
(2009) 12 AHC CK 0092
In the Allahabad High Court

Dr. Kamlesh Kumari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-12-2009

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(5), 16G(7)

Citation : (2010) 2 AWC 1521

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Judgement

Amreshwar Pratap Sahi, J.—This writ petition has been preferred by the Principal of a Girls Institution who has alleged mala fides against the Commissioner of the Division, District Magistrate, the District Inspector of Schools, the Assistant District Inspector of Schools, the Accounts Officer and one of the Peons of the institution.

2. The writ petition is primarily filed against the orders dated 14.9.2009, 29.10.2009 and 12.11.2009, passed by the respondents, on the ground, that the District Inspector of Schools has been severely influenced by the directions issued by the Commissioner and the District Magistrate whereupon he has proceeded to compel the Committee of Management to initiate proceedings against the petitioner.

3. The dispute appears to have arisen on account of a letter written by the Commissioner of the Meerut Division dated 6.8.2009 followed by the letter of District Magistrate dated 12.8.2009 whereupon the District Inspector of Schools called upon the Manager of the institution to take action forthwith after holding the petitioner directly guilty of the allegations contained in the said letter. A copy of the said letter dated 8.9.2009 is Annexure-3 to the writ petition. A perusal of the same indicates that some report had been submitted by one Sardar Singh an Assistant District Inspector of Schools on 2.8.2009, but not being satisfied with the same, the District Inspector of Schools called upon the Accounts Officer Mr. Radhey Ram, respondent No. 7 to submit a report which was done on 7.9.2009

whereafter the District Inspector of Schools issued the directions on 8.9.2009. The said direction of the District Inspector of Schools was coupled with a direct threat of taking action against the Committee of Management, presuming, that in case no action is taken it shall be inferred that the committee is hand in gloves with the Principal. Thus, the letter dated 8.9.2009 became the basis of all the trouble.

4. The Manager of the institution forthwith proceeded to convene a meeting of the Committee of Management which passed a resolution on 14.9.2009 whereby it was resolved to suspend the petitioner on the alleged ground that the petitioner had used unparliamentary language against some Class IV employee of the institution. No other allegation was made either in the letter dated 8.9.2009 or in the suspension order dated 14.9.2009. The petitioner was thereafter called upon to submit a reply to the same whereafter the Committee of Management in its short counter-affidavit states that the petitioner avoided in giving reply on one pretext or the other. The short counter-affidavit further discloses that an alleged charge-sheet was prepared on 3.10.2009, which, apart from the charges indicated in the suspension order, contained a large number of other charges including financial irregularities which the petitioner was called upon to answer.

5. The petitioner at that stage approached this Court by filing Writ Petition No. 52561 of 2009 questioning the correctness of the order dated 14.9.2009 alleging the same mala fides which have been alleged in the present writ petition. The said petition was disposed of on 9.10.2009, with the observations that it would not be proper to interfere with the suspension order at that stage and that the District Inspector of Schools shall apply his mind and proceed to pass an appropriate order keeping in view the allegations made by the petitioner in respect of the interference caused by the Commissioner and the District Magistrate.

6. The District Inspector of Schools vide order dated 29.10.2009, thereafter proceeded to approve the resolution passed by the Committee of Management on 14.9.2009 without putting the petitioner to any notice and without even taking notice of directions issued by this Court and the observations made in the judgment dated 9.10.2009. The approval order also does not refer to any such charge which has been referred to in the charge-sheet dated 3.10.2009.

7. The petitioner is alleged to have avoided giving any reply upon which the Committee constituted an Enquiry Committee consisting of three persons, who submitted a report on 3.11.2009 and the said report was forwarded to the District Inspector of Schools alongwith the documents on which reliance was placed by the Enquiry Committee and the Committee of Management.

8. The District Inspector of Schools thereafter proceeded to pass the order dated 12.11.2009 after having received a written reply from the petitioner on 9.11.2009. It is the said order and the order of suspension as well as the earlier

order of approval which are under challenge.

