

(1994) 01 AHC CK 0111

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 25659 of 1993

Prayag Datt Misra

APPELLANT

Vs

District Inspector of School and Others

RESPONDENT

Date of Decision : 10-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Uttar Pradesh Intermediate Education Act, 1921 — Section 16G, 16G(3)
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 31, 32, 32(3), 33, 33(1)
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18(4)

Citation : (1994) 2 AWC 740 : (1994) 2 UPLBEC 866

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

Bench : Single Bench

Advocate : Ashok Khare and S.C. Dwivedi, for the Appellant;

Final Decision : Partly Allowed

Judgement

A.P. Singh, J.—Present writ petition has been filed by one Prayag Datt Misra, a lecturer of Shri Dilip Singh Inter College, Bakerganj Goraju, district Allahabad, against an order dated 26-6-1993 passed by the Manager of the College as well as against another order dated 30-6-1993 passed by the same person. By order dated 26-6-93, which has been filed as Annexure-5 to the writ petition, the Manager has communicated to the Petitioner the resolution of the managing committee of the said College whereby the Petitioner has been subjected to the punishment of (i) stoppage of three increments permanently (ii) adverse entry in the character roll and (iii) disqualification from holding the post of Principal in the event of the post falling vacant on account of leave vacancy or in the situation where the appointment is required to be made on ad-hoc basis. The order dated 30-6-93 is a letter addressed by the Manager of the said institution to the District Inspector of Schools, Allahabad (herein-after called the "Inspector") informing him about the decision taken by the managing committee of the College in its

meeting dated 25-6-93 for appointment of one Sri Ram Abhilash Singh, Respondent No. 4 as adhoc Principal of the College and further informing him that Ram Khilawan Singh has taken over charge of the post of Principal on 30-5-93 and requesting for counter specimen signature as Principal of the College,

2. In brief, the dispute in this writ petition relates to the appointment of Principal of the College. On the one hand, the Petitioner claims the right to be appointed on this post by virtue of being the senior-most teacher whereas Respondent No. 4 claims a right to continue on the post on the basis of the decision of the managing committee dated 25-6-93 approving his appointment on the basis of the order of punishment awarded to the Petitioner referred to above.

3. Petitioner's contention in support of the writ petition was (i) that the impugned orders were passed malafidely by the Manager/managing committee for the purpose of depriving the Petitioner from becoming Principal of the College on account of his being senior most lecturer and the order under challenge was so timed that it had to coincide with the occurrence of vacancy on the post of Principal on 30-6-93 when the erstwhile Principal Ram Khilawan Singh was to retire on attaining the age of superannuation; (ii) the order of punishment dated 26-6-93 (annexure 5 to the writ petition) has been passed in complete disregard of the provisions of Section 16-G of the U.P. Intermediate Education Act and Regulation 35, 36, 37 and 38 of the Regulations occurring in Chapter III framed under the said Act.

4. It was argued by Sri Ashok Khare, learned Counsel for the Petitioner that since the punishments awarded to the Petitioner by the impugned order dated 26-6-93 cause diminution in the emoluments of the Petitioner, therefore, the same is covered by Clause (3) of Section 16-G of U.P. Intermediate Education Act as well as by Regulations 31, (d) read with Regulation 32(3) of the Regulations and since no prior approval from the Inspector had been obtained by the management of the collage for inflicting the punishments on the Petitioner, the order dated 26-6-93 is void ab initio and has no application as against the Petitioner.

5. It was further argued that since no enquiry as contemplated by the provisions of the Regulations specially Regulations 36 and 37, was held by the committee of management/Manager of the College before awarding the aforementioned punishments on the Petitioner, as such the orders are void ab initio It was also argued that no compliance of Regulation 37 was, whatsoever ,made in as much as no opportunity of hearing, as contemplated by the aforesaid Regulation, was ever given to the Petitioner by the Respondents before inflicting the punishments. It was also argued that the punishment disqualifying the Petitioner from holding the post of principal is not a punishment warranted under the provisions of the Act and the Regulations, as such, the managing committee or the Manager has no power under law at all to award such punishment on the Petitioner and the said punishment having been awarded only to clear the way for appointment of Respondent No. 4 as Principal of the College by sidelining the

Petitioner on wholly wrong pretext is, therefore, bound to be ignored for being void ab initio. It was further argued that Petitioner has a vast right of being appointed Principal of the College u/s 18(4), as substituted by U.P. Ordinance No. 21 of 1992 such was subsequently replaced by U.P. Act No. 24 of 1992, being seniormost lecturer of the College as under the said provision the management has no option whatsoever but to appoint the petitioner as ad-hoc Principal of the College as the seniority alone was the criterion for appointment of the Principal on ad-hoc basis.

6. On the other hand, Dr. R.S. Dwivedi, who appeared on behalf of the Respondents, has taken a preliminary objection and has prayed that the writ petition may be dismissed without entering into the merits of the case inasmuch as the Petitioner is guilty of concealing material facts from the Court by not mentioning the facts of holding of enquiry against him by the Enquiry Committee and also of affording of opportunity of hearing to him and also for making a false averment in that regard in the writ petition to the effect that no opportunity of hearing was given to the Petitioner and no enquiry was conducted.

