. True copy of the said letter is Annexure-17 to the writ petition. Against that order, Writ Petition No. 24991 of 1999 was filed and an ex parte interim order dated 16.6.1999 has been passed by this Court. True copy of the said order is Annexure-18 of the writ petition. In pursuance of this Court's order dated 16.6.1999, the District Inspector of Schools passed an order dated 1.7.1999 vide Annexure-19. Subsequently the impugned order dated 9.7.1999 was passed by which it was directed that the respondent No. 2 will work as Principal in view of the interim order dated 16.6.1999. True copy of the said order is Annexure-20 to the writ petition.

6. In paragraph 26, it is stated that the District Inspector of Schools has not yet taken any decision in the matter and it is alleged that this was deliberate so that after sixty days of suspension, the Principal may claim reinstatement as per the U. P. Intermediate Education Act and Regulations. In paragraph 29, it is alleged that no opportunity of hearing was given to the petitioner before passing the Impugned order. In paragraph 32, it is alleged that very serious allegation of embezzlement of development fund has been made against the respondent No. 2.

7. A counter-affidavit has been filed by the respondent No. 2. In paragraph 3, it is alleged that the petitioner was a rank trespasser and not a member of the General Body. In paragraph 5 of the counter-affidavit, it is alleged that the G.O. dated 3.2.1997 is against the regulations. In paragraph 7, it is alleged that there is no illegality and irregularity in the operation of the account. The details of the same have been given in the said paragraph. In paragraph 7 of the counter-affidavit, it is stated that the answering respondent is not aware about any audit inspection. In paragraph 8, it is stated that the petitioner has misinterpreted the order of the Joint Director. The Joint Director only directed the District Inspector of Schools to look into the matter and make an enquiry and if it was found that the respondent No. 2 has illegally withdrawn any amount, he be directed to deposit the same. It is alleged that the District Inspector of Schools has not made any enquiry. In paragraph 9, it is stated that the order dated 1.5.1999 was passed without enquiry or notice to respondent No. 2. In paragraph 10, it is alleged that there was no illegal withdrawal and misutilisation of the account. The amount withdrawn has been utilised in the construction of the building and other development activity. Photostat copy of the cash-book in this connection is Annexure-C.A.3. In paragraph 11 it is stated that the order dated 19.5.1999 passed by the District Inspector of Schools is illegal as no opportunity of hearing was given to the respondent No. 2 before passing the said order. In paragraph 12 it is alleged that the respondent No. 2 has been suspended without any basis. In paragraph 23, it is stated that the respondent No. 2 is working as ad hoc Principal since 1994 and has claimed regularisation. In paragraph 30, it is alleged

that the charges levelled against the respondent No. 2 are baseless and false.

8. In the rejoinder-affidavit, the allegations in the counter-affidavit are denied and those in the writ petition are reiterated. In paragraph 9 of the rejoinder-affidavit, it is alleged that the respondent No. 2 was not empowered or authorised to utilise the development fund. It is stated that the alleged payment is farzi and incorrect.

9. In *Govind Swarup Pandey v. Authorised Controller*, 1981 UPLBEC 17, a Division Bench of this Court has held that the order of suspension passed against the Head of the Institution is subject to supervision by the District Inspector of Schools and in that petition, it was held that the petitioner was directed to avail of the alternative remedy before the District Inspector of Schools.

10. In the facts and circumstances of the case. I am of the opinion that the petitioner should approach the District Inspector of Schools who will himself hold an enquiry against the respondent No. 2 regarding alleged illegal withdrawal and misutilisation of the development fund and the District Inspector of Schools after hearing the Committee of Management and others concerned as well as the respondent No. 2 shall pass appropriate orders in relation to the same preferably within six weeks of production of a certified copy of this order in accordance with law. If the petitioner files a certified copy of this order before the District Inspector of Schools within two weeks from the date of this judgment the status quo on the post of Principal shall be maintained till the completion of enquiry by the District Inspector of Schools.

11. The petition is accordingly disposed of. No order as to costs.