
(2007) 11 AHC CK 0147
In the Allahabad High Court
Case No : C.M.W.P. No. 2904 of 2004

Committee of Management, S.B. Inter College	APPELLANT
Vs	
U.P. Secondary Education Service Selection Board and Others	RESPONDENT

Date of Decision : 30-11-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)
Uttar Pradesh Intermediate Education Act, 1921 — Section 16G, 16G(3)
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 34, 35, 36, 37
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 21

Citation : (2008) 2 AWC 2138

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : V.K. Singh, S. Shekhar and Ajeet Kumar, for the Appellant; D.R.S. Chauhan, A.K. Singh, R.P. Dubey and Indra Raj Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—In Azamgarh there is an institution S.B. Inter College, Lahuan Kalan which is a recognised institution receiving grant-in-aid from the State Government. The regular Principal of the college R. N. Singh was placed under suspension in the year 1985 and in his place Sri Om Prakash Singh Respondent No. 3 being senior most lecturer working at the institution was allowed to officiate. He continued to work as such till July, 1993. It is said that during this period of officiating principal he committed financial and administrative irregularities, on account of which the Committee of Management of the institution (hereinafter Committee of Management) decided to hold a disciplinary inquiry against him. A three member inquiry committee was appointed. The Respondent No. 3 did not appear before the inquiry committee and an inquiry report dated 30.9.1996 was submitted. The Committee of Management on its basis resolved to dismiss the Respondent No. 3 from service vide resolution

passed in its meeting held on 20.10.1996. The resolution of the Committee of Management alongwith other necessary documents were submitted to the U.P. Secondary Education Services Selection Board (hereinafter for short "Board") for approval. Pending the aforesaid approval, under pressure of the D.I.O.S. the Respondent No. 3 was allowed to resume duties and it was said that he again committed irregularities and as such was subjected to another disciplinary proceeding. This time also a three member inquiry committee was appointed to look into the irregularities committed by him. An inquiry report was submitted on 22.2.2002 and on the basis of the said inquiry report the Committee of Management passed resolution on 23.3.2002 resolving to dismiss the Respondent No. 3 from service. This second resolution for dismissing the Respondent No. 3 from service alongwith other papers relating to the inquiry were again submitted before the Board for approval.

2. The Board considered both the resolutions of the Committee of Management for dismissing the Respondent No. 3 from service and finally passed a common order dated 18.12.2003 disapproving both the resolutions.

3. It is against the aforesaid order of the Board dated 18.12.2003, that the Committee of Management of the institution has approached this Court under Article 226 of the Constitution of India.

4. Under the U.P. Intermediate Education Act, 1921 it has been provided by Section 16G that every person employed in a recognised institution shall be governed by such conditions of service as may be prescribed by the Regulations and any agreement between the management and such employee. Section 16G (3) (a) further provide that no teacher be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments except with prior approval in writing by the Inspector and the Inspector may approve or disapprove or reduce or enhance the punishment. However, with the enforcement of U.P. Secondary Education Service Selection Board Act, 1982 the power conferred upon the Inspector for approval or disapproval of the action of punishment proposed to be taken by the management has been taken away and has been vested upon the Board.

5. Section 21 of the U.P. Secondary Education Services Selection Board Act, 1982 provides that the management of an institution is not competent to dismiss or remove any teacher from service or to reduce his rank or emoluments without prior approval of the Board. Section 21 of the Act is reproduced below :

21. Restriction on dismissal etc. of teachers.--The management shall not, except with the prior approval of the (Board), dismiss any teacher or remove him from service, or serve on him any notice of removal from service, or reduce him in rank or reduce his emoluments or withhold his increment for any period (whether temporarily or permanently) and any such thing done without such prior approval shall be void.

