
(2003) 09 AHC CK 0190
In the Allahabad High Court
Case No : C.M.W.P. No. 20498 of 2000

Harish Babu Sharma

APPELLANT

Vs

Basic Shiksha Parishad and Others

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Citation : (2004) 1 AWC 298

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : V.K. Singh, G.K. Singh, R.N. Singh and S.N. Singh, for the Appellant;
P.D. Tripathi, S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. This petition has been filed challenging validity and correctness of the impugned order dated 17.4.2000, passed by District Basic Education Officer, Annexure-1 to the writ petition, terminated the services of the petitioner.

3. The brief facts of the case are that the petitioner was initially appointed under the Dying-in-harness Rules as Assistant Teacher on 3rd September, 1993 by Basic Education Officer. He was posted at Prathmik Vidyalaya, Sandpurkani, in block Alampur district Bareilly and was thereafter transferred to Prathmlk Vidyalaya, Behti Jagir Block Kyara in district Bareilly.

4. It is further submitted that in the year 1996, the petitioner was placed under suspension by District Basic Education Officer on account of some charges but subsequently he was reinstated in service in the year 1996 with full back wages/salary by the District Basic Education Officer. Petitioner was placed under suspension again on 15.12.1997 by the District Basic Education Officer. A charge-sheet was also given to the petitioner. He submitted his reply to the charges on 2.2.1998. After receiving the reply from the petitioner an order was passed on 6th April, 1998 by the District Basic Education Officer, whereby he revoked the

suspension of the petitioner and reinstated him will full salary,

5. It is further submitted by the counsel for the petitioner that on 6th May, 1999, an order was passed by the District Basic Education Officer whereby he placed the petitioner again under suspension. It is contended that while placing the petitioner under suspension, the District Basic Education Officer attached the petitioner with Primary School Kanman, block Damkhoda, district Bareilly, which is about 45 kms. away where, the petitioner was functioning. The petitioner thereafter made representation before the District Basic Education Officer showing his inability to join the institution to which he was attached stating therein that the said institution was 45 kms. away and it was very difficult for him to attend the enquiry. The representations made by the petitioner, the Director of Education (Basic), directed the Regional Assistant Director of Education Basic to enquire into the matter. She also directed the District Basic Education Officer to submit the enquiry report into the matter.

6. The District Basic Education Officer appointed the Education Officer to enquire into the charges levelled against the petitioner. He submits a report on 6.3.2000 in which he found that the charges against the petitioners are not proved. However, the Sub-Divisional Magistrate submitted another report in which he held that charges against the petitioner were proved.

7. The District Basic Education Officer while passing the impugned order dated 17.4.2000, relied upon the report submitted by the Sub-Divisional Magistrate without affording show cause notice or any opportunity to the petitioner to put up his defence. The contention of the petitioner is that he has been terminated from services by the impugned order. It is wholly illegal and in violation of equity, fair play and principle of natural justice. The impugned order dated 17.4.2000 is as under :

^ ^Isok lekIr vkns" k

vij mi ftykf/kdkjh] cjsyh dh tkap fnukad 25-3-2000 ds vuqlkj vki deZpkjh vkpj.k fu;ekoyh rFkk vkpj.k lafgrk dk fuoZgu u djus ds nks"kh ik;s x;s gaSa A vr% foHkkx dks vkidh Isokvksa dh vko";drk ugh gS] fnukad 17-4-2000 Is vkidh Isok;sa lekIr dh tkrh gS A

g- viBuh;

ftyk csfld f" k{kk vf/kdkjh]

cjsyh A**

8. It is submitted by the counsel for the parties after the order of suspension the District Basic Education Officer had not communicated any date of hearing to the petitioner and it was wholly incorrect to allege that the registered letters were sent to the petitioner. He submits after the Assistant Director of Education (B) exonerated the petitioner from all the charges. It was not open to the Basic Education Officer to order afresh enquiry without recording reasons and giving

opportunity to the petitioner. Termination of services of the petitioner is illegal and shows that the authority was biased the impugned order has been passed in mala fide exercise of powers. He also alleges that when the petitioner went to the office of the District Basic Education Officer for collecting the charge-sheet but it was not given to him and charge sheet was published in the newspaper. The petitioner had submitted his reply to the charge-sheet. The Assistant Director of Education (Basic) passed an order directing the District Basic Education Officer to dispose of the matter within 2 days in hurry. He states that the allegation made in the counter-affidavit, the services of the petitioner was dispensed with effect from 17.4.2000 is wrong the District Basic Education Officer has ante-dated the termination order and that as a matter of fact the letter was issued on 18.4.2000 and an incorrect copy of letter dated 17.4.2000, has been filed as C.A.18.

9. It is argued that the report was issued by the Magistrate on 18.4.2000 whereas order is said to have been passed on 17.4.2000. He submits that passing of the ante-dated termination order, annexed with the copy of the enquiry report is as under :

^^dk;kZy; ftyk eftLV?sV] cjsyh A

ftyk csfld f"kk{kk vf/kdkjh] cjsyh A

?i;k Mk- ,e- lh- "kekZ ofj"B mi/;{k jkT; deZpkjh la;qDr ifj"kn m- iz- tuin cjsyh ds Kkiu fnukad 26-2-2000 ds lEcU/k esa Jh gjh"kadj ckcw "kekZ] fuyfEcr] la- v- izkFkfed fo|ky; bTtruxj izFke fodkl [k.M fcFkj pSuiqj] cjsyh ds izdj.k dh tkap Jh jktkjke vij mi ftykf/kdkjh cjsyh ls djkh x;h A tkap vk[;k dh lR; izfrfyfi layXu dh tk jgh gS A layXu tkap vk[;k ds vk/kkj ij nks"kh deZpkjh ds fo:) foHkkxh; dk;Zokgh fd;s tkus ds funsZ"k ftyk eftLV?sV egksn; }kjk vius vkns"k fnukad 27-3-2000 } kjk ikfjr fd;s x;s gSaa A

vr,o tkap vk[;k esa mfYyf[kr fcUnqvksa dk v/;;u dj nks"kh deZpkjh ds fo:) foHkkxh; dk;Zokgh djus dk d"V djsa ,oa ?r dk;Zokgh ls bl dk;kZy; dks voxr dj nsa A bl lEcU/k eas ewy i=koyh ds v/;;u gsrq fdlh Hkh dk;Z fnol esa vkdj v/;;u fd;k tk ldrk gS A

g- viBuh;

eatqy dqekj tks"kh

vij ftyk eftLV?sV] uxj] cjsyh A

fnukad 17-4-2000**

10. The District Basic Education Officer sent the same by registered post on 20.4.2000. It is apparent that some mischief was played while terminating the services of the petitioner. Which is further substantiated by the letter of Basic Education Officer dated 22.4.2000, addressed to the Additional Director of Education of Basic appended and Annexure-R.A. 5.

11. The counsel for the respondents could not place any material as to how the order of termination was passed on 17.4.2000 when the letter was sent by the District Magistrate on 18.4.2000. The petitioner appears to have been victim of unfair and biased dealings, an order of termination cannot be sustained and is quashed.

12. For the reasons stated above, the writ petition succeeds and allowed. No order as to costs. The respondents are directed to reinstate the petitioner in service within one month from the date of production of the certified copy of this order.