
(2002) 01 AHC CK 0062
In the Allahabad High Court
Case No : C.M.W.P. No. 18648 of 1993

Parmeshwari Dayal Saxena	Vs	APPELLANT
Basic Shiksha Parishad and Others		RESPONDENT

Date of Decision : 11-01-2002

Acts Referred:

Citation : (2002) 1 AWC 817 : (2002) 93 FLR 492 : (2002) 2 UPLBEC 1398

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : S.N. Srivastava, for the Appellant; K.S. Shukla, Shatrughan Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri S.N. Srivastava, learned counsel appearing for the petitioner and Sri K.S. Shukla, learned counsel appearing for the respondents.

2. Petitioner is challenging the order dated 20.4.1993 passed by the Director/President, Basic Shiksha Parishad, U. P. Allahabad ; order dated 6.6.1977 passed by the Basic Shiksha Adhikari, Hamirpur and order dated 17.5.1977 passed by Manager/Secretary of Bundelkhand Purva Madhyamik Vidyalaya, (Chilli (Rath) Hamirpur, by which petitioner"s services were terminated.

3. The facts giving rise to this writ petition are stated as under :

"Petitioner was appointed as Headmaster of Bundelkhand Purva Madhyamik Vidyalaya, Chilli (Rath) Hamirpur, on 6.7.1972. His services were alleged to have been confirmed on 31.1.1974 by the resolution of the Committee of Management which was communicated to the petitioner by Manager/Secretary of the School. By order dated 17.5.1977. the services of the petitioner were terminated. He represented his case before the District Basic Education Officer, Hamirpur. The order of termination was disapproved on the ground that after the enforcement of the provisions of Basic Education Act, 1972. the services of Headmaster and teachers of basic schools cannot be terminated without seeking approval of the

District Basic Education Officer. Thereafter, there was some correspondence between the management and District Basic Shiksha Adhikari after which the order terminating the petitioner's services was approved on 6.6.1977 without affording any opportunity of hearing to the petitioner."

4. Sri S.N. Srivastava, learned counsel appearing for the petitioner, submitted that the order terminating the services of the petitioner was illegal inasmuch as no enquiry was held against him nor any charge-sheet was given to him. The order of termination was earlier disapproved by the District Basic Education Officer and that the same order could not have been recalled and approved subsequently without giving opportunity to the petitioner. A civil suit was filed by the petitioner in the year 1979, to which objections were raised with regard to the jurisdiction. The trial court by its order dated 27.5.1982 rejected the objection against which a revision was preferred which came to be registered as Revision No. 19 of 1982. It was heard by IVth Additional District Judge who has held that the Civil Court had no Jurisdiction to try the suit by his order dated 17.4.1985. The file was sent back to the trial court and the suit was thereafter dismissed on 7.11.1985 with the liberty to the petitioner to seek remedy from the proper forum. Thereafter the petitioner filed an appeal before the Director, Basic Shiksha Parishad which was dismissed as time barred on 1.12.1986.

5. Aggrieved by the aforesaid order, the petitioner filed Civil Misc. Writ Petition No. 5596 of 1987 which was heard and was decided on 28th August. 1992. This Court found that the Director, Basic Shiksha Parishad had omitted to consider the question of condonation of delay though there was material for consideration of the said question and found that the ends of justice could be served if the impugned order was quashed and a direction was issued to re-hear the appeal on merit. A mandamus was accordingly issued.

6. In pursuance of the aforesaid direction a representation was made by the petitioner to the Chairman of the Basic Shiksha Parishad on 26.9.1992, which has been dismissed by the impugned order dated 20.4.1993.

