
(2008) 08 AHC CK 0340

In the Allahabad High Court

Case No : C.M.W.P. No. 39879 of 2008

Committee of Management, Mahadev Prasad Viswanath
Prasad Balika Inter College and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-08-2008

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(5), 16G(8), 16G(8)
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 39
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 21

Citation : (2009) 1 AWC 681 : (2008) 3 UPLBEC 2555

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Radha Kant Ojha, for the Appellant; Ashok Khare, Pradeep Narain Pandey and Ramanand Pandey and S.C., for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Sri R. K. Ojha, the learned Counsel for the Petitioners, Sri Ashok Khare, the learned senior counsel for the contesting Respondent No. 4 assisted by Sri Pradeep Narain Pandey advocate, and the learned standing counsel for the remaining Respondents.

2. It transpires that the Committee of Management appointed Respondent No. 4, as an officiating Principal of the institution on 1.7.2006. The Committee of Management resolved to suspend the Respondent No. 4 on 23.5.2007 and simultaneously appointed the Respondent No. 5, as an officiating Principal. It transpires that the requisite paper was forwarded to the District Inspector of Schools for necessary approval or disapproval. The District Inspector of Schools, instead of passing an order u/s 16G (5) of the U.P. Intermediate Education Act, forwarded the papers to the U.P. Secondary Education Service Selection Board U.P. at Allahabad (hereinafter referred to as the Selection Board). The Respondent No. 4, being aggrieved by the said direction of the District Inspector

of Schools, filed Civil Misc. Writ Petition No. 50531 of 2007 and the Committee of Management also filed Civil Misc. Writ Petition No. 53032 of 2007. Both the writ petitions were disposed of by a common judgment dated 30.11.2007, holding that the District Inspector of Schools had wrongly sent the suspension matter to the Selection Board and, that the District Inspector of Schools alone, was competent to consider the approval or disapproval of the suspension order and, that the District Inspector of Schools was not denuded of his power even after the expiry of 60 days. The Court, consequently directed the District Inspector of Schools to decide the matter.

3. Based on the aforesaid direction, the District Inspector of Schools, by an order dated 18.1.2008, approved the suspension order, against which, Respondent No. 4 filed a Civil Misc. Writ Petition No. 12928 of 2008 which was allowed by a judgment dated 7.3.2008, holding that the District Inspector of Schools was required to record its reasons for the approval of the suspension order and, accordingly, the Court remitted the matter again to the District Inspector of Schools, to pass a fresh order, in the light of the observations made therein.

4. Based on the aforesaid direction, the District Inspector of Schools while giving reasons, has now refused to accord approval, by the impugned order. The District Inspector of Schools held that the charge Nos. 2 and 5 were partially proved by the Enquiry Committee and that the remaining charges had not been proved and that the charge so proved, did not amount to any financial irregularity, and that the error, if any, occurred on account of lack of knowledge in the financial matters by the Respondent No. 4, and therefore, the District Inspector of Schools held that instead of suspending the Respondent No. 4, she should be let off with a warning. The Committee of Management, being aggrieved by the order of the District Inspector of Schools, has filed the present writ petition.

5. While all these proceedings were going on, the Enquiry Committee issued a charge-sheet and the matter was investigated and an opportunity was given to the Respondent No. 4 to adduce evidence. It transpires that the Enquiry Committee submitted a report on 22.7.2007 and, based on its recommendation, the Committee of Management, in its resolution dated 30.7.2007, accepted the findings of the Selection Committee and, resolved to continue to keep Respondent No. 4 in suspension and recommended the reversion of the Respondent No. 4 from the post of officiating Principal to the post of L.T Grade with a rider, that in future, Respondent No. 4 would never be given the charge of an officiating Principal. This recommendation of the Committee of Management was forwarded to the District Inspector of Schools by a letter dated 31.7.2007 for remission to the Selection Board for approval or disapproval as required u/s 21 of the U.P. Secondary Education Services and Selection Board Act, 1982 (hereinafter referred to as the "Act").