7. This apart Dr. R.S. Dwivedi further argued that the Petitioner was guilty of committing fraud and interpolation in the Service Book, as such, action against him was taken and punishment for stoppage of three increments on permanent basis was awarded against him and since the managing committee on overall review of his conduct in respect whereof the Petitioner was charge sheeted found him unfit for holding the post of Principal, awarded on him, also the punishment of disqualifying the Petitioner from holding the post of Principal of officiating or on ad-hoc basis. It was also argued that although there was no provision in the Act and the Regulations, framed therein for awarding such punishment, but the managing committee, being the employer, has an inherent power to disqualify an unsuitable lecturer from holding the post of Principal on an overall consideration of his work and conduct. It was further argued that the order passed by the managing committee and duly communicated by the Manager, filed as annexure 5, was open to challenge by the Petitioner under Regulation 34 by filing appeal before the Inspector, as such, writ petition would not lie. Writ petition, therefore, must be dismissed on the ground of alternative remedy.

8. It is further argued by Dr. Dwivedi that the proceedings for inflicting aforesaid punishments on the Petitioner were initiated not under Regulations 35, 36, 37 and 38 occurring in Chapter III of the Regulations, but the said proceedings were initiated under the implied powers of the managing committee for awarding minor punishment which were taken in consonance with the principles of natural justice. In the same corollary it was further argued that Regulations, 35, 36, 37, and 38 of the Regulations have application only when the Manager of the Institution decides to inflict one of the punishment enumerated in Regulation 31; it has however, no application when any other punishment including the punishment provided in Regulation 33 is sought to be inflicted by the Management on a teacher. Accordingly, it was emphasised that the breach of the

provisions of Regulations 35, 36, and 37 of the Regulations which has been complained of by the Petitioner in the writ petition so as to challenge the orders of punishment inflicted on him by order dated 26-6-93 cannot be a valid ground for quashing the said order.

9. Dr. Dwivedi further argued that with-holding of increments whether temporarily or permanently does not at all amount to diminution in emoluments already earned by the incumbent concerned inasmuch as the stoppage of increments are applicable in respect of such increments which become due to the incumbent in future whereas punishment regarding diminution of emoluments referred to in Clause (3) of Section 16-G of the Act Clause (d) of Regulation 31 as well as Clause (3) of Regulation 32 of the Regulations relate to the diminution of emoluments already earned. On the same corollary it was further argued by the counsel that the said punishment of stoppage of increments even on permanent basis does not envisage diminution in emoluments and does not, therefore, require approval of the Inspector and the order irrespective of the absence of prior approval of the Inspector is applicable and operative against the Petitioner and is a valid order.

10. In the rejoinder submission Sri Ashok Khare, learned Counsel for the Petitioner defended the conduct of the Petitioner and maintained that there was no concealment of the relevant facts by the Petitioner from this Court nor the Petitioner is guilty of making false averments in the writ petition. It was argued that since the enquiry in the form of question and answer which was made by the manager from the Petitioner before awarding the punishments is not an enquiry contemplated by Regulation 36 of the Regulations, as such, the Petitioner was right in maintaining in the writ petition that no enquiry committee was appointed and no enquiry by it was held. It was also maintained by the learned Counsel that no intimation, whatsoever, was ever given to the Petitioner at any time either by the managing committee or by the Manager or by the Enquiry Committee regarding the appointment of the Enquiry Committee except for the letter dated 31-5-93, which has been filed as annexure 11 to the supplementary counter affidavit of Sri Avdhesh Singh whereby Petitioner was called upon to, appear before the Enquiry Committee at 9 A.M. on 8-6-93 for explaining certain discrepancies in the explanation already submitted by him in respect of the charge-sheet dated 3-4-93. It was argued that although this fact was known to the Petitioner and should have been stated in the writ petition but since the queries which were put up by the Manager to the Petitioner on 8-6-93 and the replies given by him in respect thereof, which have been filed as annexure 12 to the writ petition, were not in relation to the enquiry as contemplated by the aforementioned Regulations (35, 36, 37 and 38), as such, the Petitioner did not consider it at all relevant to mention the same in the writ petition. It was further argued that at no stage the Petitioner was confronted nor was required to appear nor actually appeared before the Enquiry Committee and the alleged constitution of the Enquiry Committee is the handiwork of the Manager who manipulated the records for the purpose of the case and in fact no

enquiry committee was constituted

11. On merits, it was further argued by Sri Ashok Khare, learned Counsel for the Petitioner that neither the Act nor the Regulations make any distinction in respect of the procedure to be followed by the Managing Committee for inflicting punishment on an incumbent and irrespective of the nature of punishment which may be imposed by the management of the institution on a teacher, the procedure provided in the Regulations 35, 56, 37 and 38 have, in any case, to be followed. In brief, his argument is that even for inflicting the punishment provided in Regulation 33 or any other punishment not enumerated in Regulation 31 the management is bound to follow the procedure provided by the said Regulations, mentioned above; (35, 36, 37 and 38) and if it is not done the consequent order of punishment of whatever nature will be rendered void and inconsequential.

