

(2002) 01 AHC CK 0113
In the Allahabad High Court
Case No : C.M.W.P. No. 40197 of 2001

Managing Committee of Gochar Krishi Inter College and
Another

APPELLANT

Vs

U.P. Secondary Education Services Selection Board,
Allahabad and Others

RESPONDENT

Date of Decision : 11-01-2002

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(3)
Uttar Pradesh Secondary Education Services Commission (Procedure for Approval of
Punishment) Regulations, 1985 — Regulation 7, 8
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 21

Citation : (2002) 1 AWC 574 : (2002) 2 UPLBEC 1225

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : V.K. Shukla, for the Appellant; A.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—This writ petition has been filed by the Committee of Management of Gochar krishi Inter College, Rampur Maniharan, district Saharanpur through its President Sri Gajendra Singh, challenging the order dated 28.8.2001 passed by the U. P. Secondary Education Services Selection Board, Allahabad communicating the decision of the Selection Board dated 16.8.2001 ; and the order dated 5.9.2000 passed by the District Inspector of Schools, Saharanpur. The Selection Board has disapproved the proposal to dismiss respondent No. 3 Sheesh Pal Singh, Principal of the college from service, and has directed the management to give charge of the post of Principal to Sheesh Pal Singh within a period of three days.

2. I have heard Sri V.K. Shukla, learned counsel appearing for the petitioners and Sri A.K. Sharma, advocate, who has entered appearance as counsel on behalf of respondent No. 3, and with the consent of the parties, the writ petition is finally

decided under the Rules of the Court.

3. The facts, giving rise to the instant writ petition, are stated below : Gochar krishi Inter College, Rampur Maniharan, district Saharanpur is a recognised institution under the provisions of U. P. Intermediate Education Act, 1921. Respondent No. 3, Sheesh Pal Singh Verma was appointed as Principal of the institution on 26.2.1988 on recommendation of the U. P. Secondary Education Service Selection Board. Some complaints were received by the Committee of Management from students levying charges against the Principal. A Preliminary Enquiry Committee was constituted which submitted its report on 8.7.1991 after which a three Members Sub-Enquiry Committee was constituted consisting of Shri Jai Singh, Shri Azab Singh and Shri Gyan Singh. This Sub-Enquiry Committee conducted enquiry and submitted its report on 11.11.1991. The Committee of Management of the Institution in its meeting dated 23rd December. 1991, unanimously resolved to suspend Sri Sheesh Pal Singh Verma forthwith, and to hold a detailed enquiry into the charges levelled against him. On 23.12.1991, the Managing Committee submitted the papers to the District Inspector of Schools, Saharanpur along with the resolution passed by the Committee of Management : copy of the order of suspension and the copy of the charge-sheet. The Enquiry Committee consisted Sri Telu Ram Verma, advocate as Chairman, and Sri Bhupendra Singh and Sri Parikshit Singh as Members of Committee. The Committee held its meeting on 14.1.1992, 3.2.1992 and 7.2.1992. In each of the meetings, Shri Sheesh Pal Singh Verma was called to submit his defence. He did not appear before the Committee. The Committee, therefore, submitted Its report dated 15.2.1992 holding that the charges were proved against the suspended Principal, and recommended to dismiss him from service. The Committee of Management by its resolution dated 23.12.1991 considered the enquiry report and unanimously resolved to terminate the service of respondent No. 3 and sent the matter for approval to the Secretary. U. P. Secondary Education Services Selection Board, Allahabad.

4. The Commission sent a show cause notice dated 5.1.1993 to Shri Sheesh Pal Singh Verma, to which he gave reply on 2.2.1993. Thereafter, several dates were fixed but it appears that no one appeared before the Board. The Board also sent a letter to the District Inspector of Schools, Saharanpur but he did not give any reply, The Board received a letter from the Manager of the Institution dated 27.7.1998, informing that the dispute has been settled between the Committee of Management and the suspended Principal and the managing committee had decided to hand-over the charge of the Principal to Sri Sheesh Pal Singh Verma and that he is discharging his duties. The Selection Board, however, decided that a final decision shall be given after affording opportunity to both the parties. On 26.2.1999, Sri Pitamber Singh, Manager of the institution, appeared before the Board and informed the Board that the new Managing Committee was constituted on 10.9.1998. in which he had been elected as Manager in place of Sri Telu Ram Verma. He Informed the Board that he had no knowledge regarding the settlement and requested that the Principal should be adequately punished.

