

(2000) 11 AHC CK 0130

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 47795 of 2000

Committee of Management, St. Charles Inter College and
Others

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 02-11-2000

Acts Referred:

Constitution of India, 1950 — Article 141
Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(1), 16G(3), 30
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 31

Citation : (2001) 1 UPLBEC 487

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : Vivek Choudhary, for the Appellant;

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—Peter Albert/respondent No. 2 was appointed on a class IV post on 1.7.1997 in St. Charles Inter College, Sardhana, Meerut (in brief institution). His service record for the last 23 years was without any blemish. On 20.11.1999 the principal suspended him. He was issued charge-sheet on 15.12.1999. It was replied on 24.12.1999. All the four charges were denied. Sri B.D. Sharma a teacher was appointed enquiry officer. The enquiry proceedings were completed in absence of respondent No. 2. The report was submitted on 18.1.2000. The principal issued a show cause notice on 20.1.2000. It was replied on 1.2.2000. By order dated 4.2.2000 the principal dismissed the petitioner from service with effect from the date of suspension. He filed an appeal, challenging the order dated 4.2.2000, before the committee of management. It was dismissed. He filed a representation on 5.2.2000 under Chapter III, Regulation 31 of the Regulations framed under U.P. intermediate Education Act, 1921 (in brief Regulations) before the District Inspector of Schools (in brief DIOS). The management filed its objection that the DIOS had no jurisdiction to hear the representation of respondent No. 2. The DIOS allowed the representation, of respondent No. 2 by

his order dated 28.9.2000, and directed his reinstatement with a warning and stoppage of one increment permanently. It is this order of DIOS dated 28.9.2000 which has been challenged by the petitioners in this writ petition.

2. Sri Vivek Chaudhary learned Counsel for the petitioners has urged that DIOS has neither jurisdiction to entertain representation of respondent No. 2 nor his prior approval was required before dismissing him as the institution was a minority institution. He placed reliance on the decision of the Apex Court in *Yunus Ali Sha Vs. Mohamed Abdul Kalam and Others*, and the decision of Division Bench in *Committee of Management A. B. Vidhyalaya Inter College, Kanpur v. Raj Kumar Shukla* 1999 (3) ESC 2139 (AH) (DB).

3. Learned Counsel for respondent No. 2 Sri Pramod Kumar Jain has urged that even though the institution is a minority institution but the State could impose regulatory measures in functioning of the institution. He argued that the provisions of Section 16-G (1) of U.P. Intermediate Education Act, 1921 (in brief Act) read with Regulations 31 to 38, 100 to 107 of the Regulations which lay down detailed procedure and guideline for appointment and punishment of class four employees, would apply as there is no bar under the Act or Regulations that these provisions will not apply to institutions administered by minorities. Therefore the DIOS had jurisdiction to decide the representation of respondent No. 2. He further urged that the charges framed against the respondent No. 2 were vague and evidence was manufactured by petitioners. The enquiry proceedings were completed with undue haste, and without any proper opportunity to respondent No. 2. The DIOS found that there was a conspiracy to dismiss the respondent No. 2. He modified the punishment of dismissal to warning and stoppage of one increment permanently. He urged that the order of DIOS is not liable to be interfered with. The learned Standing Counsel has supported the order passed by DIOS and has adopted the argument of learned Counsel for respondent No 2.

4. The first question is whether in view of *Yunis Ali Sha* (supra) and *Raj Kumar Shukta* (supra) the provisions of the Act and Regulations are not applicable as the petitioners is a minority institution. The controversy whether prior approval of DIOS was required u/s 16-G (3) (a) of the Act before terminating the service of a teacher working in a minority institution was considered by a Full Bench of this Court in *J.K Kalra v. Regional Inspectress of Girls Schools, Meerut and Ors.* 1996 (2) ESC 421 (All). The majority after examining the decisions of the Apex Court and this Court held that it was well settled that regulatory measures could be taken by the State in administration of the minority institution; that the State could make Regulations whereby the actions of the management in discharging, dismissing, removing or imposing any penalty on a member of teaching staff would be subject to approval of the authorities appointed in that behalf by the State; that there should be guideline under the Act and the Rules and that the provisions of Section 16-G (3)(a) of the U.P. Intermediate Education Act, 1921 was applicable to minority institution. This Full Bench decision was held to be,

"no longer good law" by a Division Bench of our Court in Raj Kumar Shukla (supra) as in their opinion observations in Yunus Ali Sha (supra) :

"make it clear that hiring and terminating the service of teachers and other staff in an educational institution is a part of management of the institution, hence has the protection of Article 30 of the Constitution. As such no approval is necessary for terminating the service of teachers and other staff in minority educational institutions."

5. With profound respect to the learned Judges of the Division Bench in Raj Kumar Shukla (supra) I am not able to persuade myself to agree that the decision of the Full Bench lot its binding force for two reasons, one the principle of stare decisions and other non-applicability of the decision in Yunus Ali Sha (supra) Section 2 of the Orissa Education Act, 1969 as extracted in the Apex Court judgment is extracted below :

"2. Act not to apply to certain institutions.--Nothing contained in this Act shall apply to educational institutions of their choice established and administered by minorities having the right under clause (1).of Article 30 of the Constitution :

Provided that the State Government may, by notification, apply or adapt to an educational institution established and administered by minorities, such of the provisions of the Act, so however, that the rights under Article 30 of the Constitution are not infringed,"

6. Before the Apex Court, it was admitted in the counter-affidavit by Inspecting Officer that the institution was a religious minority institution and was covered by Section 2 of the Orissa Education Act. It was not stated that the State Government in exercise of its powers under proviso to Section 2 of Orissa Act issued any notification applying or adapting any provisions of the Act. Therefore, the Apex Court, on the facts peculiar to that case, held that the provision of Section 10-A of the Orissa Act which requires prior approval of the Director before terminating the services of a teacher of an aided institution would not apply to minority institution.