12. It was also argued that since the order dated 26-6-93 under challenge in the writ petition is a composite order of punishment awarding three different punishment on the Petitioner, no appeal is maintainable before the Inspector inasmuch as the Inspector under Regulation 33 is competent only to hear appeals against an order awarding punishment of stoppage of increments and against none other. It was further argued in the same breath that the stoppage of increments necessarily imply diminution in emoluments as per the view taken by the Supreme Court in the case of Kulwant Singh Gill v. State of Punjab 1990 (61) FLR 635, as well as a judgment of a Division Bench of this Court in the case of Sadanand Pandey v. Chief Secretary 1992 ESC 103, therefore it becomes a {punishment mentioned u/s 16-G(3) and Regulation 31(d) read with Regulation 32 (3) of the Regulations.

13. It was further contended that the Managing Committee has no power, whatsoever ,to award the punishment disqualifying the seniormost lecturer from holding the post of Principal, as no such punishment was contemplated either under the Act or under the Regulations and if a punishment is not provided either in the Act or in the Regulations, the Managing Committee cannot take the plea of implied powers as employer for awarding that punishment. It is also argued that the service conditions of teachers including the extent of power of the employer (managing committee) are regulated by the provisions of the Act and if the Act and the Regulations do not confer the power to award the punishment of disqualifying a teacher from holding the post of Principal, the Managing Committee has no such implied power for awarding such punishment ft is further argued that in view of the provisions of Section 18(4) 1982 Act, as amended by U.P. Ordinance No. 21 of 1992, the management has no say, whatsoever, in judging the suitability of the seniormost teacher for appointment as ad-hoc Principal and in any case, even if the seniormost teacher is found by the management not qualified for appointment as Head of the Institution, the management has no discretion but to appoint him and has no right to judge the suitability of the seniormost teacher. Reliance in this respect was placed on a

single Judge judgment of this Court in the case of Pramod Kumar Jindal v. District Inspector of Schools, (1993) 3 UPLBEC 2009 .

14. On an overall consideration of the facts pleaded by the respective parties as well as of the arguments advanced by the respective counsel, one fact becomes very clear that the enquiry, as contemplated by Regulations 35, 36 and 37, was not held against the Petitioner, which fact was fairly conceded by Dr. R. Dwivedi, learned Counsel for the Respondents. At the first instance, Dr. Dwivedi tried to justify the proceedings of the enquiry against the Petitioner as a preliminary enquiry for the purpose of awarding minor punishment but after some time he changed the stand and argued that the enquiry held against the Petitioner was not an enquiry under Regulations 35, 36 and 37 of the Regulations for awarding one of the punishments enumerated in Regulation 31 but some other enquiry for the satisfaction of the Managing Committee to award the punishment other than the aforementioned punishments including the punishment of stoppage of increment provided under Regulation 33(I). It will, in the circumstances, be a futile exercise to examine the merits of the arguments addressed on the question as to whether the Petitioner was given opportunity in accordance with the provisions of the Regulations 35, 36 and 37 of the Regulations to defend himself against the charges levelled on him which ultimately resulted in the passing of the impugned order of punishment on the Petitioner.

15. In view of the contention of the learned Counsel for the Respondents that Regulations 35, 36 and 37 have no application in the enquiry which was held by the Managing Committee against the Petitioner for awarding the punishment of stoppage of increments and disqualifying him from holding the post of Principal on officiating or ad-hoc basis, it is necessary to examine as to whether the Petitioner was afforded reasonable opportunity of hearing by the Managing Committee before inflicting the punishments on him, referred to above. Petitioner was served with the letter dated 3-4-93 in which no documents were attached although various serious charges were levelled on him on the basis of certain documents. There was express mention of the explanation given by the Head Clerk in which it was stated that Petitioner had illegally procured from him the Service Book and made interpolation therein for changing the date of his appointment etc. The said explanation or any other documents, ON which the charges were based were admittedly not supplied to the Petitioner. Petitioner filed his reply but was not told by any one, including the Manager, as to whether any enquiry in respect of the charges levelled on him was to be conducted. He was, however, served with the letter dated 31-5-93 (annexure 11 to the supplementary counter affidavit) whereby the Petitioner was required to appear before the Enquiry Committee on 8-6-93 at 9 A.M. in the School building to explain regarding certain discrepancies in the appointment letter dated 5-7-1956. He was also required to bring the original appointment letter as well as other documents regarding his promotion in L.T. grade. Petitioner, accordingly, "appeared on that date and certain questions were asked from him to which he replied. The enquiry report, including the assessment of the relies given by the