The Selection Board constituted a disciplinary sub-committee which considered the charges in detail and recommended to the Board to approve the resolution vide its report dated 18.1.2000. The said recommendation was accepted by the Selection Board in its meeting dated 20.1.2000.

5. Aggrieved by the order of the Selection Board approving the resolution to terminate his services, respondent No. 3 filed Civil Misc. Writ Petition No. 10322 of 2000. This Court, vide its order dated 8.5.2000, summoned, the original record from the Selection Board and upon their production and examination, it was found that the notices sent to respondent No. 3, were returned undelivered with the endorsement that the addressee had gone out and is not available. In the interest of justice, the petitioner was directed to appear before the Board on 29.5.2000. A direction was also issued that the Board shall give the copy of the supplementary charge-sheet dated 24.12.1992 and also the copy of the proceedings taken in pursuance thereof as per the order dated 7.1.1999 passed by the Sub-Committee. The parties were directed to appear before the Board on 29.5.2000. The Board was required to fix a date in presence of the parties in order to enable them to submit their replies and to fix a date for hearing of the matter. It is significant to note that this Court did not set aside the order of Board, but directed the matter to be reheard.

6. Pursuant to the aforesaid order of this Court, notices were issued to both the parties and that on 29.5.2000, the Board fixed 16.6.2000 for hearing of the matter. Both the representatives of the Committee of Management and Shri Sheesh Pal Singh Verma, appeared before the Disciplinary Committee and that the Board vide Its order dated 1.6.2001 resolved not to accept the resolution of the Committee of Management of the College. The Selection Board vide its meeting dated 16.8.2001 approved the recommendation of the Disciplinary Committee which was communicated to the District Inspector of Schools, Saharanpur, who. by his order dated 5.9.2001 directed the Manager of Gochar Krishi Inter College, Rampur Maniharan, Saharanpur to hand-over the charge of Principal to Sheesh Pal Singh Verma, the respondent No. 3.

7. Sri V.K. Shukla, learned counsel appearing for the petitioner submits that on 16.6.2000. Sheesh Pal Singh Verma, respondent No. 3, who had not submitted any reply to the charges, earlier, filed a detailed reply. A copy of this reply/ document was not given to the Committee of Management despite a precise request made by it, on 11.7,2000 followed by a letter dated 16.4.2001 and reminder dated 16.7.2001 but inspite of giving reply, the disciplinary committee fixed a date for hearing and thereafter the disciplinary committee decided to disapprove the resolution which was accepted by the Selection Board. It is submitted that the principles of natural justice were violated inasmuch as the reply given by respondent No. 3, which was relied upon by the disciplinary committee, was never given to the petitioners. Respondent No. 3, had not replied to the charges earlier. It is further submitted that while approving the resolution, the Selection Board does not have right to reappraise the entire evidence and to

arrive at a different conclusion, as an appellate authority.

8. The U. P. Secondary Education Services and Commission (Procedure of Approval of Punishment) Regulations, 1985 (hereinafter called the Regulations of 1985) have been made under the rule-making powers of the State Government u/s 35 of the U. P. Secondary Education Service and Selection Board Act, 1982, to carry out the purposes of Section 21 of the Act, which provides that the Management shall not, except with the prior approval of the Board, dismiss any teacher or remove him from service, or serve on him any notice of removal from service, or reduce him in rank or reduce his emoluments or withhold his increment for any period (whether temporarily or permanently) and any such thing done without such prior approval shall be void. Regulation 4 of the Regulations of 1985 provides that before submitting cases to the Commission for approval under Subsection (1) of Section 21, the management shall complete all proceedings as per procedure prescribed in Intermediate Education Act, 1921 or the rules, If any and regulations made thereunder or orders issued by the Education Department and/or Board of High School and Intermediate Education, U. P., from time to time in regard to any action mentioned in Sub-section (1) of Section 21 of the Act. proposed to be taken. Regulation 5 provides for the documents to accompany the cases submitted to the Commission through the Inspector. These include the copy of the regulation of management setting up the inquiry committee ; charge-sheet prepared and served on the teacher ; explanation furnished by the charged teacher in reply to the charge-sheet ; full record of proceedings including evidence taken and cross-examination, if any, done, and personal hearing, if any, given by the Inquiry Committee appointed for the purpose ; reports of the Inquiry Committee ; proposal in regard to the punishment to be inflicted ; copy of the resolution adopted by the Management in regard to the proposed punishment and up-to-date service book and character roll of the charge-sheeted teacher. Regulation 6 provides that the Inspector shall ensure that the documents are complete as required in Regulation 5 and shall forward the same ordinarily within 30 days from the date of receipt of the papers in the first Instance from the management. He may point out the defects, if any, in the proceedings of the management. Regulations 7 and 8 provide for the action to be taken by the Commission in aid of the exercise of powers u/s 21 of the Act for giving prior approval. Regulations 7 and 8 are quoted below :

