

(1991) 11 AHC CK 0064

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6868 of 1978

Committee of Management, Janta Rashtriya Vidyalaya, Pipra Kalan

APPELLANT

Vs

District Basic Education Officer and Another

RESPONDENT

Date of Decision : 14-11-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 — Rule 15

Citation : (1991) 2 AWC 525 : (1992) 1 UPLBEC 441

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : Shyam Narayan, for the Appellant;

Final Decision : Dismissed

Judgement

R.B. Mehrotra, J.—Sri Shri Ram Yadav, Respondent No. 2, was appointed as Headmaster in Janta Rashtriya Vidyalaya Pipra Kalan, Bollia, a junior High School, imparting education from classes VI to VIII in the year 1971. In the year 1975, it is alleged that certain irregularities were found against aforesaid Shri Ram Yadav and the Committee or Management claims to have served a charge sheet on Respondent No. 2 on 28th of July, 1975. It is further alleged that an Inquiry Officer was appointed, who submitted his report on 15th of August, 1976. Subsequent thereto the Committee of Management passed a resolution, dated 14th of November, 1976 whereby it was resolved that the services of Respondent No. 2 Sri Shri Ram Yadav, the Headmaster of the Vidyalaya, should be terminated. It was further resolved that the Manager is authorised to take further action in the matter and take approval of the Basic Education Officer for terminating the services of Respondent No. 2 so that Respondent No. 2 may be duly informed regarding his termination of service. In accordance with the aforesaid resolution, the Committee; of Management wrote a letter to the District Basic Education Officer on 22-11-1976 seeking approval for the termination of

the services of Respondent No. 2; The District Basic Education Officer in his turn, vide letter, dated 17-11-1977 informed the Committee of Management that so far no Rules have been framed regarding service conditions of Basic School teachers, as such the Committee of Management is at liberty to take action in accordance with law. Despite the aforesaid letter, the Committee of Management did not terminate the services of Respondent No. 2 and again sought approval for termination of services of Respondent No. 2 from the District Basic Education Officer. In the meantime, the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 came into force on 13-3-1978. Rule 15 of the aforesaid Rules provided that no Headmaster or Asstt, teacher of a recognised School will be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments or serve with notice of termination of service except with the prior approval in writing of the District Basic Education Officer. In view of the aforesaid provision having been incorporated, the District Basic Education Officer, vide his letter, dated 31-5-1978 disapproved the proposal to remove Respondent No. 2 from the post of headmaster of the Vidyalaya. In his letter, dated 31-5-1978, the District Basic Education Officer wrote a detailed order wherein the District Basic Education Officer recorded a finding that the services of Respondent No. 2 were terminated without serving any charge sheet on him and without issuing any show cause notice to him. It was also stated in the aforesaid letter that the registered letter which was sent to the headmaster contained an ante dated explanation instead of containing the charge sheet which was promptly informed by the head master. Later on also when the charge sheet was required to be served through the office of the District Basic Education Officer, the said charge sheet was, not served and original charge sheet was found in the file of the Committee of Management itself. The District Basic Education Officer also recorded a finding that admittedly no show cause notice was served on Respondent No. 2 before terminating his services. With the aforesaid findings, the District Basic Education Officer disapproved the termination of services of Respondent No. 2.

2. The Committee of Management in the present writ petition under Article 226 of the Constitution of India has challenged the validity of this order of the District Basic Education Officer, dated 31-5-1978 refusing to grant approval to the proposal of the Committee of Management for removing Respondent No. 2 from service.

3. Sri Shyam Narain, learned Advocate, appearing for the Petitioner, Committee of Management of the institution, has contended before me that the services of Respondent No. 2 were terminated far back in the year 1975 and the U.P. Recognised Basic Schools (Junior High Schools)(Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as the Rules) came into force on 13-3-1978, as such on the date the services of Respondent no, 2 were terminated, there was no rule requiring taking approval of termination of services of Respondent No. 2 from the District Basic Education Officer and as such the

District Basic Education Officer had no authority in law to disapprove the termination of service of Respondent No. 2. It is contended that the order of the District Basic Education Officer, dated 31-5 1978, as such, is without authority of law and liable to be quashed.

4. The counsel for the Respondent No. 2 has contended that the order terminating the service of Respondent No. 2 was patently illegal as his services were terminated without affording him an opportunity of hearing or show cause and without giving any show cause notice to Respondent No. 2. Even assuming that the District Basic Education Officer had no authority to disapprove the termination order passed by the Committee of Management, the order itself is so patently illegal that it cannot be sustained in the eye of law and this Court should not interfere on the technicalities that on the relevant date, the District Basic Education Officer was not authorised to disapprove the proposal of termination of the services of Respondent No. 2-It has also been contended on behalf of Respondent No. 2 that the services of Respondent No. 2 are alleged to have been, terminated far back in the year 1975. More than 16 years have elapsed since then, and if the said order is revoked, Respondent No. 2 will be remediless to challenge the said order. It has been contended that for this reason also, the order of the District Basic Education Officer should not be interfered with.

5. It is true that the Rules protecting the services of Respondent No. 2 came into force on 13-3-1978 and the resolution proposing termination of the services of Respondent No. 2 was passed some time in the year 1975 but the resolution was only a proposal to seek approval for terminating the services of Respondent No. 2. The Committee of Management itself did not terminate the services of Respondent No. 2 at any point or time and despite the fact that there were no rules requiring seeking approval for termination of services, the Committee of Management on its own was seeking approval for the proposal of terminating the services of Respondent No. 2. The services of Respondent No. 2 were not terminated as a matter of fact before coming into force of (he Rules. As such on the date the Basic Education Officer parsed an order refusing to grant approval of the proposal for terminating the services of Respondent No. 2, the Committee of Management was itself seeking approval for the proposal of terminating the services of Respondent No. 2. Till the District Basic Education Officer disapproved the said proposal, the Committee of Management at no point of time actually terminated the services of Respondent No. 2, as such there was no order passed by the Committee of Management terminating the services of Respondent No. 2 and it is not open to the Petitioner, Committee of Management, to contend that fianc? services of Respondent No. 2 were terminated earlier when the Rules were not in force, the District Basic Education Officer was not justified in refusing to grant approval.

6. Since the Committee or Management did not itself terminate the services of Respondent No. 2 before the enforcement of" the Rules and was itself seeking approval for termination of services of Respondent No. 2, the District Basic

Education Officer was perfectly within its rights to disapprove the proposal of terminating the services of Respondent No. 2 on coming into force of the Rules. I am also clearly of the opinion that in view of the findings recorded by the District Basic Education Officer that services of Respondent No. 2 were terminated without serving any charge sheet and without serving any show cause notice on him, the order of termination of service of Respondent No. 2 was patently illegal and cannot be allowed to be sustained in law even assuming that the District Basic Education Officer was not competent to disapprove the proposal of termination of Respondent No. 2. The order of termination of service of Respondent No. 2 being patently illegal cannot be allowed to stand. As such, for this reason also, no interference is called for in the order of the District Basic Education Officer disapproving the proposal of the Committee of Management for termination of services of Respondent No. 2

7. The writ petition has no merits and accordingly fails and as such is dismissed with costs.