6. The procedure for holding an inquiry and imposing punishment upon a teacher

of an intermediate college is provided under Chapter III of the Regulations under the U.P. Intermediate Education Act, 1921. The said Regulations under Regulation 35 provides that the Committee of Management on receiving complaint about any irregularities committed by a teaching or non-teaching staff shall appoint an inquiry officer/committee. Regulation 36 provides that the grounds on which the action is proposed to be taken shall be reduced in the form of a charge-sheet and shall be communicated to the delinquent employee to enable him to reply the same within three weeks. The inquiry officer or the committee as the case may be after completion of the inquiry shall submit a report with recommendations regarding punishment to be imposed on the employee. Regulation 37 provides that the Committee of Management on receiving the report of inquiry with recommendations shall immediately give notice to the delinquent employee and place the same for consideration before the Committee of Management for final decision enabling the delinquent employee an opportunity to be personally present and to submit his defence and explanation before it. Regulation 37 is material and relevant and as such is reproduced herein below :

7. It is in the background of above legal provisions that the validity of the impugned order dated 18.12.2003 is to be adjudged.

8. Heard Sri V.K. Singh, senior advocate assisted by Ajeet Kumar for the Petitioner, Sri R. P. Dubey for the Respondent No. 1 and Sri Indra Raj Singh for Respondent No. 3. Standing counsel appears for Respondent No. 2.

9. Learned Counsel for the Petitioner submits that the Respondent No. 3 was charge-sheeted twice. Under the first charge-sheet as many as 7 charges of the financial and administrative irregularities were levelled against him and the second charge-sheet contained as many as 20 charges. All charges were serious. The management resolved to dismiss the Respondent No. 3 on both the occasions after following the due procedure of law and, therefore, the Board was not justified in disapproving the proposal sent by the Committee of Management. The impugned order passed by the Board is cryptic and is uninformed of reasons. On the other hand Sri Indra Raj Singh, who appears for Respondent No. 3 states that the resolutions of the Committee of Management were rightly disapproved by the Board as the procedure prescribed under Regulations 35 to 37 of Chapter III was not followed before passing the said resolutions.

10. Having considered the respective submissions of the parties and having perused the record, I find that though the Board has considered each and every charge framed against the Respondent No. 3 independently but has not found any of the charges to be sufficient enough to warrant dismissal of Respondent No. 3. All the charges were disapproved without assigning any reasons by merely narrating the charge and the reply submitted by the Respondent No. 3 thereof and by saying that the charges appears to be untrue.

11. As far as this part of the impugned order is concerned it may be noted that it

is only for the disciplinary authority to form an opinion whether the charges levelled against the employee were established on record on the basis of the evidence adduced by the parties. The authority vested with the power to approve or disapprove such a decision of the disciplinary authority is not competent to substitute its own finding and to hold that the charges levelled were established or not established. The approving/disapproving authority is only required to consider as to whether the disciplinary inquiry was conducted by the competent authority ; as to whether the same was held in accordance with the procedure prescribed and whether the punishment proposed is commensurate to the charges levelled, but such a power cannot be stretched to include within its ambit the power to hold a fresh inquiry or to substitute its own findings in place of the findings arrived at by the disciplinary authority. It can at best while recording its disapproval refer the matter back to the disciplinary authority. Thus, the Board in the instant case had exceeded its jurisdiction in holding that some of the charges levelled against the Respondent No. 3 which were found to be proved by the disciplinary authority were actually not established.

12. The impugned order of the Board at the end of the discussion records that the Respondent No. 3 was subjected to disciplinary proceedings twice in respect of which two separate resolutions for dismissing him were passed on 20.10.1996 and 3.3.2002 respectively but both the said resolutions have been passed in clear violation of Regulations 34, 35 and 37 of the Chapter III of the Regulations and since the procedure prescribed under the aforesaid regulation was not followed the said resolutions were being disapproved. In the light of the aforesaid findings recorded by the Board now the only question required to be seen is as to whether the resolutions of the Committee of Management were in accordance with the procedure laid down in Regulations 34, 35, 37 of the Regulations.