"7. Power of Commission to call for documents.--The Commission may call for any documents, considered relevant in the case from the management or the Inspector.

8. Disposal by Commission. --The Commission shall after due consideration approve or disapprove the punishment proposed or may Issue any other directions deemed fit in the case."

9. In the present case, a perusal of the proceedings of recommendation of the disciplinary committee of the Board, which has been accepted by the Selection Board, shows that the disciplinary committee has embarked upon detailed

enquiry into the charges. It considered each charge along with its explanation which was submitted by the respondent No. 3, before the Board for the first time. The charges, which were found to be established by the Committee of Management, after affording opportunity to respondent No. 3, which he did not avail were re-examined. The disciplinary committee proceeded in the matter as if it was the disciplinary authority. In respect of charge No. 1, it was found that the respondent No. 3 should not be given the extreme punishment of termination of service. On 2nd and 3rd charges, it found that it were not established. The 4th, 5th, 6th and 7th charges were also not found to be established against the respondent No. 3. On the eleven charges of the supplementary charge-sheet dated 26.12.1992, the committee found that additional charge-sheet was not made available to the respondent No. 3, and that these were not subject-matter of enquiry by the enquiry committee of the Committee of Management. The enquiry reports submitted did not bear the signatures of enquiry officer and as such, the committee found that the additional charge-sheet was not acceptable. The committee further concluded that the respondent No. 3 did not appear before it because the then District Inspector of Schools by his letter dated 29.8.1998 had informed the Selection Board that the Committee of Management has entered into a settlement with respondent No. 3 and thus the recommendation for termination of service approved and since thereafter the respondent No. 3 appeared before the Board and gave his explanation, he cannot be given the punishment of termination of service. The Committee as such disapproved the termination recommended by the Committee of Management on 15.2.1992. The Selection Board has approved the report of the disciplinary committee dated 1.6.2001 on 16.8.2001.

10. Section 21 of the Act provides restriction on dismissal of a teacher except with the prior approval of the Board. The power to approve also Includes disapproval but the question in the present case is about the extent of powers of the Selection Board while approving or disapproving the proposal. Although, the regulations cannot curtail the powers under the Act, under which they are made. These can only enumerate the scope of powers. Regulation 7 authorises the Commission to call for any documents, considered relevant in the case from the management or the Inspector. This power is In aid of making an enquiry into the matter. Regulation 8, however, enumerates the scope of power of approval and provides that the Commission, after due consideration, shall approve or disapprove the punishment proposed or may Issue any other directions deemed fit in the case. It is to be noticed that Section 16G (3) (b) of U. P. Intermediate Education Act, 1921, provides that the Inspector may approve or disapprove or reduce or enhance the punishment or approve or disapprove of the notice for termination of service proposed by the management provided that in the cases of punishment, before passing orders, Inspector shall give an opportunity to the Principal, the Headmaster or the teacher to show-cause within a fortnight of the receipt of notice why the proposed punishment should not be Inflicted. After the enactment of U. P. Secondary Education Service and Selection Board Act, 1982,

the powers of the Inspector u/s 16G (3) (b) of the U. P. Intermediate Education, 1921, in the case of institutions, which are not minority institutions, have been vested in the Selection Board, with significant absence of the power to reduce or enhance the punishment. The authority, specifically given to the Inspector, is conspicuously missing in Section 21 of the Act, 1982 read with regulations of 1985 and consequently, the power to give opportunity to the Principal, the Headmaster or the teacher to show cause why the proposed punishment should not be Inflicted, is also not provided in Section 21 of the Act, 1982 or the regulations made thereunder. The Selection Board, therefore, has not been given the powers to either reduce or enhance the punishment.