6. It is alleged that the matter is still pending with the District Inspector of Schools and that he has not forwarded the papers to the Selection Board as yet, and that, in the meantime, the impugned order of disapproval was passed by the

District Inspector of Schools.

7. Before proceeding any further, it would be relevant to quote the provision of Section 16G (5) to (8) of the U.P. Intermediate Education Act, 1921, which is quoted hereunder:

16G. Conditions of service of Head of Institutions, teachers and other employees.--

(1) ...

(2)....

....

(5) No Head of Institution or teacher shall be suspended by the Management, unless in the opinion of the Management--

(a) the charges against him are serious enough to merit his dismissal, removal or reduction in rank ; or

(b) his continuance in office is likely to hamper or prejudice the conduct of disciplinary proceedings against him ; or

(c) any criminal case for an offence involving moral turpitude against him is under investigation, inquiry or trial.

(6) Where any Head of Institution or teacher is suspended by the Committee of Management, it shall be reported to the Inspector within thirty days from the date of the commencement of the Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975, in case the order of suspension was passed before such commencement, and within seven days from the date of the order of suspension in any other case, and the report shall contain such particulars as may be prescribed and accompanied by all relevant documents.

(7) No such order of suspension shall, unless approved in writing by the Inspector, remain in force for more than sixty days from the date of commencement of Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975, or as the case may be, from the date of such order, and the order of the Inspector shall be final and shall not be questioned in any Court.

(8) If, at any time, the Inspector is satisfied that disciplinary proceedings against the Head of Institution or teacher are being delayed, for no fault of the Head of Institution or the teacher, the Inspector may, after affording opportunity to the Management to make representation revoke an order of suspension passed under this section.

8. Chapter III Regulation 39 of the Regulations framed under the Intermediate Education Act states:

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 16G shall contain the following particulars and be accompanied by the following document:

- (a) the name of the persons 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 inquiry 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 or a teacher may be suspended by the appointing authority or any of the grounds specified in Clauses (a) to (c) of Sub-section (5) of Section 16G.

9. From a perusal of the aforesaid, it is clear that no Head of an institution could be suspended unless in the opinion of the Management, the charge or charges levelled against him was serious enough to merit his dismissal, removal or reduction in rank or his continuance in office was likely to hamper or prejudice the conduct of the disciplinary proceedings against him or where a criminal case for an offence involving moral turpitude was under investigation against him.

10. The provision contemplates that the relevant documents which the Management relied upon was required to be transmitted to the District Inspector of Schools as prescribed within a stipulated period, and that the District Inspector of Schools was required to approve or disapprove the order of suspension within 60 days. The District Inspector of Schools, was prima facie required to look into the gravity of charges and record its reasons for approval or disapproval of the suspension order, as held in *Radhey Shyam Yadav Vs. District Inspector of Schools, State of U.P. and Committee of Management, Swami Vivekanand Inter College through its alleged Manager, Dal Singh Yadav*,

11. In Special Appeal No. 830 of 2008, *Tej Narain Singh Vs. State of U.P. and Others*, a Division Bench of the Court explained the powers of the District

Inspector of Schools u/s 16G (7) holding:

We are of the considered opinion that the District Inspector of Schools, while exercising the power u/s 16G (7), has only to examine the prima facie basis as to whether the charges have any substance and as to whether there is material available in support of the charges. He is not required to enter into any disputed issue as to whether charge would be finally made out or not. The issue in that regard has to be examined in departmental enquiry to be held against the Principal.

12. The Court held that the District Inspector of Schools was only required to examine prima facie as to whether the charge had any substance or whether there was material available in support of the charge. The District Inspector of Schools was not required to go into the merit as to whether the charge could finally be proved or not.

13. Under Sub-clause (8) of Section 16G of the Act, further provision was made to revoke the suspension order where the enquiry was being delayed at the behest of the institution.

14. In the present case, while the matter of suspension was being considered by the District Inspector of Schools, the institution completed the enquiry and submitted a report. The Committee of Management accepted the report and resolved to pass an order of punishment and forwarded the requisite papers to the Selection Board through the District Inspector of Schools for its approval. The District Inspector of Schools, while passing the impugned order, has also considered the enquiry report.

