

(2001) 01 AHC CK 0105

In the Allahabad High Court

Case No : C.M.W.P. No. 21136 of 1997 with No's. 16872 of 1997 and 38483 of 1998

German Singh and another

APPELLANT

Vs

District Inspector of Schools, Aligarh and others

RESPONDENT

Date of Decision : 02-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 AWC 601 : (2001) 1 UPLBEC 633

Hon'ble Judges : Shitla Pd. Srivastava, J

Bench : Single Bench

Advocate : Prakash Padia and R.G. Padia, for the Appellant; Murlidhar, R.P. Singh, Rudreshwari Prasad, Shambhoo Nath Srivastava and B.B. Paul and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Shitla Pd. Srivastava, J.—This petition under Article 226 of the Constitution of India has been filed by German Singh and Sukhbir Singh against the District Inspector of Schools and others for quashing the order dated 26.4.1997 passed by the District Inspector of Schools, Aligarh, which has been filed as Annexure-18 to the writ petition and consequential order dated 1.5.1997 passed by the Manager of the Institution, which has been filed as Annexures-19 and 20 to the writ petition. Further other relief for mandamus has been prayed for commanding the respondents to pay the salary to the petitioner No. 1 as head clerk of the institution in question and petitioner No. 2 as assistant clerk of the institution in question.

2. The brief facts as stated in the petition are that in the institution in question, namely, Jamuna Khand Inter College, Tappal, district Aligarh, the respondent No. 4, Kishan Pal Singh was in service as Head Clerk. His services were terminated on account of charges of embezzlement. Kishan Pal Singh filed a writ petition challenging the order for termination in the High Court on the ground that his

appeal before the Deputy Director of Education has not been decided. It is stated that this Court directed the Deputy Director of Education to decide appeal within a period of two months." Thereafter, the Deputy Director of Education on 28.9.1991 dismissed the appeal of Kishan Pal Singh. It is further alleged that a criminal case was also filed against Kishan Pal Singh, which resulted in his acquittal by order dated 24.5.1994. It is further stated that against the order of acquittal, the State Government preferred an appeal which was dismissed by this Court on 28.10.1996 and leave to appeal was not granted.

3. The petitioners have further stated that petitioner No. 1 was working in the institution as assistant clerk and he was promoted as Head Clerk on the post of Kishan Pal Singh. Similarly, petitioner No. 2 working as Laboratory Assistant as class IV employee was promoted as assistant clerk in the institution on the post of German Singh petitioner No. 1. Relevant documents regarding promotion has been filed as Annexures-6 and 7 to the writ petition. The contention of the petitioners is that approval was granted by the District Inspector of Schools regarding the promotion of the petitioners vide order dated 3.12.1986, as such, the petitioners were working on their posts regularly and they were being paid salary also. It is further stated that the respondent No. 4, Kishan Pal Singh, filed Writ Petition No. 36327 of 1991, which was disposed of by this Court on 20.5.1996 and the matter was sent back to the District Inspector of Schools for reconsideration and the respondent No. 4, Kishan Pal Singh, was directed to continue under suspension. It is further stated that against the order passed by this Court, a SLP was filed by the Management before the Supreme Court but the same was rejected and leave was not granted. It is further stated that in pursuance of the direction issued by this Court, proceedings were started before the District Inspector of Schools. It is further stated that on 26.4.1997 the District Inspector of Schools passed an order to the effect that as respondent No. 4, Kishan Pal Singh, head clerk, has been acquitted from the criminal case, he shall be reinstated from 20.4.1985 and all the appointments and arrangements made in place of respondent No. 4, Kishan Pal Singh, shall be cancelled. The grievance of the petitioners is that after the order dated 26.4.1997 a consequential order was also passed by the Manager of the institution reverting petitioner No. 1 from the post of Head Clerk to the post of assistant clerk and petitioner No. 2 was reverted from the post of assistant clerk to the post of Laboratory Assistant. The contention of the petitioners is that the order dated 26.4.1997 is wholly arbitrary, unjust and illegal. The petitioners have challenged this order.

4. The grounds of attack taken by the petitioners are that no notice or opportunity, whatsoever, has been given to the petitioners at any point of time and order of reversion has been passed after a lapse of 12 years. The legal plea taken by the petitioners is that the salary cannot be reduced in respect of an employee without giving notice or opportunity of hearing. The contention of the petitioners is that after a lapse of 12 years, the petitioners shall be deemed to have become regular on their respective posts where they were promoted.