7. In the U.P. Intermediate Education Act, 1921 or the Regulations framed thereunder there is no such provision as Section 2 of the Orissa Act specifically debarring applicability of regulatory provisions for punishment to a teacher or employee of a minority institution. The ratio in the Apex Court decision of Yunus Ali Sha (supra), therefore, could not be invoked for interpreting the provisions of U.P. Intermediate Education Act, 1921 or the Regulations framed thereunder.

8. The learned Counsel for the petitioners vehemently argued that the decision in Raj Kumar Shxikla (supra) case being a Division Bench decision is binding on Single Judge. He urged that if I was not inclined to agree the proper course would be to refer it to larger Bench. The submission is based on well-known principle of judicial discipline. The Court in Tribhuvandas Purshottamdas Thakur Vs. Ratilal Motilal Patel, , while considering the nature of binding decisions has

observed as under :

"A Single Judge is ordinarily bound to accept as correct judgments of Courts of co-ordinate jurisdiction and of Division Benches and of the Full Benches of his Court and of this Court. The reason of the Rule which makes precedents binding lies in the desire to secure uniformity and certainty in law.

If the Single Judge feels that the decision of the Full Bench did not lay down the correct law or Rule or practice, it was open to him to recommend the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in law and that can be achieved only if Judges do not ignore decisions of Courts of coordinate authority or of superior authority."

9. On this ratio it is obvious that the Division Bench could not hold that the decision in J.K. Kalra (supra) was no longer good law. The appropriate course would have been to refer it to a larger Bench. In more, or less similar circumstances a Division Bench of our Court did not follow Full Bench decision as in its opinion, the controversy was covered by a decision of Apex Court which was binding notwithstanding the pronouncement by the Full Bench. This did not receive approval of the Apex Court. The Court in *State of U.P. and another Vs. C.L. Agrawal and another, etc.*, held that a Division Bench cannot hold that a decision of a Full Bench was not binding or it was erroneous because of a Supreme Court decision. The Court in paragraph 19 expressed its unhappiness and observed as under:

"We are dismayed that the Division Bench hearing the said writ petition should have proposed to examine the issue "notwithstanding the aforesaid pronouncement of the Full Bench judgment....." If the judgments in the case of *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another*, and *M. C. Puttaswamy AIR 1991 SC 295*, were cited and the respondents to the said writ petition submitted that the Full Bench judgment was erroneous by reason thereof, the proper course for the Division Bench to follow, if it found any merit in the submission, was to refer the said writ petition to a Full Bench. Judicial discipline requires that a Division Bench should not examine de novo an issue that is concluded by the decision of a Full Bench of that High Court."

10. The decision of the Division Bench in *Raj Kumar Shukla (supra)* case, therefore, was contrary to well established convention. The general Rule is that a decision by a larger Bench or a higher Bench is binding on a smaller or subordinate Bench. But there is a well-known exception to this Rule. When the decision of the higher Bench is rendered by ignoring a decision of a higher Bench or coordinate Bench then it is known in law as a decision in per incuriam. Such a decision loses its binding force. The principle is explained in *Halsbury's Laws of England*, third Edition, Volume 22, paragraph 1687 at 799-800 as under :

"The Court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the Court has acted in ignorance of a previous decision of its own or of a Court of a co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords, in the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords."

11. It was approved by the Apex Court in *Jaisri Sahu Vs. Rajdewan Dubey and Others*, . Since the decision in *Raj Kumar Shukla (supra)* was rendered in violation of these principles it was per incuriam and is not binding. As stated earlier, I am in respectful agreement with the law laid down by the Full Bench decision in *J.T. Kalra (supra)*.

12. The next question is whether the management could dismiss a class IV employee without obtaining prior approval of the DIOS as provided in Chapter III, Regulation 31. Counsel for the petitioners argued that no prior approval of DIOS was required for dismissing a class IV employee. On the other hand Counsel for the respondent No. 2 urged that prior approval of DIOS was necessary. In the alternative the learned Counsel urged that in cases where prior approval of DIOS has not been obtained the class IV employee could prefer appeal before the management and representation before the DIOS. The argument is supported by a Single Judge decision of this Court in *Daya Shanker Tiwari v. Principal R.D.BM. Uchchatar Madhyamik Vidyalaya, Neogaon, Mirzapur and Ors.*, 1998 (I) ESC 403 (All). The learned Single Judge held that the provisions of Regulation 31 read with Section 16-G (1) were applicable before dismissing a class IV employee, And prior approval of Inspector or Regional Inspector was required to be obtained by the management. This decision was approved by a Division Bench of this Court in *Principal, Rastriya Inter College, Mahrajganj and another Vs. District Inspector of Schools, Mahrajganj and others*, Therefore, since prior approval of DIOS was not obtained by the petitioners before dismissing the respondent No. 2, the DIOS rightly set aside the dismissal order.

For the reasons stated above the District Inspector of Schools was fully justified in deciding the representation of the respondent No. 2.

In the result this writ petition fails and is dismissed.