11. A question thereafter arises as to the extent and scope of the powers of the Board. In all the cases where the appointing authority is vested with discretionary powers, the power of enquiry, evidence, production of documents, the examination of charges and the defence taken by the delinquent is in the hands of the disciplinary authority. It is the disciplinary authority which has to form an opinion whether the charges were established after going through the record and evidence adduced by the department and the delinquent employee. The sufficiency or Insufficiency of evidence, demeanour of witnesses and conduct of the delinquent employee is to be judged by the disciplinary authority. The scrutiny by approving authority is to find out ; (1) whether the enquiry was conducted by the competent authority ; (2) whether the delinquent was informed of the charges ; (3) whether he was afforded opportunity to defend himself and that there was no prejudice caused on account of denial of such opportunity ; (4) whether the evidence led by department proves the charges and (5) whether the proposed punishment is commensurate to the charge. The power of approval cannot be extended to include a fresh enquiry in the matter. Even if the approving authority comes to the conclusion that the enquiry was not fair or impartial or the principles of natural justice were violated or that the punishment is not commensurate to the charges, it can only send back the matter to the disciplinary authority. The power to inflict punishment or reduce or enhance the punishment has not been given u/s 21 of the Act, and the necessary conclusion is that the Commission does not have authority to re-examine the charges and to come to a different conclusion than arrived at by the Committee of Management.

12. In the present case, the disciplinary committee and the Board were directed by this Court to decide the matter expeditiously after giving opportunity to the Committee of Management and the delinquent employee. The committee fixed 16th June. 2000, for hearing on which date it accepted the reply of respondent No. 3. The Committee has also accepted the reply of respondent No. 3 on the supplementary charge-sheet and thereafter proceeded to consider the matter. It found that the respondent No. 3 did not appear before the enquiry officer inspite of notice to him dated 22.6.1993, 3.8.1993 and 23.8.1993. The Committee has not gone into the fact whether the respondent No. 3 had sufficient notice of the date fixed by the enquiry committee or that the respondent No. 3 was justified in not appearing before the enquiry committee. The committee straightway went

into the merit of each of the charges and after considering the reply of the petitioner found that charges were not made out. After concluding that the charges are not made out, it found that the supplementary charge-sheet was not served on the respondent No. 3, and without referring to the charges of the supplementary charge-sheet, straightway rejected them on the ground that these were also not sustainable.

13. In case the Selection Board was satisfied that the respondent No. 3 was not afforded adequate opportunity to defend himself, it could have sent the matter back with a direction as provided in Regulation 8. It did not have the authority to accept the reply of respondent No. 3 and consider each of the charges on merits as the disciplinary authority. The Selection Board has, therefore, grossly erred in exercise of its powers and exceeded its authority in accepting the recommendation of the disciplinary committee to disapprove the proposal of the Committee of Management, to terminate the services of the respondent No. 3.

14. In the aforesaid facts and circumstances, it is held that the resolution of the Selection Board dated 16.8.2001, accepting the recommendation of the disciplinary committee dated 1.6.2001, disapproving the proposal of the Committee of Management dated 15.2.1992 to terminate the services of respondent No. 3 is vitiated in law and is liable to be quashed.

15. The writ petition is allowed and the order dated 28.8.2001 of the Secondary Education Services Selection Board, Allahabad communicating the decision of the Selection Board dated 16.8.2001 disapproving the proposal of the Committee of Management of Gochar Krishi Inter College, Rampur Manlharan, district Saharanpur to terminate the services of respondent No. 3 Sheesh Pal Singh Verma, is quashed. The Selection Board is directed to consider the matter of approval of the aforesaid resolution, afresh in accordance with law in the light of the observations made in this judgment.

16. There will be no order as to costs.