

(2005) 05 AHC CK 0275
In the Allahabad High Court
Case No : C.M.W.P. No. 32020 of 2005

Mahipal Singh Chauhan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-05-2005

Acts Referred:

Citation : (2005) 3 ESC 1599

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Advocate : Ashok Khare and Sunil Kumar Srivastava, for the Appellant; Prakash Padia and A.K. Yadav, for the Respondent

Final Decision : Disposed Of

Judgement

V.K. Shukla, J.—Petitioner, in instant writ petition, is assailing the validity of the decision taken by the U.P. Secondary Education Service Selection Board, Allahabad, dated 3.3.2005 and the consequential order of dismissal dated 5.4.2005 as communicated by the Manager of Puwayan Inter College, Puwayan, District Shahjahanpur.

2. The facts giving rise to instant writ petition, in brief, are that in the district of Shahjahanpur, there is a recognised aided educational institution, which is governed by the provisions as contained under U.P. Act No. 2 of 1921, U.P. Act No. 5 of 1982 and U.P. Act No. 24 of 1971. In the said institution, petitioner was appointed as assistant teacher on 19.9.1972. Thereafter, by communication dated 17.3.1997, promotion was accorded to the petitioner in Lecturer's Grade against the vacancy which was caused on account of death of one Uttam Mishra. District Inspector of Schools also issued consequential order. The Management, it has been mentioned, was not happy with the promotion accorded to the petitioner, and the same had been questioned before this Court by way of filing Writ Petition No. 120120 of 1997. Second writ petition has been filed by the petitioner, as no salary was being ensured to him in Lecturer's grade. On 20.12.1997 a report was submitted by the Principal of the Institution levelling

various allegations against the petitioner. Pursuant thereto resolution was passed for instituting departmental proceedings against the petitioner, and the Principal who was complainant, was made Enquiry Officer. Charge-sheet dated 23.3.1998 had been issued. Appointment of R.S. Parmar, Principal, as Enquiry Officer, was questioned. After receipt of copy of charge-sheet, petitioner filed representation dated 18.4.1998 demanding various documents. Petitioner has contended that majority of documents asked for had not been supplied; only some of the documents had been supplied under covering letter dated 27.4.1998. Petitioner has contended that he submitted reply to the charge-sheet. Petitioner has asserted various infirmities in the inquiry proceedings, on account of the fact that the provisions as contained under Chapter III Regulations 35 to 37 of the Regulations framed under U.P. Intermediate Education Act had not been complied with. Enquiry Officer submitted his report on 14.5.1998. Petitioner has contended that notice was given informing and intimating that on 7.8.1998 report of the Enquiry Officer would be considered, however, no meeting was held on the said date. Thereafter, petitioner submits that meeting was held on 17.9.1998, wherein resolution was passed proposing dismissal of petitioner from service. The said decision was of no consequence without there being approval of the U.P. Secondary Education Service Selection Board as envisaged u/s 21 of U.P. Act No. 5 of 1982, as such entire papers were transmitted for the purpose of obtaining prior approval. Petitioner has contended that he filed detailed objections on 13.9.1999 against the proceedings undertaken by the Management. Petitioner has submitted that further objections were filed on 13.1.2000, 7.2.2000 and 13.3.2000. Petitioner has made categorical statement of fact that matter was heard on 16.2.2004 by one Dr. Kshetrapal Gangwar. Thereafter at no point of time any hearing was done in the matter, and it appears that ex parte hearing was done on 6.1.2005 by Dr. Kaushal Kishore Mishra and Dr. Bodh Narain Singh, and thereafter, on that basis ex parte report had been submitted on 3.5.2005, and on the same date, U.P. Secondary Education Service Selection Board accorded approval to the same and thereafter consequential order of dismissal has been passed. All these actions have been impugned in present writ petition.

3. On presentation of writ petition, as serious questions had been raised in respect to the way and manner in which proceedings had been undertaken by the U.P. Secondary Education Service Selection Board, as such Sri A.K. Yadav, Advocate, who represents the U.P. Secondary Education Service Selection Board before this Court, was directed to produce original record.

4. Counter-affidavit has been filed on behalf of the Management, and it has been sought to be asserted that departmental proceedings were undertaken in free and fair manner and full opportunity was afforded to the petitioner. It has also been asserted that opportunity of hearing was afforded by the committee consisting of Dr. Kaushal Kishore Mishra and Dr. Bodh Narain Singh. In this regard it has also been submitted that 6.1.2005 was fixed for hearing in the matter. Information in this respect was sent by letter dated 24.12.2005, but the petitioner did not turn up, as such petitioner cannot complain that there has

been any violation of principles of natural justice, and as the charges have been proved, no interference is warranted by this Court.

5. To this counter-affidavit rejoinder affidavit has been filed, and the statement of fact mentioned in the counter-affidavit has been rebutted and it has been mentioned that at no point of time copy of notice dated 21.12.2004 has ever been served upon the petitioner, as such entire proceedings are ex parte.

6. After pleadings mentioned above have been exchanged and original record has been produced, with the consent of the parties, present writ petition has been taken up for hearing and final disposal.