Petitioner, by the Enquiry Committee and the recommendations, if any, made in that regard were also not supplied to the Petitioner. Petitioner was not called upon by the Managing Committee to show cause regarding the nature of punishment which was proposed by the Managing Committee to be inflicted on the Petitioner. The record discloses that the Petitioner was absolutely kept in dark about the nature of proceedings which were initiated against him and the punishment with which he was to be visited. It is, therefore, a futile effort on the part of the learned Counsel for the Respondents to emphasise that the Managing Committee awarded the punishment on the Petitioner in keeping with the principles of natural justice. The charges levelled on the Petitioner were serious. The Petitioner was a seniormost teacher of the institution and was a lawful contender for the post of Principal which post was going to fall vacant on 30-6-93 consequent to the retirement of the sitting Principal. Petitioner was hopeful of this appointment as Principal, The Managing Committee, on the other hand, had some other designs of its own. The record to indicate that the Managing Committee was not at all prepared to accept the Petitioner as Principal of the institution, It, therefore, initiated proceedings for inflicting punishment on the Petitioner so as to disqualify him from becoming the Principal, The use of words "Inki seva samapati ki karyawahi sthagit ki jati hai," in the operative portion of the order of the Manager dated 26-6-93, before awarding the punishment of disqualifying the Petitioner from holding the post of Principal, do amply suggest that the proceedings initiated against the Petitioner were only used as a ruse to prevent the Petitioner from becoming Principal as per the provisions of Sub-section (4) of Section 18 of U.P. Secondary Education Service Commission and Selection Boards Act 1982, as substituted by Amendment Ordinance No. 21 of 1992. The contention of the learned Counsel for the Respondents that the Petitioner was given reasonable opportunity of hearing before inflicting the punishment is thus not warranted from the facts noticed above which amply show that no opportunity was at all given which could by any standard be termed either "fair" or reasonable". As a matter of fact the procedure under Regulations 35, 36 and 37 provides for a fair or reasonable opportunity of hearing to a teacher before he is subjected to any punishment anything short of that cannot be termed as reasonable or fair opportunity at any rate. Although in view of the aforesaid finding, it is not necessary to examine as to whether the Managing Committee has power to inflict the punishment with which the Petitioner has been visited without complying with the requirements of the provisions of Regulations 35, 36, 37 and 38, but since no amount of emphasis in the arguments of the learned Counsel for the parties was laid on this topic as well, it is therefore, necessary to deal with the same now.

16. Clauses (1), (2) and (3) of Section 16-G of the U.P. Intermediate Education Act, which are relevant in this respect and deal with the conditions of service of Heads of Institution, teachers and other employees of recognized Institutions, reads as under:

16 G Conditions of Service of Heads of Institution, Teachers and other Employees.

(1) Every person employed in a recognised institution shall be governed by such conditions of service as may be prescribed by Regulations and any agreement between the management and such employee in so far as it is consistent with the provisions of this Act or with the Regulations shall be void.

(2) Without prejudice to the generality of the powers conferred by Sub-section (1), Regulations may provide for--

(a) the period of probation, the conditions, confirmation and the procedure and conditions for promotion and punishment, (including suspension pending or in contemplation of inquiry or during the pendency of investigation, inquiry or trial in any Criminal case for an offence involving moral turpitude) and the emoluments for the period of suspension and termination of service with notice;

(b) the scale of payment of salaries;

(c) transfer of service from the recognized institution to another;

(d) grant of leave and Provident Fund and other benefits and

(e) maintenance of record of work and service.

(3)(a) No Principal, Headmaster or teacher may be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments or served with notice of termination of service except with the prior approval in writing of the Inspector. The decision of the Inspector shall be communicated with the period to be prescribed by regulations.

(b) 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 the notice why the proposed punishment should not be inflicted.

(c) Any party may prefer an appeal to the Regional Deputy Director, Education, against an order of the Inspector under Clause (b), whether passed before or after the commencement of the Uttar Pradesh Intermediate Education (Sanshodhan Adhiniyam, 1966, within one month from the date of communication of the order to that party, and the Regional Deputy Director may, after such further enquiry, if any as he considers necessary confirm, set aside or modify the order, and the order passed by the Regional Deputy Director shall be final. In the case the order under appeal was passed by the very person holding the office of Regional Deputy Director while acting as Inspector, the appeal shall be transferred by the order of the Director to some other Regional Deputy Director for decision, and the provisions of this clause shall apply in relation to decision by that other Regional Deputy Director as if the appeal had been preferred to himself.

(d) All appeals preferred under Clause (c) as it stood before the date of commencement of the Uttar Pradesh Intermediate Education (Sanshodhan) Adhiniyam, 1965, and pending decisions immediately before the said date shall be decided by the Regional Deputy Director, Education, in accordance with Clause (c) as substituted by the said Adhiniyam.

17. A perusal of Clause (a) of Section 16-G would show that every person employed in a recognized educational institution is governed by such conditions of service as may be prescribed by Regulations and agreement between the management and the employee provided the agreement is not inconsistent with the provisions of the Act and the Regulations, in particular, the Regulation as provided by Clause (2) may provide for the period of probation, conditions of service confirmation and the procedure for promotion and punishment etc. Clause (3) puts an embargo on the power of the employer (Management; to terminate, discharge or remove from service or reduce in rank or subject to any employee to diminution in emoluments without the prior approval of the Inspector. In carrying out the purposes of Section 16-G, Regulations have been framed which occur in Chapter III of the Regulations framed under the Act. The relevant regulations in this respect occurs under the heading "Punishment, Enquiry and Suspension" the relevant regulations are 31 to 39.

