
(1979) 10 AHC CK 0009

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 6108 of 1974

Magan Ram Yadava

APPELLANT

Vs

Dy. Director of Education and Others

RESPONDENT

Date of Decision : 29-10-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Educational Code, 1958 — Rule 143

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G

Citation : (1979) AWC 726

Hon'ble Judges : Yashoda Nandan, J;K.N. Seth, J;K.C. Agarwal, J

Bench : Full Bench

Advocate : B.B.P. Singh, for the Appellant;

Final Decision : Allowed

Judgement

Yashoda Nandan, J.—When this writ petition, which should normally have been decided by a Division Bench, came up for hearing, the Bench hearing it was of the opinion that the decision of this Court in *Manager, Shanta Nand Swatantra Bharat Inter College v. Kamla Rai* 1972 ALJ 933, needed reconsideration by a larger Bench since it was not in accord with another Division Bench decision of this Court in *Dhata Intermediate College v. Brahma Nand Singh* 1976 ALJ 499 and that is how this case happens to be before this Full Bench.

2. The material facts giving rise to this case are that Respondent No. 6, Chandrika Lal, was employed as a librarian-cum-clerk at the Maharajganj Inter College, Maharajganj, district Azamgarh (hereinafter referred to as the College). During the relevant period because there was a conflict between two sections of the members of the Society running the College, two rival bodies of persons were claiming to be the duly elected Committee of Management thereof. This led to a civil litigation between the two rival committees of Management and an interim order of injunction therein came up to this Court in Civil Revision No. 697 of 1963: While deciding the Civil Revision, Hon"ble K.B. Asthana, J. (as he then

was) passed an order directing appointment of a Receiver to manage the affairs of the College and to exercise the powers of the Committee of Management till such time as the suit itself was decided. As a consequence of this order, the Sub-Divisional Magistrate, Sagari, commenced functioning as the Receiver of the College and exercising the powers of its Committee of Management he framed certain charges against Respondent No. 6 and pending enquiries into them suspended him from service. Ultimately the Receiver came to the conclusion that Respondent No. 6 merited the punishment of termination from service. Under the impression that the approval of the District Inspector of Schools was needed before the services of Respondent No. 6 could be terminated, he sought such approval and sent the papers to the District Inspector of Schools. The District Inspector of Schools under the impression that the Receiver had proposed the punishment of dismissal from service of Respondent No. 6 while agreeing that he deserved to be punished directed that he be removed from service instead of being dismissed therefrom. Aggrieved by the order of the District Inspector of Schools, Respondent No. 6 filed an appeal before the Deputy Director of Education of the region concerned. The Deputy Director of Education dismissed the appeal for default of Respondent No. 6. Thereupon Respondent No. 6 applied for the review of the order passed by the Deputy Director of Education on the ground that there was no power in him to dismiss the appeal in default which should have been decided on merit even if the Appellant was absent. The Deputy Director of Education accepted the contention of Respondent No. 6 and reviewed his earlier order and allowed the appeal of Respondent No. 6 filed against the order of the District Inspector of Schools and directed his reinstatement to service. It may be mentioned here that during the proceedings before the District Inspector of Schools and in the appeal filed by Respondent No. 6 the Petitioner Magan Ram Yadav was not a party during the period Respondent No. 6 was under suspension and out of employment in consequence of the order passed by the District Inspector of Schools and during the pendency of the appeal before the Deputy Director of Education; the Petitioner was appointed as librarian of the college first on a temporary and subsequently on probation. According to the Petitioner during this period he completed his period of probation satisfactorily and was confirmed as the librarian of the College. In consequence of the order of reinstatement of Respondent No. 6 passed by the Deputy Director of Education, the District Inspector of Schools directed that services of the Petitioner Magan Ram Yadav be terminated and Respondent No. 6 be reinstated to the post. Respondent No. 6 claims that as a result of the order of the District Inspector of Schools, he rejoined the service of the College as a librarian on the 7th October, 1974. Aggrieved by the order passed by the Deputy Director of Education on the appeal of Respondent No. 6 and the consequential order of the District Inspector of Schools directing his reinstatement, the Petitioner moved this Court under Article 226 of the Constitution praying in substance for quashing the order of the Regional Deputy Director of Education and that of the District Inspector of Schools directing reinstatement of Respondent No. 6 to the service and termination of his own service in consequence.

3. When this petition came up for hearing before a Division Bench of this Court, it was urged, as it has been before us, that the Receiver appointed by this Court who was functioning as the Committee of Management of a recognised institution was not required either under the provisions of the U.P. Intermediate Education Act (hereinafter referred to as the Act) or the Regulations framed thereunder to seek the approval of the District Inspector of Schools before either dismissing or removing from service a librarian. It was contended that while Section 16-G of the Act required approval of the District Inspector of Schools before the services of a teacher or head of an institution could be terminated either by dismissal or otherwise, there was no requirement under the Act or the Regulations acting as an impediment to the committee of management ordering the dismissal or removal from service of a librarian. It was urged that since there was no statutory requirement requiring the Receiver to seek approval of the District Inspector of Schools to his decision to terminate the services of Respondent No. 6, proceedings before the District Inspector of Schools as well as the appellate order by the Deputy Director of Education directing reinstatement of Respondent No. 6 to the service of the College were without jurisdiction and of no legal consequences as far as the services of the Petitioner, who had been appointed on probation and subsequently confirmed on his post was concerned.