7. It has been submitted that no enquiry was held against the petitioner and that the charges, which were found to be proved, were never informed to the petitioner nor any charge-sheet was given to him and thus the order, terminating the service of the petitioner, is Illegal. The learned counsel for the respondents submitted that the petitioner was required to give explanation, both-orally and thereafter in writing, and that by letter dated 6.10.1976, the petitioner has given reply to the charges. The petitioner's services were terminated on 27.6.1976 but the committee gave the opportunity for a further period of one month and that the petitioner was required to submit his reply. The petitioner submitted his reply in which he admitted that the information given by him to the management with regard to the recognition of the school was correct. Before the Director, Basic Shiksha Parishad, the management has disputed the fact that the petitioner was a permanent employee. The Director, considered the records, which includes the proceeding register dated 28.1.1974 in which the petitioner was found to be

present. In this meeting the decision taken by the Committee of Management in its earlier meeting was rejected on the ground that the quorum of the members in the last meeting was not complete. A perusal of the order terminating the services of the petitioner and the order of the Director, Basic Shiksha Parishad, shows that the petitioner was held guilty of misusing the funds of the college and that there were certain charges with regard to the character of the petitioner. The petitioner was given chance to reply the allegations to which his explanation was not found to be satisfactory and that the petitioner's services were terminated.

8. The facts, constituting the charge, are quite interesting. The school did not have the permanent recognition from the Basic Shiksha Parishad. It appear that an application regarding permanent recognition was pending. The petitioner assured the management that in case an amount of Rs. 6,000 is given to him, he shall manage and obtain permanent recognition. After some time, the petitioner was again reminded by the Committee of Management on which he appears to have assured and agreed that in case the petitioner is not able to obtain the permanent recognition by 27th July, 1976, he may be removed from service. As no permanent recognition was obtained within the time assured by the petitioner, his services were terminated. The fact that the petitioner was given Rs. 6,000 was established from the record. The petitioner has also admitted this fact that he had accepted this amount.

9. Sri S. N. Srivastava, learned counsel for the petitioner submitted that the petitioner was confirmed headmaster and that the Committee of Management could not have entered into any agreement with the Principal which was opposed to the public policy. The petitioner could not be held responsible for grant of permanent recognition which was finally given within a short time of the termination of services of the petitioner. Further, he was also not responsible to get arrears of some of the teachers drawn which was said to have been assured by him. He thus submitted that the petitioner cannot be held guilty of misappropriation of Rs. 6,000 and, in any case, he should have been afforded opportunity to substantiate the charge against him. It is further submitted that the charge of misbehaving with some women casting aspersion on his character, alleged by the Committee of Management was also not substantiated, but no opportunity was given to reply the said charge.

10. The order of termination does not show that the petitioner was charged with any incident which related to his character. Paragraphs 2 and 3 of the termination order states that the petitioner was not a permanent headmaster and that his application for confirming him was not accepted by the Committee of Management. Further, paragraphs 4 and 5 of the termination state that the petitioner had tendered apology for misusing the funds of the college and had not fulfilled his assurance in getting the arrears of the teachers on which the committee was not satisfied with his conduct and thus terminated his services.

11. A Principal of the School should not indulge in Illegal activity. His primary

function is confined to teaching, to maintain academic atmosphere and discipline in the school. He cannot be an agent of the manager for legal and Illegal activities and should not have indulged in assuring to obtain permanent recognition and getting the arrears of the teachers drawn. It is submitted by the petitioner that he had taken Rs. 6.000 for the purpose for which he was not directly concerned. In case the petitioner acted in breach of his promise, it could be a matter between the manager and the Principal. The fact remains that he used college funds for achieving legitimate object, by illegitimate means. The fact on record shows that this matter was the bone of contention, and that the petitioner was put to task by the management on this score. The petitioner was therefore, aware of the charges against him to which he did not give satisfactory reply to the management. In the circumstances, it cannot be said that the petitioner was not aware of the charges or that any enquiry was not held in the matter.

12. In the aforesaid circumstances, I do not find any Illegality in the order dated 20.4.1993 passed by the Director/President, Basic Shiksha Parishad, U. P., Allahabad.

13. The writ petition is accordingly dismissed.