18. Regulation 31 is virtually reproduction of Sub-clause (a) of Clause (3) of Section 16-G. Thereafter Regulation 32 provides as to on what grounds an employee may be dismissed, may be removed from service and may be reduced in rank. The term "reduction in rank" as provided in Clause (3) of the Regulation 32 may also result by way of reduction to a lower post or to a lower time scale or lower stage in the time scale. Regulation 33 provides that an employee may also be punished by stoppage of increment in a time-scale for any period whether temporarily or permanently. Clause (2) of the said Regulation provides for an appeal to be filed before the Inspector/Regional Inspectors in the case of Girls Institution within thirty days of the commencement of the order of punishment. Regulation 34 deals with the quantum of punishment and it provides that in deciding the punishment to be imposed on an employee including teacher, mitigating factors, such as past record of service of the employee will be taken into account Regulations 35, 36 and 37 relate to the procedure for holding enquiry on receipt of a complaint or an adverse report of fact of a serious nature against the incumbent concerned. Regulation 38 provides that with the approval of the Inspector instead of awarding the punishments enumerated above, simple order of termination may be made. The procedure in these regulations are almost the same as in other Service Rules and are in keeping with the principles of natural justice. On a complaint/report of serious nature being received against the employee concerned Enquiry Officer/Enquiry Committee is to be entrusted with the job of framing of the charge-sheet, whereafter opportunity of reply of the charges to the employee concerned is given with the condition that the opportunity should be not less than three weeks; then holding of oral enquiry in respect of the charges not admitted with the entitlement of the charged

employee to cross examine the witnesses and also to give evidence on his own behalf. The proceedings are required to contain sufficient record of evidence and statement of findings and the grounds thereof. The inquiring authority is also empowered to make his own recommendations regarding punishment to be imposed on the employee concerned. The application of Clause (1) of Regulation 36 regarding holding of enquiry and calling for the explanation is ruled out in case the employee concerned is absconder. There is further power with the enquiring authority to waive the opportunity to call for the explanation and holding enquiry for sufficient reasons to be recorded subject to that no injustice should be caused to the delinquent. Regulation 37 provides that as soon as the proceedings and the recommendations are recorded, the managing committee shall send a notice to the employee calling upon him to appear before it for consideration of the report of the proceedings and recommendations made by the Enquiry Committee. The employee, if he so desires, is also authorised to appear in person before the authority and answer the questions put to him by the authority in the presence of the members, whereafter, the Committee is required to send the entire report along with papers to the Inspector for grant of approval.

19. Regulation 38 provides that if it is felt at any stage that the matter could more properly be dealt with by terminating the service of the incumbent with notice, the same could be done with the approval of the Inspector. Regulation 39 which deals with the proceedings regarding the passing of the suspension order, need not be examined as the same is not relevant.

20. A perusal of the relevant provisions, mentioned above, do not make out the situations under which Regulations 35 to 38 would be applicable. It also does not give any indication regarding the powers of managing committee to inflict any other punishment, than those which are enumerated in the said provisions, on its employees. A perusal of all the provisions, in my opinion, do indicate that the managing committee cannot award any punishment on its employee which are not enumerated in the aforementioned provisions except that it can make periodical assessment of work in the form of award of annual entries for which no enquiry obviously is needed under any service law. It is thus very difficult to accept the contention made on behalf of Respondents that the managing committee has the power of awarding a punishment on its employee other than the one provided in the Act and the Regulations. A perusal of Regulations 35, 36, 37 and 38 would also suggest that the applicability of those regulations is not confined to the award of punishments enumerated in Regulation 31. There is no provision either in the Act or in the Regulations from which such a suggestion may be warranted. In my opinion, Regulations 31, 32 and 33 (1) read with Section 16-G(3)(a) give an exhaustive list of punishments which the managing committee may award on a teacher or any other employee who is governed by the provisions of the Act, and the procedure in Regulations 35 to 38 is the only procedure for inflicting any other punishment.

21. The argument of Dr. Dwivedi that the Managing Committee had inherent power in its capacity as employer to award a punishment not mentioned in either the Act or the Regulations is, in my opinion, not comprehensible. The employer alone and no one else has the power to award the punishments which have been provided for in the Act and in the Regulations. The Act and the Regulations, however, impose a check on the inherent powers of the employer and those powers have been circumscribed by the provisions noted above. The employer, therefore, can exercise only such powers as are mentioned in the Act and the Regulations and in the matter of awarding punishments, it can only impose such punishments which are enumerated therein; and the punishments can only be awarded provided for and not otherwise. A Managing Committee in its capacity as employer has no inherent or implied power to devise its own method to award punishments nor it has power to award punishments not provided in the Act or the Regulations. Award of adverse entry not being an award of punishment, a Managing Committee has obviously the power to award an adverse entry against its employee on assessment of his work in a fair manner. It has, however, no power to award the punishment of disqualifying a teacher from holding the post of Principal in exercise of its inherent power firstly for the reasons referred to above and secondly also for the reason that the Managing Committee has no say in the matter of appointment of a teacher as ad-hoc or officiating Principal in view of the provisions of Section 18(4) of U.P. Secondary Education Service Commission and Selection Boards Act 1982, as amended by U.P. Ordinance No. 21 of 1992.

22. It was next argued by Dr. Dwivedi that the Managing Committee is not obliged to follow the procedure provided in Regulations 35, 36 and 37 for awarding the punishment of stoppage of increment on a teacher inasmuch as the last sentence of Regulation 37 do suggest that these Regulations have application only when a punishment provided in Regulation 31, which requires prior approval of the Inspector, is to be imposed on the teacher or employee concerned.