4. Learned Counsel for Respondent No. 6 supported the order passed by the Deputy Director of Education allowing his appeal and directing his reinstatement to the service by placing reliance on the Division Bench decision of this Court in *Manager, Shanta Nand Swatantra Bharat Inter College v. Kamla Rai*, (supra). In this case a Division Bench of this Court took the view that Rule 143(i) of the Educational Code of Uttar Pradesh, 1958 edition required the Managing Committee to obtain the approval of the District Inspector of School to a decision for dismissal, removal or suspension of the services of a person on the clerical staff of a recognised college and that if the Inspector of Schools approves the proposal of the Managing Committee the order of approval would be tantamount to passing an order in an appeal against the clerk concerned and in such an event the clerk has a right of second appeal before the Deputy Director under the provision of the Code adverted to above. If the view taken in this decision is correct, no legal exception can be taken to the proceedings before the District Inspector of Schools and the appellate order passed by the Deputy Director of Education, who have been impleaded as Respondents in the writ petition.

5. On the other hand, Learned Counsel representing the Petitioner placed reliance on another Division Bench decision of this Court in *Dhata Intermediate College v. Brahma Nand Singh* (supra), in which after considering certain earlier decisions of this Court, it was held that Rule 143(i) of the Education Code was a mere executive instruction and could not be given the status of a statutory rule. In support of this view, reliance was placed on a Division Bench decision of this Court in *Muslim Association, Kanpur v. Hamid Hussain S.A.* No. 831 of 1970 decided on 25th February, 1972 (Alld.). Though the decision in *Manager, Shanta Nand Swatantra Bharat Inter College v. Kamla Rai* (supra), was noticed by the

Bench deciding *Dhata Intermediate College v. Brahma Nand Singh* (supra), it did not either specifically agree or disagree with the views expressed therein but it has been clearly held therein, as already stated, that Rule 143(i) of the Education Code was not statutory in character. The judgment of this Court in the case of *Dhata Intermediate College* is a well considered one and we do not consider it necessary to burden this judgment by repeating the reasons given therein in support of the conclusion arrived at. As adverted to earlier, it has placed reliance for its conclusion on an earlier Division Bench case decided by this Court. We are in respectful agreement with the view expressed in *Dhata Intermediate College v. Brahma Nand Singh* (supra). Before the Bench which decided *Manager, Shanta Nand Swatantra Bharat Inter College v. Kamla Rai* (supra), it was not urged that Paragraph 143(i) of the Educational Code, U.P. had any statutory force and hence could not create a right of appeal. With due deference to the learned Judges who decided *Manager, Shanta Nand Swatantra Bharat Inter College v. Kamla Rai* (supra), we record our dissent therefrom, if it was intended to lay down therein that by virtue of Paragraph 143(i) of the Educational Code, U.P. the Committee of Management of a College recognised under the Act was powerless to pass an order terminating the services of a member of the clerical staff without the approval of the District Inspector of Schools and that an order of the District Inspector of Schools according or withholding approval to such proposed action was appealable to the Deputy Director of Education.

6. In this view of the matter, the conclusion is inescapable that the Receiver appointed by this Court who had all the powers of the Committee of Management of the College concerned could independently of any approval or otherwise of the District Inspector of Schools take a decision to terminate the services of Respondent No. 6 or to determine his services otherwise. It is further clear that the order of the District Inspector of Schools could not be the subject matter of an appeal at the instance of Respondent No. 6 under the provisions of Rule 143 of the Educational Code. A right of appeal against an order sanctioned by law is plainly one that requires statutory authority and cannot be founded on executive directions-See *Het Ram Vs. Collector of Aligarh*, ; *Soorajmull Nagarmull Vs. Commissioner of Income Tax, Calcutta*, .

7. In this view of the matter, neither the proceedings before the District Inspector of Schools nor the order passed by the Deputy Director of Education purporting to be exercising a power of appeal against the order passed by the District Inspector of Schools, the consequential order passed by the District Inspector of Schools directing reinstatement of Respondent No. 6 and the termination of the services of the Petitioner can be sustained.

8. For the reasons given above, we allow this writ petition, quash the order of the Deputy Director of Education dated 5th September, 1974 and the order of the District Inspector of Schools which was subject matter of appeal before the Deputy Director of Education as well as the order of the District Inspector of

Schools directing reinstatement to service of Respondent No. 6 and the termination of the services of the Petitioner. From the material on record before us it does not appear that the decision of the Receiver to terminate the services of Respondent No. 6 was given effect to by its being communicated to him. It will now be open to the Receiver or in the event of a proper Committee of Management having come into existence in the meanwhile to such Committee of Management to take such action as it may deem proper on the basis of the findings recorded by the Receiver and the decision incorporated by him therein without any interference by Respondent No. 1 or by Respondent No. 3. In the circumstances of the case, parties shall bear their own costs. Interim orders, if any, are hereby vacated.