
(2007) 04 AHC CK 0304
In the Allahabad High Court

Mahendra Pal Singh

APPELLANT

Vs

District Basic Education Officer and Another

RESPONDENT

Date of Decision : 11-04-2007

Acts Referred:

Citation : (2007) 5 ADJ 26 : (2007) 6 AWC 6500 : (2007) 113 FLR 789 : (2007) 3 UPLBEC 107

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Saran, J.—The petitioner was appointed as an Assistant Teacher on 21.2.1992. By an order dated 18.1.2000, communicated to the petitioner on 25.1.2000, the petitioner has been dismissed from service on certain charges. Aggrieved by the said order, the petitioner has filed this writ petition,

2. I have heard learned Counsel for the petitioner. No one is present on behalf of the respondents even in the revised list. However, counter affidavit on behalf of the respondents has been filed, which has been perused by me.

From the impugned order it is clear that a show cause notice dated 12.1.2000 was sent to the petitioner by registered post requiring him to submit his reply by 2.00 p.m. on 18.1.2000. It is the specific case of me petitioner that the said notice Was received by him on 18.1.2000 itself by registered post and he immediately thereafter on 19.1.2000 submitted his reply but by then the impugned order had already been passed on 18.1.2000. The said averments made by the petitioner have not been specifically denied in the counter affidavit. The charges against the petitioner were to the effect that he had remained on leave from 24.9.1999 and that his B.T.C. Certificate appeared to be doubtful.

3. The specific case of the petitioner is that he was suffering from Tuberculosis and had initially taken three days leave on 24.9.1999 but on coming to know of the disease he applied for medical leave for five months. The said application was

sent to the Assistant Basic Education Officer through the I lead. Master. With regard to the B.T.C. Certificate it has been stated that by the petitioner that the same is genuine and could be verified from the institution which had issued the same.

4. Considering the facts and circumstances of this case it is absolutely clear that no adequate opportunity of showing cause was given to the petitioner. A notice sent by registered post on 12.1.2000 would, in normal course, be expected to reach in 4-5 days. The said notice had been received by the petitioner on 18.1.2000. Itself and immediately thereafter on 19.1.2000 he submitted his reply. The respondents had in the meantime on 18.1.2000 passed the impugned order. The extreme hurry in passing the order itself shows that the respondents- had a predetermined to dismiss the petitioner from service. The said action of the respondents is contrary to the principles of equity, fair play and natural justice. From the facts of the case it is absolutely clear that the petitioner was not given adequate opportunity of hearing. Further, even if no reply had been submitted by the petitioner, the order should indicate some reason as to on what basis the B.T.C. Certificate of the petitioner was incorrect. The impugned order has been passed merely on the ground that since no reply has been received, the charges stand proved. There would be a presumption that the B.T.C. Certificate of the petitioner was correct as he had been working on the strength of the said certificate since the year 1992, unless the same was proved to be forged or fabricated on some valid basis. In the absence of any specific finding in this regard, the Impugned order deserves to be set aside.

5. For the foregoing reasons, the order dated 18.1.2000 passed by respondent No. 1 is quashed. By an interim order dated 7.3.2000 the operation of the impugned order dated 18.1.2000 had been stayed by this Court. As such the petitioner would be treated in continuous service.

This writ petition stands allowed. However, there shall be no order as to costs.