23. On the other hand, it was suggested on behalf of the Petitioner that the sentence on which reliance has been placed on behalf of the Respondents are applicable only in such cases where the approval of Inspector is required before inflicting the punishment and if no approval is required, the Committee is not under duty to send the papers to the Inspector. In the nut-shell, it was suggested on behalf of the Petitioner that the said sentence in Regulation 37 cannot be read so as to rule out the applicability of Regulations 35, 36, and 37 in so far as it relates to the award of punishment other than the punishment enumerated in Regulation 31 inasmuch as the last sentence occurring in Regulation 37, on which reliance has been placed on behalf of the Respondents, is severable from the rest of the portion of the Regulation, referred to above, and its compliance need not be made if the case in hand is one of inflicting minor punishment as provided in Regulation 33(1).

24. For a better appreciation of rival contentions made in this respect, it is necessary to quote Regulations 35, 36, and 37, which read as under;

35. On receipt of a complaint or an adverse report of fact of a serious nature, the Committee may in the cases of teachers appoint the Headmaster or Principal or Manager as the enquiry officer (or the Manager may himself set up the enquiry if such power has been delegated to him by the Committee under rules), and in the case of the Headmaster or Principal, small subcommittee, with instructions to submit the report as expeditiously as possible.

36. (1) The grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the employee charged and which shall be so clear and precise as to give sufficient indication to the charged employee of the facts and circumstances against him. He shall be required within three weeks of the receipt of the charge-sheet to put in a written statement of his defence and to state whether he desired to be heard in person if he or the inquiry authority so desire an oral enquiry shall be held in respect of such of the allegations as are not admitted. At that enquiry such oral evidence will be heard as that enquiring authority considers necessary. The person charged shall be entitled to cross-examine the witnesses, to give evidence in person, and to have such witnesses called as he may wish provided that the enquiring authority conducting the enquiry may for sufficient reasons to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof. The enquiring authority conducting the enquiry may also, separately from these proceedings, make its own recommendation regarding the punishment to be imposed on the employee.

(2) Clause (I) shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him.

(3) All or any of the provisions of Clause (I) may for sufficient reasons to be recorded in writing be waived where there is difficulty in observing exactly the requirements thereof and those requirement can in the opinion of the inquiring authority be waived without injustice to the person charged.

37. Soon after the report of the proceedings and recommendation from the inquiring authority are received, the Committee of Management shall after notice to employee meet to consider the report of proceeding and recommendation made and take decision on the case. The employee shall be allowed, if he so desires, to appear before the Committee in person to state his case and answer any question that may be put to him by any member present at the meeting. The Committee shall then send a complete report together with all connected papers to the Inspector or Regional Inspectress, as the case may be, for approval of action proposed by it.

(Emphasis supplied)

25. A combined reading of the provisions, quoted above, would show that there is no indication in these Regulations to the effect that the procedure given in the Regulations will apply only for awarding punishments enumerated in Regulations 31 and 32 and not for inflicting the punishment provided in Regulation 33(1). In my opinion, learned Counsel for the Petitioner is justified in his submission that since the last sentence in Regulation 37 is severable from the rest of the provision of that Regulation. The compliance of Regulation 37 even in the case of award of punishment as provided under Regulation 33(1) cannot be ruled out and does not become unworkable. I am, therefore, of the view that Regulations 35, 36, and 37 except for the last sentence, are applicable also for awarding the punishment of stoppage of increment, as provided in Regulation 33(1), on a teacher where as all the requirements of these Regulations without any exception are required to be complied with for awarding any other punishment enumerated in Regulation 31. It is settled principle of law that if the compliance of a particular provision of law is possible after severing the inapplicable portion thereof the whole of the provision cannot be said to be unworkable if the severed part does not apply in the particular given case. Irrespective that last sentence of Regulation 37 is not applicable in case of the award of punishment mentioned in Regulation 33(1), the requirement of Regulation 37 except for the last sentence, which is severable from the rest of it, is applicable and its compliance is a must also for awarding the punishment mentioned above. In the light of the view taken above, the contention of the learned Counsel for the Respondents that Regulations 35, 36, and 37 have no application in the case where the proceedings initiated are for awarding punishment of stoppage of increments on its employee, including a teacher, cannot at all be accepted as the same is not warranted from the reading of the relevant provisions of the Act and the Regulations, which have been noticed above.

26. In view of the finding of the effect that for awarding the punishment under Regulation 33(1), the compliance of the provisions of Regulations of Regulations 35, 36, and 37, except for the last sentence in Regulation 37, is a must, it is not necessary for me to deal with the submission of the learned Counsel for the Petitioner that stoppage of increment permanently has the effect of reduction in rank of the Petitioner as provided by Regulation 32(3). That question may be decided in some other appropriate case as the result in the present writ petition is not going to be different if that question is not decided specifically in view of the case of the Respondents? counsel himself that the enquiry which was held against the Petitioner was not an enquiry under the said Regulations.