9. Sri J.J. Munir, learned Counsel for the petitioner contends that the suspension order which has been passed on the strength of the resolution of the Committee of Management amounts to surrender of jurisdiction inasmuch as the entire proceedings are founded on the letter of the District Inspector of Schools, dated 8.9.2009 which was in turn a direction issued by the Commissioner of the Division and the District Magistrate. He further submits that the order dated 8.9.2009 having been passed in violation of principles of natural justice is even otherwise without jurisdiction inasmuch as apart from the fact that no notice was given to the petitioner, the said order does not conform to the provisions of Sections 16G(5) to 16G(7) of the U.P. Intermediate Education Act and the Regulations under Chapter III of the 1921 Act. It is further submitted that once this Court had intervened on 9.10.2009 then the District Inspector of Schools was bound to comply with the same but he simply passed an order without referring to the provisions of the Act and without even giving any opportunity to the petitioner.

10. Sri Munir further submits that once the District Inspector of Schools had passed the order on 29.10.2009, then he had no power to review the same subsequently under the garb of directions issued by this Court. He submits that as a matter of fact the order dated 12.11.2009 amounts to review of the earlier order dated 29.10.2009 and, therefore, the same is also without jurisdiction. He has further invited the attention of the Court to the mala fides alleged and submits that the District Inspector of Schools and the Committee of Management both have played into the hands of the Commissioner and the District Magistrate with a predetermined mood to somehow or the other punish the petitioner. He further submits that the letter dated 8.9.2009 is more than sufficient to establish malice in law against the District Inspector of Schools who surrendered his jurisdiction and acted on the dictates of the Commissioner and the District Magistrate.

11. Sri Sharma, learned Counsel for the Committee of Management has attempted to support the impugned orders with the aid of affidavits filed on record but at the same time submits that in view of the fact that the District Inspector of Schools has withdrawn the orders dated 29.10.2009 and 12.11.2009, the Committee of Management undertakes to conduct the enquiry fairly without being influenced by the dictates of the District Inspector of Schools or by any other authority in respect of the alleged charges. Learned standing counsel Sri Sandeep Mukherji has filed an affidavit on behalf of the District Inspector of Schools wherein it has been categorically stated that the orders dated 29.10.2009 and 12.11.2009 have been recalled and the same was being done keeping in view the representation made by the Principal of the institution on 17.11.2009 to enable her to present her stand before the District Inspector of Schools.

12. Having heard learned Counsel for the parties and having perused the

affidavits and the documents on record, there is no gain saying that the entire action was actuated by malice in law and the interference of the administration which had instructed the District Inspector of Schools to compel the Committee of Management for taking action. For this the order of the District Inspector of Schools dated 8.9.2009 is more than sufficient to establish the aforesaid inference. The letter dated 8.9.2009 has not even been disputed by the respondent. It is, therefore, clear that the District Inspector of Schools compelled the Committee of Management to suspend the petitioner on the asking of the District Magistrate and the Commissioner of the Division. In the opinion of the Court the District Inspector of Schools, therefore, did not independently act in his capacity as the District Inspector of Schools and even otherwise there is no law conferring any such jurisdiction on the District Inspector of Schools to compel the Committee of Management to proceed on the strength of the letter of the administration issued with a predetermined mood. This inference has been drawn inasmuch the said letter clearly indicates that the explanation given by the Principal was without any basis, therefore, the District Inspector of Schools prima facie was satisfied about the petitioner being guilty of the charges. This opinion has been expressed without any enquiry by the competent authority, i.e., the Committee of Management. This is evident inasmuch as the Committee of Management has later on proceeded to pass a resolution and has mentioned the aforesaid charge as charge No. 1 in the charge-sheet. It is further sufficiently evident that the charge-sheet was also prepared by adding material to it which was not in existence on the date when the Committee of Management passed the resolution to suspend the petitioner. It is by now well-settled that an action taken is actuated by malice in law is an action which is illegal. The action of the District Inspector of Schools at the behest of the Commissioner and District Magistrate was performed in an unreasonable manner which was not bona fide. Public functionaries like the Commissioner or District Magistrate have no legal duty in respect of disciplinary matters of employees of institutions under the 1921 Act. Reference may be had to the following words of justice H.R. Khanna in the celebrated decision of Additional District Magistrate, Jabalpur Vs. Shivakant Shukla,

...A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind ; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far as the state of his mind is concerned, he acts ignorantly, and in that sense innocently....

