

(1977) 05 AHC CK 0023
In the Allahabad High Court
Case No : Second Appeal No. 2139 of 1974

Mahabir Singh Verma

APPELLANT

Vs

Managing Committee, Adarsh Inter College

RESPONDENT

Date of Decision : 04-05-1977

Acts Referred:

Specific Relief Act, 1963 — Section 38

Uttar Pradesh Intermediate Education Act, 1921 — Section 16F, 16G(3)(a)

Citation : (1977) 05 AHC CK 0023

Hon'ble Judges : Hari Swarup, J

Final Decision : Allowed

Judgement

Hari Swarup, J.

This is plaintiff's appeal and arises out of a suit for a permanent injunction to restrain the defendants, namely, the Managing Committee of Sri Adarsh Intermediate College and its Manager, from giving effect to the notice terminating the plaintiff's services and also for an injunction to restrain them from the plaintiff's functioning as a teacher.

The plaintiff was appointed on temporary basis on July 8, 1958. The nature of appointment was described as "temporary till trained hand is not available". The appointment was subsequently approved, it appears, by the Inspector of Schools on October 16. By a notice dated August 16, 1971 the Manager of the institution gave the plaintiff one month's notice terminating his services. It is against this order of termination that the plaintiff filed the suit.

The plaintiff's case was that his services were governed by the Intermediate Education Act and they could not be terminated without prior approval of the District Inspector of Schools as required by Section 16G (3) (a) of the Act. The defence taken in the suit was that as the plaintiff was not qualified to hold the post, his appointment had become void on the amendment of the Intermediate Education Act and introduction therein of Section 16E and Section 16G on October 13, 1959. And, as the appointment became void, no prior approval of

the Inspector of Schools was necessary for termination of the service.

The trial court held that the termination of service could not be made except with the prior approval of the District Inspector of Schools. It accordingly decreed the suit and issued the injunction prayed for by the plaintiff. An appeal was filed by the defendants. The first appellate court has allowed the appeal and dismissed the suit. According to the learned Civil Judge, the appointment itself had become void, because the plaintiff did not possess on the date of his appointment or on the date of the enforcement of Section 17E of the Act the required qualification. Against this decree the plaintiff has come up in appeal.

Section 16G (3) (a) provides: "No.....teacher may be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments, or served with notice of termination of service except with the prior approval in writing of the Inspector". Admittedly the plaintiff was in service till the date of the notice of termination. It is further not denied that no prior approval of the Inspector had been taken for issuing the notice of termination of services. The order terminating the services was thus, *ex jure*, an order passed in contravention of the Intermediate Education Act.

Learned counsel for the defendants has relied upon Section 16E(1), 16G(1) of the Act. Section 16E provides the qualifications for appointment as Principals, Headmasters and Teachers. Section 16F(1) (a) provides: "Subject to the provisions hereinafter specified, no person shall be appointed as Principal, Headmaster or Teacher in a recognised institution unless he (a) possesses the prescribed qualifications or has been exempted under subsection (1) of Section 16E". Section 16G (1) provides: "Every person employed in a recognised institution shall be governed by such conditions of service as may be prescribed by Regulations and any agreement between the management and such employee in so far as it is inconsistent with the provisions of this Act or with the Regulations shall be void". The plaintiff was employed as a Physical Training Instructor, the qualification for which is given in Appendix "A" under Item No. 37 which is as under:

"For High School (classes IX and X)

Undergraduates with full one year's training from College of Physical Education recognised by the State Government."

According to the plaintiff he had acquired the necessary qualification in 1961, while according to the defendants he does not possess. To determine in this case whether the plaintiff possessed the necessary qualification or not because if he does not possess the qualification, that can provide a reason for termination of his services, but cannot by its own force make the appointment non est, or make it unnecessary the taking of approval of the Inspector for termination of his services as required by Section 16G of the Act. Section 16F speaks about the appointment of teachers.

Learned counsel for the defendants relied on the case reported in *Arya Kanya Pathshala v. Smt. Manorama Devi Agnihotri* 1971 A.L.J. 983. It was held in that case that an appointment made without prior approval of the officer concerned, as required by Section 16F(1) of the Act, was not an appointment in the eye of law, and that Section 16G (3) of the Act will not be attracted to such a case. That case has no applicability to the present case because here the appointment had been made prior to the date when Section 16F was introduced, and in fact also the approval to the appointment had been given by the District Inspector of schools. The plaintiff was admittedly appointed before the Act was amended and Section 16F was introduced. Hence at the time of his appointment the qualification now prescribed was not necessary to be possessed. The appointment initially made cannot, therefore, be held to be illegally made. The court was in error in thinking that it was illegal. There is no provision in the Act providing for automatic termination of the services of persons who, according to the management do not have the required qualification. Whether a person has qualification or not will depend upon the determination of the matter by the authority concerned who is charged with the duty of giving approval to the termination of services. Section 16G (3) makes it imperative that notice of termination of service can be served only after prior approval of the Inspector. The notice was thus void and not in accordance with law, and could not have the effect of terminating the plaintiff's services.

The question, however, remains as to what relief the plaintiff is entitled to get in the present suit. The plaintiff had secured an ad interim injunction from the trial court and had continued to work as a teacher till the appeal filed by the defendants was allowed by the first appellate court. The plaintiff has not been serving the institution since then. The plaintiff had applied for an ad interim relief in this Court, but the application remained undisposed of. There is also nothing to show that the plaintiff did anything else to mitigate the damages. Learned counsel for the defendants, while dealing with the question about the relief which should be awarded in the present case, referred to the decision of the Supreme Court in *Vaish Degree College v. Lakshmi Narain* A.I.R. 1976 S.C. 888. He has referred to the observations in the judgment to the effect that if the amount of damages to be awarded can become too heavy for the institution to bear, even a smaller amount of damages can be awarded. His contention is that a relief be not granted which might make the institution run into bankruptcy. It is urged that if the injunction sought is granted the amount which will become payable on the reinstatement of the plaintiff will be so heavy that the institution will not be able to bear. Taking into consideration the circumstances of the case and keeping in view the law that the remedy available under the Specific Relief Act for issue of injunctions is a discretionary remedy, the plaintiff's suit should be decreed subject to the condition that the plaintiff will not be entitled to get salary at the full rate for the period he has not worked in the institution but only be entitled to get 50% thereof for this period. Further, the injunction that the plaintiff will not be prohibited from acting as the teacher of the institution on the basis of the

impugned notice will also be subject to "the condition that the injunction will not bar the institution from terminating the plaintiff's services either after obtaining the approval of the District Inspector of Schools, as required under Section 16G(3) of the Intermediate Education Act, or on the appointment being made as contemplated by the order of appointment. Learned counsel for the defendants also contended that the injunction should not compel the institution to take actual work from the plaintiff. In the special circumstances of the case, the injunction is made subject to the further condition that it will be open to the institution not to take work from the plaintiff for a period of six months from today provided it continues to pay salary to the plaintiff. It is also clarified that for purposes of terminating the services of the plaintiff, this condition will not be taken to mean that his appointment is sanctioned for six months by this decree. The condition will be deemed deleted after six months.

In the result, the appeal is allowed. The decree of the lower appellate court is set aside and the decree of the trial court is modified in the manner indicated above. The injunction will issue in terms of this order. In the circumstances, parties shall bear their own costs.