
(1975) 01 AHC CK 0028

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4525 of 1974

Param Hans Tripathi

APPELLANT

Vs

Mahajan Degree College, Balbuzurg, Chauri Chaura, Dist
Gorakhpur

RESPONDENT

Date of Decision : 17-01-1975

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 37(4)

Citation : (1975) 01 AHC CK 0028

Hon'ble Judges : K.N.Singh, J

Final Decision : Allowed

Judgement

K.N. Singh, J.

The petitioner was appointed Lecturer in English in the Mahajan Degree College, Balbuzurg, Chauri Chaura, District Gorakhpur on August 23, 1972. His appointment was approved by the University of Gorakhpur. After the expiry of period of probation, he was confirmed on that post and he executed statutory agreement with the management of the College. Subsequently some difference arose between the Principal and the petitioner as a result of which relations between the two became strained. It appears that the management of the Colleges was not happy with the petitioner's work and conduct, as the petitioner took active part in various activities in the capacity of Secretary of the Teachers Association of the College. The Secretary of the College sent a letter to the petitioner dated April 15, 1974 informing him that the Managing Committee of the College at its meeting held on April 14, 1974 had considered the petitioner's case and it found the petitioner guilty of gross indiscipline, disobedience of orders, misbehaviour and dereliction of duty and of creating prejudicial atmosphere in the institution and against the Principal, ss such it was unanimously of the opinion that the petitioner's continuance in service was not in the interest of the institution. It, thereupon, terminated the petitioner's service under subsection (4) of Section 37 of Chapter VII of the U.P. State

Universities Act, 1973. The petitioner represented to the Vice Chancellor of the Gorakhpur University for disapproving the order of the termination. The Vice Chancellor disapproved the action of the management and his decision was communicated to the Management of the College by a letter of the Assistant Registrar of the Gorakhpur University, dated May 14, 1974. The management disregarded the direction of the Vice Chancellor, as it took a stand that no approval of Vice Chancellor was necessary. The petitioner thereupon filed the present petition challenging the validity of the termination of his services.

Chapter VI of the U.P. State Universities Act, 1973, contains provision relating to the appointment and conditions of teachers and officers of the University. Section 31 confers power of appointment of teachers on the Executive Council of the University and on the management of the affiliated or associated Colleges. Subsection (2) of Section 31 lays down that the appointment of every teacher shall in the first instance be on a probation of one year which may be extended for a period not exceeding one year. The proviso to that subsection provides for termination of service of a probationer. Section 35 makes provision for dismissal, removal and determination of services of a teacher. Subsection (2) of Section 35 lays down that a teacher of an affiliated College may be dismissed, removed or reduced in rank or be punished in any other manner by the management but the decision of the management shall not take effect unless it is approved by the Vice Chancellor. Subsection (3) further lays down that the provision of subsection (2) shall also apply to any decision to terminate the services of a teacher whether by way of punishment or otherwise. Section 37 (4) of the Act further lays down that except as provided by the Act the management of an affiliated College shall be free to manage and control the affairs of College and be responsible for maintenance and upkeep and its Principal shall be responsible for the discipline of students and for the superintendence and control over its staff.

These provisions make it clear that whenever the management of an affiliated College of a State University takes a decision to dismiss, remove or terminate the services of a teacher of an affiliated College that decision shall not be effective unless it is approved by the Vice Chancellor. The approval of the Vice Chancellor is thus a condition precedent for making the order effective. The services of a teacher therefore cannot legally be terminated unless the decision of the management is approved by the Vice Chancellor. The same considerations would apply to an order for dismissal or reduction in rank. Subsection (3) makes it clear that the provisions of subsection (2) of Section 35 would equally apply to any kind of decision for the termination of services of a teacher, be it a probationer, a permanent teacher or an officiating teacher. Every kind of termination of service is regulated by Section 35 (2) and (3) of the Act. The power of Managing Committee of an affiliated College to supervise or manage the affairs of the College, to terminate the services of a teacher is circumscribed by the said provision. The legislature has placed restriction on the power of the management so that the Vice Chancellor may have control over the affiliated Colleges and the teachers may not be victimized by the management. The expression "except as

provided by the Act" occurring in Section 37(4) of the Act imply that right and power of the management of an affiliated College is subject to the provisions of the Act, therefore the managements right to terminate or discharge a teacher is subject to Sections 31 and 35 which require prior approval by the ViceChancellor. In the absence of any such approval the order cannot be effective.

In the instant case it is admitted that the petitioner's services were terminated by the management of the affiliated College but the Vice Chancellor refused to grant approval to the decision of the management of the affiliated College as required by Section (2) of Section 35. In the absence of approval by the Vice Chancellor the decision of termination was ineffective in law.

Learned counsel for the respondent College urged that the petitioner was a lecturer in English Department of the College. The management by its resolution dated August 7, 1974 had abolished the department of English and as such the petitioner is not entitled to any relief. The petitioner has, however, urged that the said resolution of the management of the College abolishing the English department has not been approved by the ViceChancellor and as such the abolition is of no consequence. I do not consider it necessary to discuss or decide this matter in the present petition as it is not necessary for the adjudication of the dispute involved in the present case.

The petitioner's services were terminated by a resolution of the management of the affiliated College dated April 14, 1974 which was communicated to him by a letter of the Secretary of the management dated April 15, 1974. The petitioner's services were terminated even before the alleged abolition of the English department. In these circumstances the subsequent decision of the management abolishing the English department does not validate the resolution of the Managing Committee terminating the petitioner's services.

In view of the above discussion I hold that the impugned order of termination is void. I, therefore, allow the petition with costs and quash the order of the management terminating petitioner's services as communicated to him by the letter of the Secretary of the management dated April 15, 1974. The petitioner is entitled to continue in service with all the benefits available to him under law.