13. In the instant case, the District Inspector of Schools has admittedly proceeded on the dictates of authorities who had no say under the statute. For this reference may be had to the following line of the Apex Court in the case of Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another,

The influence of extraneous matters will be undoubted where the authority making the order has admitted their influence....

14. Apart from this the order dated 29.10.2009 was passed without giving any notice or opportunity and, therefore, was in violation of principles of natural justice. On both counts the order dated 29.10.2009 has no legs to stand, therefore, was liable to be set aside. However, the District Inspector of Schools has himself withdrawn the said order. There is, therefore, no need to issue a futile writ in that respect. Subsequently the District Inspector of Schools again appears to have proceeded presumably on account of the observations by the Special Appellate Bench in the order dated 7.11.2009. However, a perusal of the said judgment nowhere indicates any authorization to the District Inspector of Schools to proceed with the matter inasmuch the Special Appellate Bench took notice of the order passed by the District Inspector of Schools on 29.10.2009 and made it open to the petitioner to challenge the same.

15. To my mind it appears that the District Inspector of Schools under the pressure of the District Magistrate and the Commissioner of the Division further complicated the issue by passing a fresh order on 12.11.2009. The District Inspector of Schools had no power to review the earlier order nor was there any opportunity given to the District Inspector of Schools by the Division Bench on 7.11.2009 to pass an order. In this view of the matter the order dated 12.11.2009 was also actuated by the same malice and suffers from the same infirmities as the order dated 29.10.2009. The District Inspector of Schools under the affidavit filed before this Court has withdrawn the said order and, therefore, in view of the aforesaid position it would not be necessary for this Court to issue any writ with regard to the said order which has already been withdrawn.

16. The question now remains as to whether the Committee of Management would be entitled to proceed against the petitioner for any further disciplinary action.

17. In the instant case, it is evident that the entire dispute began with the directions issued by the Commissioner and the District Magistrate upon which the District Inspector of Schools issued the orders and the Committee of Management having found itself helpless eventually brushed aside the entire procedure prescribed in law and proceeded hurriedly to net in the petitioner with a mood to punish her. This predetermined mood, therefore, brought about the result which culminated in the proceedings against the petitioner. The charge-sheet which has been placed before the Court refers to the other charges apart from the original charges which had been referred to in the resolution of the suspension. In this regard it will not be for proper this Court to comment on the same inasmuch as this Court cannot act as an Enquiry Tribunal in respect of the allegations or the gravity of the charges. The undertaking given by Sri Sharma before this Court on behalf of the Committee that the Committee shall fairly proceed to inquire into the matter without any bias or allegations of mala fides, therefore, cannot be doubted at this stage.

18. In view of the aforesaid position the orders having been withdrawn by the District Inspector of Schools, no further orders in that respect are required to be

passed leaving it to the Committee of Management to adopt the procedure as prescribed under the U.P. Intermediate Education Act, 1921 in case it still wants to proceed with the charges after having an explanation from the petitioner. In the event the explanation furnished by the petitioner is found to be satisfactory it shall be open to the Committee to proceed accordingly. The petitioner shall now submit a full and complete reply to the allegations contained in the charge-sheet within 15 days from today which shall be considered by the Committee of Management and the Committee shall proceed accordingly.

19. In view of the order dated 12.12.2009, passed by the District Inspector of Schools the petitioner cannot be treated to be under suspension for the time being, unless any fresh action is taken and orders are passed in accordance with law.