27. In view of the above discussions, there is no escape from the conclusion that the punishment awarded to the Petitioner by order dated 26-6-93, (annexure 5) which is under challenge in the writ petition, is neither in keeping with the principles of natural justice nor it has been awarded in accordance with the procedure provided in Regulations 35, 36, and 37 which as held above, are applicable except for the last sentence in Regulation 37. So far as the punishment of disqualifying the Petitioner from holding the post of Principal on

officiating or ad-hoc basis is concerned, such a punishment, as held above, is not warranted by the provisions of law and the award of the same on the Petitioner is wholly illegal. The Managing Committee in its capacity as employer has no power, whatsoever, to award any punishment which is not a punishment enumerated in Section 16-G(3) and the Regulations framed thereunder except for the assessment of work and making of annual entries in the character roll as a result of the said assessment, which, as held above, is not a punishment.

28. Now the question arises as to whether the writ petition should be dismissed on the ground that the Petitioner has been guilty of not disclosing full facts and has concealed relevant facts from this Court and has also made false averments in the writ petition regarding the holding of the enquiry. The contention made by the learned Counsel for the Respondents in this context is not warranted from the facts of the case. It is admitted position in the case by the Respondents' counsel himself that whatever enquiry was held against the Petitioner was not an enquiry, as provided in Regulations 35, 36, 37 and 38. Examination of the proceedings which were undertaken against the Petitioner by the Managing Committee for awarding the punishment in question also show that the enquiry as required by the said Regulation was not held. It has also been proved that whatever enquiry was made was not an enquiry in keeping with the principles of natural justice. In view of these findings, there is no escape from the conclusion that no enquiry whatsoever was held against the Petitioner. The emphasis given on annexure 8 to the supplementary counter affidavit, which is in the form of question-answer, is also misconceived. Such a query is contemplated by Regulation 37 at the stage of hearing by the Managing Committee after the enquiry proceedings are over by the Enquiry Committee. That does not by itself show that any enquiry was held. In the circumstances, it is not possible to brand the Petitioner of being guilty of concealment of necessary facts and also being guilty of making wrong statement of facts in the writ petition. In my opinion, on the facts of the case, the writ petition cannot be dismissed on the ground urged by the learned Counsel for the Respondents.

29. The next question which arises in this case is as to whether the Petitioner should be relegated to the remedy of appeal under Regulation 33(2) and his writ petition should be dismissed on that ground or whether the writ petition should be heard and decided on merits for the reason that the order under challenge is a composite order awarding three punishments, including the punishment of stoppage of increments, disqualifying the Petitioner from holding the post of Principal on officiating or ad-hoc basis and award of adverse entry on him.

30. This Court as well as the Apex Court of the country for times out of numbers have discouraged entertainment of the writ petitions under Articles 226 and 32 directly if remedy of appeal was available against the order under challenge, but it was not availed. On the other hand, these Courts have also upheld in appropriate cases, entertainment of writ petitions under Article 226 as well as under Article 32 of the Constitution ignoring the alternative remedy of appeal

depending however on the facts of the case in hand.

31. In this context it was argued by the learned Counsel for the Petitioner that since the order under challenge is a composite order and inflicts two punishments on the Petitioner one of which is not open to appeal before the Inspector, the Petitioner is, therefore, justified in filing the writ petition directly in this Court without first approaching the Inspector against the order. It was further emphasised that the punishment awarding stoppage of increments no doubt was appealable but the remedy provided under Regulation 33(2) came to be diluted on account of the award of punishment of disqualification of the Petitioner from holding the post of Principal by the same order, as such, the filing of appeal was not an effective remedy as against the impugned order inasmuch as the Inspector has no power to set aside the punishment. It is also argued that since the stoppage of three increments on permanent basis which has been awarded by the impugned order on the Petitioner by the Managing Committee amounts to reduction in rank as provided in Regulation 32(3) which will be apparent from the view taken respectively by the Supreme Court as well as by this Court in the cases of Kulwant Singh Gill and Sadanand Pandey (*supra*) the remedy of appeal was, in the circumstances, inconsequential inasmuch as the order imposing the said punishments on the Petitioner having been passed without the prior approval of the Inspector as required by Section 16-G(3)(a) and Regulation 31, is void ab initio, therefore, the remedy of filing appeal need not be insisted upon and injustice meted out to the Petitioner at the hands of the Managing Committee may be remedied by this Court itself, it was further emphasised that since the aforesaid punishments were awarded without affording opportunity of hearing to the Petitioner as required by Regulations 35, 36, and 37 as also by the principles of natural justice, as such, the order under challenge having been passed in breach of the principles of natural justice and in breach of the provisions mentioned above, are non-est being void ab initio, therefore, the remedy of appeal should not stand in the way of the Petitioner who otherwise is entitled for issue of the writs as prayed for in the writ petition.

