
(2012) 05 AHC CK 0048
In the Allahabad High Court
Case No : Writ Petition No. 4076 of 2011

Iliyas Ali

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-05-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 135 FLR 205

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : L.P. Mishra and Abhishek Misra, for the Appellant; D.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—Matter is taken in the revised cause list.

None present on behalf of O.P. No. 5.

Heard Dr. L.P. Mishra, learned Counsel for petitioner, learned State Counsel for official respondents and perused the record.

2. In the City of Unnao, there is an institution known as Jawahar Lal Nehru Inter College, Fatehpur Chaurasi, Unnao (hereinafter referred to as the institution) recognized by U.P. Secondary Education Board, Allahabad as provisions provided under U.P. Intermediate Education Act, 1921 and the Regulations framed thereunder as well as U.P. High Schools and Intermediate Colleges (Payment of Salaries to the Teachers and other Employees) Act, 1971.

3. On 27.7.1974, the petitioner was appointed on the post of Lecturer in Geography in the institution. In July, 2010 as he was the senior-most Lecturer in the institution, so appointed as Principal in July, 2010. While working and discharging the duties on the said post, by an order dated 10.6.2011 placed under suspension thereafter retired on 30.6.2011 after attaining the age of

superannuation during suspension period.

4. In view of the abovesaid factual background, the present writ petition has been filed by the petitioner with the following main prayer:--

(a) To issue a writ, order or direction in the nature of Mandamus commanding the opp. parties 1 to 4 pay to the petitioner his post-retirement benefits including the monthly pension by treating the petitioner having retired from the post of Principal of Jawahar Lal Nehru Inter College, Fatehpur Chaurasi, Unnao, the suspension order date 10.5.2011 notwithstanding.

5. Dr. L.P. Mishra, learned Counsel for petitioner while pressing the relief as claimed by petitioner submits that he was appointed on the post of Principal in the institution being the senior most Lecturer is to retire on after attaining the age of superannuation i.e., 62 years as his date of birth recorded in High School Certificate/Service Book as 14.3.1949. However, he was allowed to continue till 30th June, 2011 under the provisions that the age of superannuation of a teacher including the Principal of an Intermediate College is 62 years but in the event of date of birth being Second July, or onwards, the person shall continue till the end of Academic Session, i.e. June, 30 of the said year. But 20 days prior to his retirement placed under suspension by order dated 10.6.2011 by levelling false and frivolous allegation.

6. He further submits that after retirement from services there is no provisions, provided under U.P. Intermediate Education Act, 1921 and the Regulations framed thereunder for conducting disciplinary proceedings or the continuance of any disciplinary proceedings against a Teacher or a Principal of an Intermediate College. Hence, in the present case after retirement on 30.6.2011 neither the suspension nor any disciplinary proceeding can either be initiated or conducted against the petitioner, so withholding of the post-retiral dues of the petitioner by the respondents is not permissible under law and they shall be directed to pay the same to him.

7. In support of his argument, he placed reliance on the judgment given by Apex Court in the case of Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, , and in the case of Shri Rajesh Kumar Saxena Retd. Chief Accounts Officer (T.A) Vs. Bharat Sanchar Nigam Ltd., B.S.N.L. Board, The Chief General Manager, Bharat Sanchar Nigam Ltd. and The General Manager Telecom, Bharat Sanchar Nigam Ltd., .

8. Further, in the instant matter, on behalf of the opposite party Nos. 1 to 4 i.e., State authorities, no counter-affidavit has been filed in spite of time granted to them. However, learned State Counsel on the basis of the document on record, a letter dated 13.10.2011 written by District Inspector of Schools to Manager of the institution submits that as the suspension order dated 10.6.2011 by which the petitioner has been placed under suspension by the Committee of Management has not been approved by the said authority, so the same has automatically ineffective after his retirement. In this regard, he placed reliance

on the following averments made in the letter dated 13.10.2011, the District Inspector of Schools, relevant portion quoted below:--

9. As stated above, none has appeared on behalf of O.P. Nos. 5 and 6 i.e. Committee of Management and the Manager of the institution, however, on the basis of the counter-affidavit filed on their behalf, the stand taken by the said authorities is that the petitioner has placed under suspension on 10.6.2011.

10. However, in respect to the pleading as raised by the petitioner in para Nos. 18 and 19 of the writ petition that after his retirement no disciplinary proceedings can either be initiated or conducted, the reply as given in para No. 18 of the counter-affidavit by the said opposite parties are to the effect that "the contents of paras 18 and 19 of the writ petition are not correct."

11. In view of the abovesaid facts, after hearing learned Counsel for parties who are present today and going through the material on record, sole question to be decided in the present case is whether after the retirement of the petitioner disciplinary proceeding can continue against him when there is no specific provision for initiation and continuation of any disciplinary proceeding after retirement of a teacher or Principal of Intermediate College in the U.P. Intermediate Education Act, 1921 and the Regulation framed thereunder.

