
(2009) 11 AHC CK 0186
In the Allahabad High Court
Case No : Special Appeal No. 1752 of 2009

Krishna Pal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Citation : (2009) 11 AHC CK 0186

Hon'ble Judges : Chandramauli Kumar Prasad, CJ and Sanjay Misra, J

Final Decision : Dismissed

Judgement

1. Writ petitioner appellant, aggrieved by order dated 24.10.2009 passed by learned Single Judge in Civil Misc. Writ Petition No. 52413 of 2009, has preferred this appeal under Rule 5 Chapter VIII of the Allahabad High Court Rules, 1952.

2. Short facts giving rise to the present appeal are that the District Magistrate, Shahjahanpur brought to the notice of the Additional Director of Education that a large number of forms of students of other districts have been allowed to be deposited by the writ petitioner appellant (hereinafter referred to as the "petitioner") without permission of the District Inspector of Schools, in the office at Shahjahanpur. Taking into account the aforesaid communication, the petitioner was placed under suspension by the Additional Director of Education by order dated 23rd September, 2009. Petitioner challenged the said order of suspension before this Court on the ground that the same has been passed at the dictate of the District Magistrate, without recording any objective satisfaction and, therefore, the same is vitiated in the eye of law. Said submission of the petitioner did not find favour with the learned Single Judge and he dismissed the writ petition, inter alia, observing as follows:

"Further the District Magistrate, however, cannot be said to be a higher authority than the Additional Director of Education (Basic), therefore, it cannot be said that he has acted under the dictates of the District Magistrate. On the contrary, in the case in hand the disciplinary proceedings has been initiated at the instance of the District Inspector of Schools and therefore it is also evident that the impugned

order has been passed after considering the complaint made by the departmental authorities concerned."

Mr. Subodh Kumar, appearing on behalf of the petitioner, submits that the order of suspension, having been passed by the Additional Director of Education without recording his objective satisfaction, is vitiated in the eye of law. In support of the submission, he has placed reliance on a Division Bench judgment of this Court in the case of Dr. Arvind Kumar Ram Vs. State of U.P. & Ors., 2007 (4) AWC 4163, and our attention has been drawn to the following passage of paragraph 21, which reads as follows:

"21. The Director in paragraph 3 (a) of the counteraffidavit has stated that he believed the allegations made on 15.5.2007 by the Principal Dr. R. V. Singh against the petitioner to be serious and genuine and by his letter dated 22.5.2007 sent recommendation to the State Government for initiating the inquiry into the allegations and in the meantime suspend the petitioner. On the recommendation of the Director the Principal Secretary, Higher Education on 22.6.2007 suspended the petitioner and directed for an inquiry. The counteraffidavit has also been sworn by the Director on behalf of the Secretary who has suspended the petitioner but it has not been stated that the Principal Secretary had applied his own independent mind to the material available on the record and after being prima facie satisfied that the allegations were so serious which may warrant major penalty, suspended the petitioner. ..."

Reliance has also been placed on another Division Bench judgment of this Court in the case of Shyam Singh Yadav Vs. State of Uttar Pradesh & Ors., (2008) 3 UPLBEC 2276.

5. We do not find any substance in the submission of Mr. Subodh Kumar and the decisions relied on are clearly distinguishable. Here, in the present case, misdemeanour said to have been committed by the petitioner was brought to the notice of the Additional Director of Education. The Additional Director of Education, being satisfied, passed the order of suspension. Merely the fact that he has referred to the communication of the District Magistrate would not mean that he has not applied his mind objectively.

6. Now, referring to the decision of this Court in the case of Arvind Kumar Ram (supra), we find that in the said case, the order of suspension was passed by the State Government and in the affidavit, it was not stated that the Principal Secretary, while passing the order of suspension, had applied his own independent mind to the material available on record and was prima facie satisfied that the allegations were so serious that in the event of their being established, may warrant major penalty. The Division Bench in the said case held that exercise of power of suspension by the competent authority without recording its objective satisfaction would be invalid. Here, in the present case, allegations against the petitioner are serious in nature and in the event of their being established, may warrant major penalty.

7. In that view of the matter, we are of the opinion that the decision in the case of Arvind Kumar Ram (supra) is clearly distinguishable and so is the decision in the case of Shyam Singh Yadav (supra).
8. We are of the opinion that consideration of the matter by the learned Single Judge does not suffer from any error calling for interference in this appeal.
9. We do not find any merit in the appeal and it is dismissed accordingly.