5. Counter-affidavit has been filed by Kishan Sharma, Manager, Committee of Management of the Institution. In the counter-affidavit, it is stated that German Singh was appointed as clerk and Sukhbir Singh was appointed as class IV employee in the institution. German Singh was promoted in place of Kishan Pal Singh, who was dismissed from the service and in place of German Singh, Sukhbir Singh was promoted but when Kishan Pal Singh was reinstated, both petitioners were reverted to their parent posts.

6. Second counter-affidavit has been filed by Kishan Pal Singh, respondent No. 4, where the deponent has denied the charge of embezzlement and has stated that the petitioners were provided job on the condition mentioned in Annexure-8 to the writ petition where it is specifically mentioned that in case Kishan Pal Singh, respondent No. 4, is reinstated, the person who has been appointed on the post will be reverted back to his original post. In paragraph 13 of the counter-affidavit, reply to paragraphs 16 to 24 of the writ petition has been given, where it is stated by Kishan Pal Singh, respondent No. 4, that it relates to the correspondence between the Committee of Management and the District Inspector of Schools regarding records and papers which are wholly irrelevant. It is further stated by Kishan Pal Singh, respondent No. 4, that he was rightly reinstated by the District Inspector of Schools on 26.4.1997. It is further stated in paragraph 24 of the counter-affidavit that Kishan Pal Singh, respondent No. 4, was exonerated from the charges by this Court as well as by the Supreme Court. Rejoinder-affidavits have also been filed by the petitioners.

7. Civil Misc. Writ Petition No. 16872 of 1997 has been filed by Deo Dutt Singh for a writ of certiorari for quashing the order dated 1.5.1997, copy of which has been filed as Annexure-7 to the writ petition. A writ of mandamus has also been prayed for directing the respondents to allow the petitioner to work and to pay his salary. This petition has been connected with Civil Misc. Writ Petition No. 21136 of 1997. The petitioner has stated in this writ petition that he was appointed on 29.9.1986 by order of the Principal of the institution on the post of Lab. Assistant (Biology Lab.) on probation for a period of one year. It is further stated that he joined the service on 1.10.1986 as Lab. Assistant and worked till 1.5.1997 and was given due increment and other benefits according to rules. It is further stated that he was directed by the respondent (Committee of Management) and the Principal to hold charge for teaching classes VI to VIII and he took the classes also. It is further stated that the petitioner was directed to examine the copies of classes IV to VIII also and he was given charge of class teacher of class IX in the year 1995-96 and charge of class teacher of Intermediate second year in 1996-97 but his services were terminated on 1.5.1997 by the Committee of Management on the ground that one Kishan Pal Singh, Head Clerk, has been exonerated of the charges, therefore, the services of the petitioner are being terminated. The contention of the petitioner is that in the appointment of the petitioner there was no condition imposed that his services will be terminated in case Kishan Pal Singh is reinstated. The grievance of the petitioner is that before passing the impugned order of termination no

notice was given to the petitioner nor any explanation was called for as such order is arbitrary in nature. His contention is that the petitioner has served more than 11 years, therefore, his services should not have been terminated.

8. A counter-affidavit in this case has been filed by the management giving history of the appointment of the petitioner and it is stated that Kishan Pal Singh, Head Clerk, was dismissed and terminated on 31.1.1986 by the Committee of Management and the order was approved by the District Inspector of Schools and German Singh who was working as assistant clerk was promoted to the post of Head Clerk, which was occupied by Kishan Pal Singh. Sukhbir Singh was promoted to the post of German Singh and Deo Dutt Singh was appointed in place of Sukhbir Singh. It is stated that these appointments were sent for approval and the District Inspector of Schools by order dated 3.12.1986 has given financial concurrence on the condition that the matter of Kishan Pal Singh was pending in this Court. On the condition that the matter of Kishan Pal Singh was pending in this Court and the approval was given subject to the condition that in case any order is passed in favour of Kishan Pal Singh they will be returned back to their respective posts and services of Deo Dutt Singh will be terminated. A copy of the order dated 3.12.1986 has been filed as Annexure-1 to this counter-affidavit. It is further stated that Civil Misc. Writ Petition No. 36327 of 1991 filed by Kishan Pal Singh was allowed by this Court on 20.5.1996 and the order of termination and order of the appellate court as well as approval order passed by the District Inspector of Schools was quashed and the matter was remitted back to the District Inspector of Schools for passing fresh orders. In pursuance thereof a fresh order was passed on 26.4.1997 by the District Inspector of Schools and in compliance of that order German Singh was reverted back to the post of Assistant Clerk and Sukhbir Singh was reverted back to the post of class IV employee and since no post of class IV employee was left the services of Deo Dutt Singh were terminated. The management simply complied with the order of this Court as well as the order of the District Inspector of Schools. It is further stated that the posts of class IV employee or the assistant teacher or the Lab. Assistant were never advertised nor the name of the petitioner was called for from the employment exchange and the petitioner was appointed as class IV employee pending litigation of Kishan Pal Singh.