12. In order to decide the same it is relevant to go through the provisions provided in the Intermediate Education Act, 1921 for conducting disciplinary proceeding.

13. Regulations 31 to 45 under Chapter III framed in U.P. Intermediate Education Act, 1921 provide condition of service of teachers and employees of the institution upto Intermediate classes.

Regulation 35 of Chapter III of the Act provides that if a complaint or an adverse report is received by the Committee of Management of the institution, against a teacher or a principal of the institution, the Manager, in the case of a teacher and in the case of the principal of the institution, a sub-committee will be constituted to enquire into the charges and submit the report.

Regulation 36 of the Regulations provides.--That the grounds which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the employee charged and which shall be so clear and precise as to give sufficient indication to the charged employee of the facts and circumstances against him.

.....The Inquiring Authority conducting the enquiry may also, separately from these proceedings, make his own recommendation regarding the punishment to be imposed on the employee.

The language of Regulation 35 read with Regulation 36 makes it clear that it is obligatory in the case of the allegations against a principal, that a Sub-Committee should be constituted to enquire into the charge. The said Sub-

Committee is required to reduce in the form of a definite charge or charges the grounds on which it proposes to hold enquiry.

14. Further, Regulation 39, Chapter-III of the U.P. Intermediate Act, 1921 provides the formalities are to be done by the Committee of Management after submitting of the inquiry report by the Inquiry Officer the said Regulation is quoted as under:--

Regulation 39, Chapter-III framed under U.P. Intermediate Act, 1921 reads as under:--

39(1). The report regarding the suspension of the head of institution or of the teacher to be submitted to the Inspector u/s 16-G shall contain the following particulars and be accompanied by the following document--

(a) the name of the persons suspended along with, particular of the (posts including grades) held by him since the date of his original appointment till the time of suspension including particulars as to the nature of tenure held at the time of suspension, e.g., temporary permanent or officiating;

(b) a certified copy of the report on the basis of which such person was last confirmed or allowed to cross efficiency barf, whichever later;

(c) details of all the charges on the basis of which such person was suspended;

(d) certified copies of the complaints, reports and enquiry report, if any, of the enquiry officer on the basis of which such person was suspended;

(e) certified copy of the resolution of the Committee of Management suspending such person;

(f) certified copy of the order of suspension issued to such person;

(g) in case such person was suspended previously also, details of the charges, on which and the period for which he was suspended on previous occasions accompanied by certified copies of the orders on the basis of which he was re-instated.

(2) An employee other than a head of institution or a teacher may be suspended by the appointing authority on any of the grounds specified in Clauses (a) to (c) of sub-section (5) of section 16-G.

15. Needless to mention that there is no provision under in the U.P. Intermediate Education Act, 1921 or the Regulation framed thereunder which deals with issue that if the person is placed under suspension and during the period of suspension retired from service then a disciplinary proceeding can either be instituted or conducted after retirement.

16. Hon'ble the Apex Court in the case of Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, , in para Nos. 6 and 7 held as under:--

Para No. 6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of departmental enquiry after superannuation.

Para No. 7. In view of the absence of such provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.1995, there was no authority vested in the Corporation or continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

17. The abovesaid view was further reiterated by Hon'ble the Supreme Court in the case of State Bank of India and others Vs. T.J. Paul, .

18. Accordingly, in absence any provision in the Act, 1921 Rule or Regulation framed there in which governs the field for initiating or conducting the disciplinary proceedings after retirement of Teacher/Principal of the Intermediate Institution the competent/concerned authority after the retirement of a Teacher/Principal cannot proceed to initiate or conduct the disciplinary proceedings after his retirement and the entire disciplinary proceedings if initiated would laps with the retirement.

19. For the foregoing reasons, once there is no specific provisions in the U.P. Intermediate Education Act, 1921 or Regulation framed thereunder for initiation of a disciplinary proceeding or continuing the disciplinary proceeding against petitioner who placed under suspension after his retirement then the action on the part of official respondents to withhold his post retiral dues is an action which is arbitrary in nature, thus, violative of Article 14 of the Constitution of India as well as principles of natural justice (See Shri Rajesh Kumar Saxena Retd. Chief Accounts Officer (T.A) Vs. Bharat Sanchar Nigam Ltd., B.S.N.L. Board, The Chief General Manager, Bharat Sanchar Nigam Ltd. and The General Manager Telecom, Bharat Sanchar Nigam Ltd., . In the result, the writ petition is allowed with a direction to respondents to pay the petitioner his post retiral dues treating him to retire from the post of Principal, Jawahar Lal Nehru Inter College, Fatehpur Chaurasi, Unnao w.e.f. 30.6.2011 in accordance with law expeditiously preferably within a period of four weeks from the date of receiving certified copy of this order.