15. The question which arises now for consideration is, what is the scope of the power which the District Inspector of Schools has to utilise while approving or disapproving the order of suspension where a final enquiry has been made and a resolution has been passed by the Committee of Management recommending a punishment ?

16. In my opinion, the District Inspector of Schools is, only required to examine prima facie the gravity of the charge and was not required to go into the merit of the findings given by the enquiry officer or by the Enquiry Committee, as the case may be. The District Inspector of Schools further could not go into the question, as to whether, the recommendation made by the Enquiry Committee was correct or not nor can the District Inspector of Schools give a finding, as to whether, the punishment proposed by the Committee of Management was fair or proper. The proposed punishment or the quantum of punishment proposed by the Committee of Management was outside the scope of power of the District Inspector of Schools and the question whether the proposed punishment commensurate with the misconduct could only be considered by the Selection Board, while considering the matter u/s 21 of the U.P. Secondary Education (Services Selection Boards) Act, 1982. The District Inspector of Schools was only required to prima facie give his opinion on the gravity of the charge in terms of

Section 16G (5) of the Intermediate Education Act and record its reasons for approval or disapproval of the suspension order. While doing so, the District Inspector of Schools would be benefited by the findings given in the Enquiry Report.

17. In the light of the aforesaid, a strange thing has happened in the present case. The District Inspector of Schools, initially accorded the approval of the suspension of the Respondent No. 4 from the post of officiating Principal. This order was set aside on the sole ground that the District Inspector of Schools did not record the reason and remitted the matter again to the District Inspector of Schools. Now, while recording its reasons, the District Inspector of Schools has disapproved the suspension order. The Court does not understand, as to why, the District Inspector of Schools had changed his opinion when no new material facts came before him and the order was passed on the basis of the same material.

18. Further, the Court finds that the District Inspector of Schools has gone into the merits of the case and exonerated the Respondent No. 4 on the ground that the financial irregularity, if any, was committed by the Respondent No. 4 on account of her lack of knowledge in the financial matter.

19. In my opinion, the District Inspector of Schools had no jurisdiction to go into this aspect of the matter. The District Inspector of Schools has also substituted the punishment from reversion to a warning which again could not be done by him. The District Inspector of Schools has again held that the charge Nos. 3, 4, 7 and 8 has not been proved against the Respondent No. 4 when in fact the Enquiry Committee has found that the charges have been proved. The District Inspector of Schools cannot substitute its findings with the findings of the Enquiry Committee. The District Inspector of Schools is only required to peruse the enquiry report and prima facie give its opinion on the gravity of charge as per Section 16G (5) of the Act. The District Inspector of Schools cannot go into the merit or give a finding as to whether a particular charge has been proved or not and cannot upset the findings of the enquiry report.

20. In view of the aforesaid, this Court is of the opinion that the order of the District Inspector of Schools dated 26.7.2008 and the consequential order dated 31.7.2008 cannot be sustained and is quashed. The writ petition is allowed. The District Inspector of Schools, Basti is directed to pass a fresh order, within two weeks from the date of the receipt of a certified copy of this order, either approving or disapproving the suspension order, in the light of the observations made above.

21. It has also come on record that the order of punishment, as resolved by the Committee of Management in its resolution dated 30.7.2007, has already been sent to the District Inspector of Schools. The District Inspector of Schools is required to forward the requisite papers to the Selection Board for necessary approval or disapproval of the order of punishment u/s 21 of the U.P. Secondary Education (Services Selection Boards) Act, 1982. In the event, the District

Inspector of Schools has not forwarded the papers to the Selection Board, the same shall be done within a week of the receipt of a certified copy of this order. The Selection Board is also directed to pass an order of approval or disapproval of the action taken by the Committee of Management u/s 21 of the U.P. Secondary Education (Services Selection Boards) Act, 1982 within three months thereafter. The Petitioners is required to serve a certified copy of the order upon the District Inspector of Schools as well as upon the Selection Board within two weeks from today for the necessary action and compliance.