13. In this regard reference may be had to paragraphs 9, 19, 21 and 24 of the writ petition. A bare reading to these paragraphs indicate that the Committee of Management on receiving the inquiry report on both occasions have straightaway passed the resolutions dated 20.10.1996 and 3.3.2002 resolving to dismiss the Respondent No. 3 from service and no show cause notice was given to the Respondent No. 3 to appear before the Committee of Management at the time when the Committee of Management was to consider the said reports. The Respondent No. 3 in the counter-affidavit vide paragraphs 10, 16, 18 and 29 had categorically stated that the Committee of Management neither served the copy of the alleged inquiry report nor issued a notice of any kind before passing the resolutions dated 20.10.1996 and 30.3.2002. Further it has been emphasised that at no point of time he was served with any notice on the basis of the two inquiry reports to appear before the Committee of Management. These, averments in the counter-affidavit have gone uncontroverted. They have not been dealt with and no specific reply has been given in the rejoinder-affidavit. No document was brought on record at any stage either before the Board or even in the writ petition to establish that the Committee of Management afforded any opportunity of hearing to the Respondent No. 3 to appear before it to submit his

explanation pursuant to the inquiry reports as contemplated by Regulation 37 of the Regulations.

14. Sri V.K. Singh learned Counsel for the Petitioner on being specifically asked as to whether any show cause notice was given to the Respondent No. 3 on any of the two occasions by the Committee of Management before passing the resolutions as contemplated by Regulation 37, he expressed his inability and was unable to show anything from the record in this regard. Thus, as per the record, it is established that the procedure prescribed by Regulation 37 of the Regulations was not at all followed by the Committee of Management before passing the two resolutions against the Respondent No. 3.

15. The Apex Court in the case of Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thora, while considering these very Regulations held that the provisions of Regulations 35 to 38 of the Regulations are at par and analogous to the provisions of Article 311(2) of the Constitution of India and, therefore, procedure which governs such cases of termination should be the same as those underlying Article 311(2) of the Constitution of India. The relevant portion of the aforesaid judgment of the Supreme Court in this regard is quoted below :

It is seen from the foregoing that the above provision relating to the procedure to be followed before imposing the punishment of dismissal or removal from service are virtually the same as provided by Article 311(2) of the Constitution and the principles which should govern this case should, therefore, be the same as those underlying Article 311(2).

16. In the case of Union of India and others Vs. Mohd. Ramzan Khan, it has been laid down that where an inquiry is conducted by an authority or officer other than the disciplinary authority it is incumbent to supply the inquiry report to the delinquent employee and to afford him an opportunity of hearing before inflicting any punishment by the disciplinary authority. Such opportunity after conclusion of disciplinary inquiry has been termed as second opportunity or second show cause notice. Regulation 37 of the Regulations embodies the same principle.

17. In the instant case this second show cause notice or an opportunity of hearing as contemplated by Regulation 37 of the Regulations was not afforded to the Respondent No. 3 before the passing of the two resolutions resolving to dismiss the Respondent No. 3 service. Thus, the well-settled principles of natural justice stood violated. Accordingly, the impugned order of the Board cannot be held to be defective though may not be correct partly in so far as it deals with the individual charges and records its own finding that they are not proved. Any resolution of the Committee of Management which has not been passed by following the procedure prescribed or which has been passed in violation of the principles of natural justice in the matter of termination of service could not have been approved by the Board in exercise of powers u/s 21 of the Act. Therefore, the Board committed no error of law in disapproving both the resolutions of the

Committee of Management.

18. In view of the above, no case for interference in exercise of writ jurisdiction has been made out. The writ petition has no substance and is dismissed. However, it shall be open for the Committee of Management of the institution to proceed against the Respondent No. 3 in accordance with law from the stage of the completion of the disciplinary proceedings and, if necessary, to take a final decision in the matter with the approval of the Board.

19. With the above observations the writ petition is dismissed. Cost upon the parties.