32. I will take first the contention of the learned Counsel for the Petitioner that the order being a composite order awarding two punishments is not open to appeal under Regulation 32(3). It is to be seen that the Managing Committee has awarded three punishments against the Petitioner-first being stoppage of three increments permanently, second disqualifying the Petitioner from holding the post of Principal on officiating or ad-hoc basis and third, adverse entry in the character roll of the Petitioner. Although strictly speaking second and third are not punishments provided under the Act and the Regulations. Only first punishment is warranted by the provisions of the Act and the Regulations while third cannot be termed as a punishment at all. On an over all examination of the provisions of the Act and the Regulations, I have held in the earlier part of this judgment that Managing committee has got no power to disqualify a teacher from holding the post of principal for which he has a right under the provisions of Section 18 of the U.P. Secondary Education Service Commission and Selection

Boards Act as in respect thereof the Management has no say, whatsoever, that is also the view taken by this Court in the case of Pramod Kumar Jindal (*supra*). In my opinion, the Managing Committee has no power, whatsoever, to award the said punishment on the Petitioner and the impugned order in this respect, in my opinion, deserves to be completely ignored. The Managing Committee has however, power to impose punishment of stoppage of increments against its employees as provided by Regulation 33 (1) and the Concerned employee has the remedy of approaching the Inspector against that punishment and the Inspector under the law is empowered to review the said punishment if the appeal is filed before him. In my opinion, Petitioner cannot be heard saying that the remedy of appeal under Regulation 33(2) has become redundant on account of the order under challenge being a composite order awarding two punishments—one of which is not appealable. The Scheme of the Act and Regulations would show that any punishment awarded on a teacher or employee of a Higher Secondary School or Intermediate institution is subject to review by the Inspector whereas the punishment of termination of service, removal from service, dismissal from service, reduction in rank and diminution in emoluments cannot be awarded without the prior approval of the Inspector while punishment of stoppage of increments is subject to review by the Inspector in appeal against that order. At the time of granting prior approval the Inspector is empowered to make a full review of the procedure adopted by the Managing Committee for awarding the punishment in question and he is also free to judge the sufficiency of the material on which the punishment in question has been awarded and if he is of the opinion that the material did not warrant the award of the punishment with which the employee concerned has been visited he is empowered to set aside that punishment and award an appropriate punishment which is warranted on the material on record. If, however, he is satisfied that the procedure adopted by the Managing Committee of the Institution for awarding the punishment was not in keeping with the provisions of the Regulations, he is empowered to set aside the punishment in toto. Similarly, in case where the employee is visited with the punishment of stoppage of increments under Regulation 33(1) the award of punishment is also subject to the review by the Inspector under Regulation 33(2). It is, therefore, not justified on the part of the learned Counsel for the Petitioner to urge that the remedy of appeal provided by Regulation 33(2) is diluted or washed away on account of the award of punishment on the Petitioner "disqualifying him from holding the post of Principal on ad-hoc or officiating basis I am, therefore, of the view that the Petitioner had an effective alternative remedy of filing appeal before the Inspector under Regulation 33(2) and the Inspector has the requisite power of reviewing the order of the Managing Committee which is under challenge in the present writ petition.

33. Here it is to be noticed that the approval for awarding punishments enumerated in Regulation 31 is to be given now by the (U.P. Secondary Education Service Commission as required by Section 25 of U.P. Act No, 5 of 1982 and not by the Inspector. The change, however, has no impact on the

question in consideration. Since the order awarding punishment of stoppage of incitements is appealable before the Inspector even today the Petitioner may challenge that order before the Inspector by filing appeal.

34. So far the punishment of disqualifying the Petitioner from holding the post of Principal on ad-hoc or officiating basis is concerned it has already been held that no such punishment is warranted by the law and the Managing Committee has no power to impose such a punishment as such the order of the Managing Committee in so far as it relates to the disqualification of the Petitioner from holding the post of Principal on officiating and ad-hoc basis is concerned is liable to be quashed. The Managing Committee and the Inspector or any other authority for that matter will have to decide the claim of Principalship of the College u/s 18 of the U.P. Act No. 5 of 1982 ignoring the said part of the order of punishment from the order under challenge and are under a legal obligation to take a decision accordingly. So far as the letter dated 30-6-1993, which is also under challenge and has been filed as Annexure 6 to the writ petition is concerned, the same having been passed as a consequence of the order of punishment disqualifying the Petitioner from holding the post of Principal on ad-hoc or officiating basis also deserves to be quashed.

35. In the result, the writ petition succeeds in part and is allowed partly. The order of the Manager dated 26-6-93 and the resolution of the Managing Committee dated 25-9-93 in so far as it relates to the award of punishment on the Petitioner disqualifying him from holding the post of Principal on officiating or ad hoc basis, is quashed. Remaining part of the order awarding the punishment of stoppage of three increments on the Petitioner and award of adverse entry is concerned the same shall be subject to the appellate order by the Inspector. In case an appeal against that order is filed by the Petitioner within a period of one month from the date of this judgment, the Inspector shall decide the appeal strictly in accordance with law. The Managing Committee is however, directed to take a fresh decision regarding the appointment on the post of Principal of the Institution strictly in accordance with the provisions of Section 18 of U.P. Act No. 5 of 1982 and ignoring the punishment awarded by it by the order dated 26-6-93 disqualifying the Petitioner from holding the post of Principal on ad-hoc or officiating basis. Till a decision in this respect is taken and that decision is duly approved by the Inspector, the Petitioner, who is already functioning as Principal of the College as per the stay order passed by this Court, shall continue to function as officiating Principal of the College. In view of the divided success in the writ petition, the parties to the writ petition shall bear their own costs.