
(1988) 04 AHC CK 0079

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4144 of 1978

Mangla Prasad Upadhya, Principal Higher Secondary School	APPELLANT
Vs	
State Government of Uttar Pradesh and Others	RESPONDENT

Date of Decision : 29-04-1988

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 35

Citation : (1988) 2 AWC 1383

Hon'ble Judges : A.P. Misra, J

Bench : Single Bench

Advocate : D.S.M. Tripathi, for the Appellant; R.N. Upadhyaya, R.C. Shukla and R.N. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

A.P. Misra, J.—By means of the instant writ petition the Petitioner has challenged the orders dated 13th January, 1976, 27th January, 1976, passed by the Respondent No. 3 and dated 22nd June, 1977, passed by the Respondent No. 2.

2. According to the Petitioner, he is a confirmed permanent Principal of the College as he was appointed as Principal with effect from 12th September, 1972, on probation of one year on a clear vacancy and after being duly approved by the Regional Deputy Director of Education, V Region, Varanasi, was confirmed as such with effect from 11th September, 1973 by the Respondent No. 5 by its resolution No. 5 dated 2nd September, 1973. It seems there was some difference between the Petitioner and the Manager of the College, which led into even proceedings u/s 6(3) of U.P. Act No. 24 of 1971. Thereafter the Respondent No. 6, namely, Sri Lal Chand Upadhya, the then Manager suspended the Petitioner on 8th December, 1975. According to the Petitioner, in the said meeting dated 8th December, 1975, there was no such agenda nor this matter was circulated to other members. It is also urged, there was no quorum for such a meeting, and also the term of the committee of management by that time had come to an

end. It is also urged that Respondents Nos. 6 and 7 are acting in collusion with each other and on that account they terminated the services of the Petitioner. In fact, no charge sheet was ever issued or served on the Petitioner by the competent authority in accordance with law and the inquiry committee constituted was illegal and was not in accordance with the Regulation 35 made u/s 16-G of the U.P. Intermediate Education Act. The proceedings taken by the inquiry committee were done ex parte without giving any opportunity to the Petitioner and therefore the resolution dated 4th July, 1976, by virtue of which the proposal to terminate the services of the Petitioner was made is said to be illegal, arbitrary and mala fide. The said termination order was sent for approval to the District Inspector of Schools on 27-1-1977, who approved the said termination on the same date. Thereafter, the Petitioner preferred an appeal urging the aforesaid grounds. However, even his appeal was dismissed on 22-6-1976. Aggrieved as against the aforesaid orders the Petitioner has preferred the present writ petition.

3. I have heard the learned Counsel for the parties and also perused the various affidavits filed by the parties. In the present case, I find that it is urged that the chargesheet was served on the Petitioner on the 8th December, 1975. It has not been disputed that the inquiry committee consisted of Sri Adya Prasad Singh and Sri Lal Chand Upadhyaya, President and Manager respectively of the Committee of Management. They started the proceedings only at 2 P.M. on 8th December, 1975. According to the case of the Respondents and also as submitted by the State in paragraph 9 of the counter affidavit and Annexure VI to the counter affidavit on behalf of the State chargesheet was actually served on 8th December, 1975 by means of registered post. It cannot be doubted on the facts of this case when the inquiry committee itself was constituted on 8th December, 1975 and it initiated the proceedings at 2 P.M. it was not possible that the chargesheet framed by the said committee may be served on the Petitioner the same day by means of registered post. In fact, by perusal of Annexure XXVI to the writ petition, which is a letter by Sri Lal Chand Upadhyaya, the then Manager of the College, it was urged that it was not necessary for the inquiry committee to have served the chargesheet. By perusal of the various averments and annexures to the writ petition and the counter affidavit one thing is clear that no chargesheet on the facts and circumstances of this case could be said to have been duly served on the Petitioner on the 8th December, 1975, which is framed by the inquiry committee. In law, the chargesheet has to be framed by the inquiry committee and the service must be of the chargesheet framed by the committee and not by the institution and therefore, on the facts of this case when the Petitioner was served with a chargesheet on 8th December, 1975, when the inquiry committee started, its proceedings at 2.00 P.M. on the same day could not be a case of service of the chargesheet framed by the said committee by means of registered post.

4. Therefore, on this ground alone, the order of termination passed as against the Petitioner cannot be sustained.

5. It was further urged, even alternatively, that the inquiry committee consisted of Sri Lal Chand Upadhyaya, the then Manager, and since he was a complainant in this case, which would be revealed from the proceedings of the committee of management's meeting dated 8th December, 1975, which is Annexure VI to the counter affidavit on behalf of the State that the grievances were by the then Manager against the Petitioner, the Manager could not have been made as member of such a committee. It is not disputed in this case that the Manager was the member of such committee. In view of this the proceedings initiated, before the said inquiry committee would be null and void, and the order of termination which was passed by the then committee of management against the Petitioner, which was sent for approval and approval obtained by the District Inspector of Schools, cannot be sustained.

6. It is significant in this case that the Petitioner also challenged the suspension order as not having been passed in accordance with law. However, in this case in the changed situation when the committee of management is changed and newly elected committee of management is supporting the Petitioner especially after passing of the resolution dated 22-2-1987 by the new committee of management (Annexure CA-1 to the affidavit accompanying the application dated 20-4-1988 moved by Sri R.C. Shukla Advocate) there is no possibility of any prosecution or conduct of any inquiry and, therefore, on the facts and circumstances of this case even the suspension order cannot be sustained.

7. In this case an application for impleadment as Respondent No. 9 in the writ petition was moved by Sri Chandra Shekhar Singh whose appointment as principal in place of the Petitioner was made subject to the result of the writ petition. Since the writ petition itself is being allowed, there is no vacancy existing and there is no question of absorption of the applicant and none of the applicant's right is affected. The applicant may approach appropriate authority for redress of his grievance, if any, since the writ petition is allowed no useful purpose would be served by impleading the applicant and the application for his impleadment is rejected.

8. In view of the aforesaid, the present writ petition is allowed and the impugned orders dated 13th January, 1976, 27th January, 1976 and 22nd June, 1977 are hereby quashed. In view of the peculiar facts and circumstances of this case costs shall be borne by the parties.