7. Sri Ashok Khare, learned senior Advocate, assisted by Sri Sunil Kumar Srivastava, submitted with vehemence that hearing took place on 16.2.2004, and on the said date petitioner had sought time up to 25.2.2004 for submission of document, and thereafter at no point of time petitioner had been informed of the date 6.1.2005, as such entire proceedings being ex parte are liable to be quashed. It has also been strongly contended that reply submitted by the petitioner has not at all been considered and adverted to, and thus, decision which has been taken is clearly vitiated and further appointment of Enquiry Officer was bad and entire proceedings are clearly in violation of Regulations 35 to 37 of Chapter III of the Regulations, as such order impugned, in all eventuality, is liable to be quashed.

8. Sri Prakash Padia and Sri A.K. Yadav, appearing for respondents, submitted that decision has been taken by the U.P. Secondary Education Service Selection Board in free and fair manner, and there being no infirmity in the action taken, as such no interference is warranted by this Court. As far as petitioner is concerned, he cannot complain violation of principles of natural justice, especially when he failed to participate in the proceedings and present himself on 6.1.2005 pursuant to notice dated 21.12.2004, as such writ petition is liable to be dismissed.

9. After respective arguments have been advanced, the first question, which has to be answered, is as to whether principles of natural justice has been violated or not. In order to answer this question, pleadings as well as original record, has been perused. The factual position, which is emerging from the order sheet maintained by the U.P. Secondary Education Service Selection Board, is that hearing took place on 16.2.2004 and on the said date, petitioner requested for short time upto 25.2.2004 and that decision be taken only thereafter. Order sheet further indicates that thereafter on 5.8.2004, sub-committee was changed and Dr. B.N. Singh and Dr. Kaushlesh Kumar Mishra were authorised to hear the matter and make recommendation. The order sheet further indicates that order dated 17.12.2004 was passed fixing 6.1.2005 and directives were issued asking that notices be sent to both the parties. Thereafter, order sheet indicates that papers were placed before the Secretary in respect to issuance of notices. Thereafter, order sheet indicates that on 6.1.2005 hearing took place; wherein petitioner was not present, and Deputy Manager, Rajveer Singh was present.

Thereafter, on 3.3.2005 matter was placed before the Board and the same was accepted, pursuant to which decision has been taken. Entire record nowhere reveals that any satisfaction has been recorded by the two members who were authorised to hear the matter in respect of service of notice on petitioner and that petitioner had deliberately failed to appear before the Sub-Committee in spite of service of notice. Petitioner has made categorical statement of fact that at no point of time aforementioned letter/notice dated 21.12.2004 had ever been served upon him. The said statement of fact cannot be rebutted, as there is nothing on record to suggest that aforesaid letter had been served on the petitioner and deliberately, petitioner had avoided his participation in aforementioned proceeding. Apart from this, record in question makes entire affairs to be suspicious for the reason that impugned decision dated 3.3.2005, which has been communicated by the U.P. Secondary Education Service Selection Board, therein minutest details of the dates which had been fixed in the matter has been mentioned, and it is most surprising that the said order in question dated 3.3.2005 does not give even remotest reference that notice was issued on 21.12.2004 fixing 6.1.2005, rather to the contrary said order reflects that notice was issued on 27.1.2004 fixing 16.2.2004, and on the said date petitioner prayed for time up till 25.2.2004 and thereafter did not turn up and documents were awaited for long period and as the petitioner at no point of time appeared before the Board nor produced any document, and as the matter was quite old and stale, as such decision was taken to decision on the said resolution. This circumstance in itself amply speaks that manipulation has been done in the record qua issuance of show cause notice dated 21.12.2004 and fixing therein 6.1.2005. U.P. Secondary Education Service Selection Board had been constituted, as it was felt that selection of teachers under the U.P. Act No. 2 of 1921 and Regulations framed thereunder, was not free and fair, and besides the same, field of eligibility was also restricted, which adversely affected the availability of suitable teachers in order to maintain standard of education. Apart from this, in disciplinary matters provisions of Section 16-G (3) of U.P. Act No. 2 of 1921 was found to be inadequate, and as such power of approval to the proposed punishment was vested with the Selection Board, which in itself was to be independent and impartial body. Section 21 of U.P. Act No. 5 of 1982 has been designed to control the arbitrary exercise of power of punishment vested in the Management of Institution, and thus Selection Board has to address itself on all aspects of the matter. Here the very object for which, Selection Board has been constituted, has been sought to be defeated and frustrated, when Selection Board has stepped down to make manipulation and manoeuvring, which is so glaring in the present case. Credibility of Selection Board has clearly been eroded in the fact of the present case. Such conduct should not go unnoticed, and whosoever, is responsible for such a situation, against them enquiry in all eventuality, be conducted and action taken, in accordance with law.

10. Consequently, writ petition succeeds and is allowed. Entire proceeding dated 3.3.2005 as communicated by means of letter dated 23.3.2005, and the

consequential order of dismissal are hereby quashed and set aside, and the matter is remitted back to be decided afresh by U.P. Secondary Education Service Selection Board, Allahabad. It is made clear that Sub-Committee who has submitted report on 3.3.2005 will not hear the present matter, and the Chairman of the Board will authorise another Committee to hear the matter. Parties to the dispute have agreed to appear before the Board on 24.5.2005, and thereafter, the newly appointed sub-committee shall proceed to hear the matter as expeditiously as possible preferably within a period of four months from 24.5.2005, and thereafter decision be taken in accordance with law.

11. Copy of this judgment be supplied to the learned Standing Counsel for forwarding the same to the Secretary, Secondary Education, for ensuring compliance of the order passed by this Court.

No order as to costs.