
(1999) 04 AHC CK 0206
In the Allahabad High Court
Case No : C.M.W.P. No. 13189 of 1995

Hanuman Prasad

APPELLANT

Vs

District Inspector of Schools, Banda and others

RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Intermediate Education Act, 1921 — Regulation 31

Citation : (1999) 3 AWC 2161

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

Bench : Single Bench

Advocate : R.K. Pandey and S.K. Shukla, for the Appellant; S.C., V.S. Singh, for the Respondent

Final Decision : Allowed

Judgement

V.M. Sahai, J.—The only question that arises for consideration in this petition is whether the order dated 21.3.1995 dismissing the petitioner, a head clerk in Adarsh Inter College. Manikpur, district Banda can be maintained.

2. The petitioner was suspended, by the authorised controller, on 5/7.12.1989. A charge-sheet dated 9.3.1990 was served upon him. He claims to have submitted his reply. But no steps were taken by the respondents. Therefore, he filed Writ Petition No. 3797 of 1990 questioning the suspension order. The petition was disposed of by this court on 7.12.1994 with direction to disciplinary authority to decide the proceedings within three months in accordance with law.

3. The Manager of the college issued notice dated 3.3.1995 to petitioner to file his reply to the charges within seven days as time granted by this Court was expiring. The petitioner on 13.3.1995 replied that he had already submitted explanation to the authorised controller in 1990. The letter was sent by registered post. It was received by the respondents on 16.3.1995. The Inquiry was completed ex parte on same day. The report was submitted to the disciplinary authority who passed the order on 21.3.1995, which is quoted below :

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izcU/kd]

vkn"kZ b.Vj dkyst]

ekfudiqj] ckank A

i=kad %1735 &94&95 fnukad %212-3-95

Jh guqeku izlkn fu- iz/kku fyfid]

vkn"kZ b.Vj dkyst] ekfudiqj] ckank A

vkidks lwfpr djrs gq, voxr djuk gS fd ftu vkjksiksa ds vk/kkj ij vki lkf/kdkj fu;a=d vkn"kZ b.Vj dkyst] ekfudiqj] ckank }kjk fuyfEcr fd;s x;s Fks] og IHkh vkjksi vki ds ?ij IR; ik;s x;s A

vr% fuyEcu dh frfFk ls vkidh lsok fo|ky; ls lekIr dh tkrh gS A

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4. The petitioner has filed this petition challenging this order. It is claimed that the order is without jurisdiction as it was passed without obtaining prior approval of the District Inspector of Schools. The order is said to be illegal as it was passed in violation of principles of natural justice without giving him adequate opportunity of hearing and without applying mind. The respondents in the counter-affidavit have stated that the inquiry committee comprising of Principal and two teachers proceeded ex parte as petitioner was, not present on the date fixed by several reminders and letters. The counter-affidavit further states that a copy of the inquiry report was sent but it bears the endorsement of the peon, that the petitioner refused to accept it. Thereafter, a meeting of Committee of Management was called on 19.3.1995 in which It was resolved unanimously to terminate services of the petitioner. It is stated that the order of termination was passed on 21.3.1995 and the papers were submitted to District Inspector of Schools on 30.3.1995 even though the law does not provide that prior approval of District Inspector of Schools was necessary for terminating the services of the petitioner who was an employee.

5. I have heard Sri R. K. Pandey for the petitioner and Sri V. S. Singh for the respondents, Sri Singh raised preliminary objection that the petition has an alternative remedy by way of appeal, therefore, the petitioner was liable to be dismissed on this ground alone. The argument is without substance as it has been held by Apex Court that alternative remedy is not an absolute bar. In Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, the

Court held that if the order was without Jurisdiction or null and void or motivated or contrary to principles of natural Justice, the High Court was not prevented from Interfering and setting it aside. The services of the petitioner were terminated by respondents, admittedly, without obtaining approval of the District Inspector of Schools. Such an order against employees is also contrary to law. It is not disputed that the orders were passed ex parte. This was contrary to principles of natural justice. The petition, therefore, cannot be dismissed on the preliminary objection raised by the learned counsel for the respondent.

6. The order terminating service of petitioner were passed without obtaining approval of the District Inspector of Schools. Regulation 31 of Chapter III specifically provides that the services of an employee cannot be terminated without prior approval of the Inspector. In *Managing Committee V. P. Krishi Udyog Inter College v. District Inspector of Schools, Kanpur and others* 1988 (2) UPLBEC 1461, a division bench of this Court held that an order of termination without obtaining prior approval is against law.

7. I have already extracted the order of the disciplinary authority. He has not given any reason in support of the order. The order dispensing services of the petitioner has been made effective from the date he was suspended. In other words, the order has been made retrospective. I am not inclined to examine whether an order like the one passed by the disciplinary authority is legal or not as after going through the inquiry report on which the order is based. I am of the opinion that the order cannot be maintained. From facts given earlier, It is clear that the entire proceedings were completed between 3.3.1995 to 21.3.1995. This court passed an order on 7.12.1994. The respondents did not take any action till the time was about to expire. The Manager of the college suddenly Issued the notice on 3.3.1995 asking the petitioner to file reply either before it or the inquiry committee. The earlier charge-sheet had been issued by the authorised controller. He was party in earlier writ petition. After the Committee of Management was restored, there is nothing on record nor there is any allegation that it appointed an inquiry committee except the mention of it in the notice sent by the manager. If the inquiry committee was appointed, then in absence of any provision, the notice should have been Issued by it. The notice thus was contrary to rules for holding inquiry. The allegation that the petitioner did not appear despite many letters in the circumstances is not correct. Once the petitioner claimed that he had already submitted his reply before the authorised controller but the enquiry committee was not satisfied, then it was under obligation to inform the petitioner that it intended to proceed ex parte because the letter dated 3.3.1995 sent by Manager did not mention that if reply or Its copy was not submitted, then proceedings shall be taken ex parte. There was, therefore, no justification for proceeding ex parte.

8. The order of disciplinary authority that he accepted the report without any discussion. A disciplinary authority, under law is required to apply his mind. It was necessary in this case as a perusal of the report shows that the inquiry

authority did not discharge his duty properly and in accordance with law. It has repeated the charges and the evidence in support of it as mentioned in the charge-sheet and then recorded the finding that the charge was proved without any discussion or any reason in support of it. The report shows complete non application of mind. It is clear that the respondent in order to comply with order of this court passed, the order hurriedly without the least regard to the rules or their responsibility.

9. For all these reasons, this petition succeeds and Is allowed. The order dated 21.3.1995 Annexure-11 to the writ petition passed by respondent is quashed. The petitioner shall be entitled to reinstatement with all consequential benefits of service. The respondent shall pay the arrears of salary within three months from the date a copy of the order Is served upon the respondents.

10. The facts of the case make out a case for special costs in favour of the petitioner. It is determined at Rs. 10.000 [Rupees ten thousand only). This amount shall also be paid by respondent No. 2 within same period.