9. Civil Misc. Writ Petition No. 38483 of 1998 has been filed by Kishan Pal Singh and the relief claimed is only for a writ of mandamus directing the respondents to release the money, which is fallen due. This petition was connected with Civil Misc. Writ Petition No. 21136 of 1997. It appears that no counter-affidavit has been filed in this case. From the order-sheet dated 12.4.1999 passed in Civil Misc. Writ Petition No. 16872 of 1997 it is clear that one more Civil Misc. Writ Petition No. 3672 of 1997 was ordered to be connected with this writ petition and all the four writ petitions were connected and directed to be listed on 7.5.1999 with the consent of the learned counsel for the parties. It was made clear in the order dated 12.4.1999 that relevancy of these two Writ Petition Nos. 3672 of 1997 and 38483 of 1998 shall be examined when they are listed.

10. On the date of hearing, i.e., 15.11.2000, three writ petitions, namely, Writ Petition Nos. 21136 of 1997, 16872 of 1997 and 38483 of 1998, were listed. Learned counsel for the parties did not press that Writ Petition No. 3672 of 1997 is also necessary, therefore, the matter was heard. The judgment is being delivered in Writ Petition No. 21136 of 1997 which will be leading case. A copy of this judgment will be kept in other files.

11. Heard learned counsel for the parties.

12. From the pleading of the parties, it is clear that the appointments of the petitioners German Singh, Sukhbir Singh and Deo Dutt Singh in the institution is connected with the termination of the services of Kishan Pal Singh. It appears that Kishan Pal Singh, who was Head Clerk in the institution was involved in some criminal case on account of which his services were terminated, therefore, the post of Head Clerk was in abeyance. To fill up this post, German Singh, who was working as assistant clerk was given promotion to the post of Head Clerk and when the post of assistant clerk on account of German Singh became vacant, Sukhbir Singh, who was working on the post of Lab. Assistant was promoted to the post of assistant clerk and as the post of Sukhbir Singh fell vacant Deo Dutt Singh was appointed on that vacant post. Thereafter, Kishan Pal Singh was acquitted in criminal case and he was reinstated. After his reinstatement, German Singh was reverted back to his parent post (assistant clerk). Similarly, Sukhbir Singh was reverted back to the post of Lab. Assistant and the services of Deo Dutt Singh were terminated. German Singh and Sukhbir Singh have filed this writ petition challenging the order of their reversion and Deo Dutt Singh has also filed writ petition challenging the order of his termination.

13. Sri R. G. Padia, advocate, appearing for petitioners, German Singh and Sukhbir Singh, has submitted that the order of reversion of these two petitioners is bad in law because when Writ Petition No. 36327 of 1991 was filed by Kishan Pal Singh on 26.5.1991 challenging the termination order, this Court directed the District Inspector of Schools for reconsideration of the matter and the District Inspector of Schools was directed to verify the charges levelled against Kishan Pal Singh from the original record if the same has been received from the Court. It was further directed that so long a fresh order of termination of the services of Kishan Pal Singh was not passed in accordance with law. Kishan Pal Singh will continue under suspension. Sri R. G. Padia has submitted that there are documents on record to show that the District Inspector of Schools did not act according to the direction issued by this Court, therefore, the order of the District Inspector of Schools dated 26.4.1997 reinstating Kishan Pal Singh and cancelling the appointment made on his post is bad in law. Therefore, since the reinstatement of Kishan Pal Singh is not in conformity with the orders passed by this Court, the reversion of the petitioners to their parents posts is also illegal. His further submission is that the petitioners have worked for a number of years on their promoted post, therefore, their services on the promoted posts could not

have been terminated without giving notice or opportunity of hearing.

