
(2003) 08 AHC CK 0123
In the Allahabad High Court
Case No : C.M.W.P. No. 23333 of 1990

Jai Karan Singh

APPELLANT

Vs

Principal Sri Singheshwari Inter College and Others

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Citation : (2003) 4 AWC 3256

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : D.K. Srivastava, for the Appellant; S.S. Sharma and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

R.B. Misra, J.—Heard Sri D.K. Srivastava, learned counsel for the petitioner and Sri S.S. Sharma learned standing counsel for the State respondent.

2. In this petition, the order dated 1.6.1990 dismissing the service of the petitioner by the Principal, Sri Singheshwari Inter College, Tetri Bazar, Siddharthanagar has been challenged.

3. Petitioner was given a charge-sheet for unauthorised absence and for coming late several days and for irregularities and disobedience. The Principal of the College served a notice to the petitioner and after obtaining his explanation, the dismissal order dated 1.6.1990 was passed. According to the petitioner, his services were, if at all, could only be terminated on the basis of disciplinary enquiry conducted under Regulation 35 of Chapter III of the U.P. Intermediate Education Act, 1921 (in short called "Act"), which was brought on 10.3.1975 by Notification No. 7/562-V-8, dated 10.3.1975, according to which for the serious complaints and allegations, the Principal of the College was to appoint a seniormost teacher as an Inquiry Officer. Regulation 35 of "Act" reads as below :

"35. On receipt of adverse report regarding complaint or charges of serious nature, the Committee shall appoint the Principal or Headmaster as Enquiry

Officer in respect of teachers and other employees (or Manager himself would enquire into if he has been delegated with the rights under the rules by Committee) and in case of Principal or Head Master a small sub-committee be appointed which will have instructions to present the report as soon as possible.

In respect of Fourth class employees Principal/Head Master may appoint a senior teacher as Enquiry Officer."

4. Regulation 36 of "Act" reads as under :

"36". (1) The grounds on which it is proposed to take action which 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. He shall be required within three weeks of the receipt of the charge-sheet to put in a written statement of his defence and to state whether he desire to be heard in person. If he or the inquiring authority so desires, an oral enquiry shall be held in respect of such of the allegations as are not admitted. At that enquiry such oral evidence will be heard as that inquiring authority considers necessary. The person charged shall be entitled to cross-examine the witnesses, to give evidence in person, and to have such witnesses called as he may wish ; provided that the enquiring authority conducting the enquiry may for sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof. 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.

(2) Clause (1) shall not apply where the person concerned has absconded, or where it is for other reasons Impracticable to communicate with him.

(3) All or any of the provisions of Clause (1) may for sufficient reasons to be recorded in writing be waived where there is difficulty in observing exactly the requirements thereof and those requirements can in the opinion of the Inquiring authority be waived without injustice to the person charged."

5. According to the petitioner a proper enquiry by a duly appointed Inquiry Officer in reference to the Regulation 35 of the "Act" was to be made in consonance to the Principle of natural justice. Here, the petitioner was charge-sheeted by the Principal of the said college himself and the enquiry was made by himself as an interested party and after obtaining the explanation, the Principal himself has passed the dismissal order against the petitioner without affording him opportunity of hearing, therefore, the dismissal order is not legally sustainable.

6. The counter-affidavit reveals that the petitioner was suspended on 29.4.1983 and a charge-sheet dated 26.7.1983 was served to him on 28.7.1983 In respect of disobedience, indiscipline and for dereliction of duty. The petitioner tendered

an unconditional apology with assurance to the principal by his letter dated 28.7.1983 (Annexure-C.A. 5 to the counter-affidavit) that he shall not make any mistake in future, on such assurance the suspension of the petitioner was revoked and he was reinstated and deployed again in the said college. The petitioner thereafter started committing same mistakes including gross insubordination and disobedience, therefore, on 18.4.1984 the petitioner was again suspended and charge-sheeted and in response to that the petitioner tendered his written apology dated 24.7.1984 (Annexure-C.A. 7 to the counter-affidavit) and a sympathy was shown keeping in view the written apology and assurance of the petitioner to improve himself and the petitioner was again kept in service, however, the petitioner did not improve and had committed the same blunder of insubordination, indiscipline and dereliction of duty, i.e., the misconduct as had been committed by him as such he was third time suspended on 20.11.1985 (Annexure-C.A. 8 to the counter-affidavit). Third time also a written apology dated 23.1.1986 was tendered by the petitioner and keeping in view his apology on humanitarian consideration the petitioner was kept again in service. Despite his all assurances and written apologies given three times the petitioner did not improve himself and was indulged in same Irregularities of disobedience, indiscipline, dereliction of duty and insubordination, therefore, he was called for explanation on 16.10.1989 and was suspended on 19.10.1989 and charge-sheeted on 30.3.1990. No explanation was submitted by the petitioner, despite reminder letters given by the Principal. The petitioner submitted his explanation dated 5.5.1990, which was not found satisfactory, therefore, the Principal in order to afford opportunity of hearing issued another letter dated 18.5.1990 to the petitioner and the petitioner's service was terminated. According to the respondent the Principal was the competent authority to terminate the petitioner, therefore, after affording him opportunity of hearing the service of the petitioner was rightly terminated.

7. The endeavourance has been made on the part of the petitioner to controvert the contents of the counter-affidavit and to reiterate the averments of the writ petition.

8. I have heard learned counsel for the parties, I find that undisputedly the petitioner was charge-sheeted three times for dereliction of duty, disobedience, insubordination and indiscipline and was placed under suspension and keeping in view the repeated written apologies of the petitioner after showing sympathetic consideration, the petitioner was reinstated and deployed three times, but in the last he did not show any improvement. However, the enquiry In accordance to the Regulations 35 and 36 of the "Act" was not properly conducted, no Inquiry Officer, namely, senior most teacher was appointed and the charge sheet and evidences relied upon with supporting documents was not served and the petitioner was not allowed to adduce the evidences and to cross-examine the witnesses. The date, time and place of the enquiry was not fixed and the opportunity of hearing was not properly afforded to him, therefore, the termination order and the approval of the termination by the District Inspector of

Schools is not legally sustainable. Therefore, the termination order dated 1.6.1990 and the approval thereof by the District Inspector of "Schools are set aside. However, keeping in view the serious charges against the petitioner, the petitioner is not to be reinstated and the enquiry therefore has to be conducted under the provisions of Regulations 35 and 36 of the "Act" by the Principal by appointing a senior most teacher of the college as Inquiry Officer, who will give the same charge sheet to the petitioner with supporting documents and evidences to be relied upon and the petitioner shall be under the obligation to receive the same and shall also be under obligation to know the date fixed to give explanation, and avail the opportunity of rendering documents and evidences and to cross-examine the witnesses. Therefore, the proper date, time and place for finalisation of the enquiry shall be fixed and after affording proper opportunity of hearing the inquiry shall be concluded by the Inquiry Officer. The petitioner is expected to co-operate in the inquiry and shall be in touch to the Principal to know the dates and shall not take unnecessary adjournments and shall render all possible co-operations to finalize the enquiry. The enquiry report submitted by the Inquiry Officer, shall be perused and shall be sent to the District Inspector and after approval of the same a proper order shall be passed in respect of the petitioner within six months from the date of production of certified copy of this order to the Principal of the said college and to the District Inspector of Schools.

9. In view of the above observations, writ petition is disposed of.