14. Sri Murlidhar, advocate, appearing for Kishan Pal Singh, respondent No. 4, has submitted that the promotion of the petitioners on the respective posts was on certain conditions and the conditions have been mentioned in Annexure-8 to the writ petition of German Singh and another. He has placed before the Court Annexure-8, which is the letter written by the District Inspector of Schools, Aligarh, to the Manager of the institution on 3.12.1986. The subject is appointment of clerk and IV class employee. It is mentioned in the letter that if Kishan Pal Singh gets some order in his favour from the Court, from that date German Singh and Sukhbir Singh shall be reverted back to their parent post and services of Deo Dutt Singh shall be terminated. Sri Murlidhar has submitted that the promotion of German Singh and Sukhbir Singh and the appointment of Deo Dutt Singh were conditional. Therefore, when Kishan Pal Singh was exonerated from criminal charges and was acquitted, the conditions mentioned in the letter dated 3.12.1986 (Annexure-8 to the writ petition of German Singh and another) was to be complied with and the petitioners cannot say that they have acquired right on the basis of such conditional promotion. His further submission is that this Court directed the District Inspector of Schools to consider the papers regarding termination of the petitioners. But there is no dispute that services of Kishan Pal Singh were terminated on account of the fact that criminal case was going on against him and if there was some correspondence between the management and the District Inspector of Schools and some other authority on the basis of the direction of this Court, that had nothing to do with the case of the petitioners whose promotions were dependent on the fact of reinstatement of Kishan Pal Singh. Sri Murlidhar has further submitted that if the order of promotion was a conditional, then on the fulfilment of the conditions, the promotees have to be reverted back and they cannot acquire any right merely on the basis of their long stay on the promoted post which was in the shape of stop gap arrangement.

15. Sri Shambhoo Nath Srivastava learned counsel appearing on behalf of the management has submitted that when Kishan Pal Singh has been reinstated the petitioners were rightly reverted back to their parent post and they cannot now challenge the order of reversion and reinstatement of Kishan Pal Singh. He has also placed reliance on the letter dated 3.12.1986 sent by the District Inspector of Schools to the Management which deals with the appointments of the petitioners.

16. Sri B. B. Paul learned counsel appearing for Deo Dutt Singh in Writ Petition No. 16872 of 1997 has submitted that the appointment of Deo Dutt Singh was independent. It was not a promotion rather it was a fresh appointment, therefore, his services could not have been terminated. Sri Shambhoo Nath Srivastava appearing for the Committee of Management in this case has submitted that from the letter of the District Inspector of Schools to the management dated 3.12.1986 it is apparent that his appointment was also in the

same link.

17. In reply, Sri B. B. Paul has submitted that the appointment of Deo Dutt Singh was on the basis of the letter dated 29.9.1986 which has been filed by the petitioner as Annexure-2 to the writ petition. There is no mention that his appointment has any connection with the termination of the services of Kishan Pal Singh or promotions of German Singh and Sukhbir Singh. Therefore, his appointment cannot be linked with the promotions of German Singh and Sukhbir Singh. Sri B. B. Paul has submitted that as Deo Dutt Singh has worked for the last 11 years on the post, therefore, in view of the existing law, which is applicable to the services of a teacher, the services of the petitioner cannot be terminated. Sri Srivastava has submitted that the aforesaid law is not applicable for IV class employee rather it is applicable to the services of the teachers.

18. After hearing learned counsel for the parties at length and going through the record, I am of the view that Writ Petition No. 21136 of 1997 filed by German Singh and another must fail for the reasons that as the promotions of these petitioners were dependent upon the reinstatement of Kishan Pal Singh and since Kishan Pal Singh has been reinstated, they must come back to their parent posts, therefore, this petition fails and is dismissed.

19. So far as the petition filed by Deo Dutt Singh is concerned after hearing learned counsel for the parties, I am of the view that it is true that the appointment letter of Deo Dutt Singh, which is Annexure-2 to the writ petition, does not mention that he was appointed on the vacant post with any condition that his services shall be terminated. But from the letter dated 3.12.1986 issued by the District Inspector of Schools, it is apparent that the District Inspector of Schools granted approval for payment of salary with a condition that in case Kishan Pal Singh gets order in his favour from the Court, then the services of Deo Dutt Singh shall stand terminated and in view of this condition mentioned in the order of approval the services of Deo Dutt Singh shall stand terminated. The result is that this writ petition falls and is dismissed.

20. So far as Writ Petition No. 38483 of 1998 is concerned which has been filed by Kishan Pal Singh for a writ of mandamus against the respondents to release the money but nobody has pressed the petition. No body has pressed for taking of the other Writ Petition No. 3672 of 1997 which is not listed, therefore, no order is required in this case. Writ Petition Nos. 21136 of 1997 and 16872 of 1997 are dismissed. Parties shall bear their own costs.