
(2000) 11 AHC CK 0053
In the Allahabad High Court
Case No : C.M.W.P. No. 8945 of 1989

Prem Shanker Awasthi

APPELLANT

Vs

District Inspector of Schools, Kanpur Dehat and others

RESPONDENT

Date of Decision : 21-11-2000

Acts Referred:

Citation : (2001) 1 AWC 240 : (2001) 88 FLR 983

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : R.K. Jain and Ms. Manju Chauhan, for the Appellant; V.N. Agrawal, S.C., for the Respondent

Final Decision : Allowed

Judgement

A. K. Yog, J.—Heard Ms. Manju Chauhan, learned counsel for the petitioner. Shri V. N. Agrawal, learned standing counsel on behalf of respondent No. 1 and learned counsel representing respondent Nos. 2 and 3.

2. Prem Shanker Awasthi-petitioner was appointed as Class-IV employee by one Shri Jagdish Prasad Tripathi, Principal of a recognised educational institution namely - Shri Pathik Shiksha Parishad Inter College. Sadh, district Kanpur Dehat (called "the College") after its upgradation to Intermediate level on 4th August, 1977. From the averments in the writ petition, it is apparent that Shri Jagdish Prasad Tripathi, aforesaid Principal was brought into the college by transfer from another institution against the wishes of the then Manager. In-flight between the two rival groups over right to manage the institution and anxiety of the respective group to have "yes-man" in the office of the Principal of the college, eclipsed the posting of Jagdish Prasad Tripathi as Principal. On the other hand, appointment of petitioner was also opposed by the opposite group and thereby the appointment of petitioner was also brought into dispute. Detailed facts. In respect of the above, i.e., a spate of litigation between the rival groups of the management and the dispute regarding holding office of the head of institution is concerned. In the writ petition have not been effectively denied by any of the

respondents, reference be made to Writ Para 1 to 23.

3. Petitioner asserts that he has been making representations to the management to the then District Inspector of Schools but the said authorities paid no heed. It is claimed that District Inspector of Schools, for the first time vide letter dated 21st July, 1986 (Annexure-5 to the writ petition) informed the petitioner that his services were terminated and he had a right of appeal under U. P. Intermediate Education Act.

4. Petitioner filed an appeal before the Committee of Management (Annexure-6 to the writ petition) and the same was dismissed by the Committee of Management as communicated to the petitioner by the then Manager of the institution vide letter dated 15th September, 1986, (Annexure-7) to the writ petition).

5. The said impugned order of the management, dismissing appeal of the petitioner clearly shows that it was not the petitioner alone against whom action was taken but there were three other persons, i.e., Rameshwar Yadav and Satya Narain Savita both said to be class-IV employees of the college. This fact do reflect upon the background in which alleged action of termination of services have been motivated by the person in de facto control of the college, viz., desire to eliminate who did not act as their "yes-man" due to party faction and unhealthy vindictive approach of the management for its vested interest.

6. The other fact evident from perusal of the impugned order (Annexure-7 to the writ petition) is that there was serious dispute regarding the petitioner and two others of same charge - i.e., refusing to accept orders/letters from the college. It shows a collective action on one ground affecting more than one person. The said order also indicates that petitioner and others were paid salary up to January, 1985.

7. Feeling aggrieved from dismissal of appeal by the Committee of Management, petitioner again filed an appeal before District Inspector of Schools [Annexure-8 to the writ petition) as contemplated under Regulations framed under U. P. intermediate Education Act. The District Inspector of Schools also dismissed the appeal by means of the impugned order dated December 30, 1988 (Annexure-9 to the writ petition).

8. The impugned order passed by District Inspector of Schools, according to the petitioner, suffers from manifest error apparent on record at least on two scores :

(i) District Inspector of Schools has not referred to any particular document or material on record in support of its conclusion on the issue specifically urged by petitioner in appeal viz., "whether petitioner was actually served with relevant letters and order of termination as alleged by the college?" District Inspector of Schools has thus failed to deal with specific issues raised by the petitioner in his Memorandum of Appeal (Annexure-8 to the writ petition) particularly paras 4 to 18, and

(ii) The District Inspector of Schools, has acted beyond the scope of the controversy arising from the impugned order and in exercise of its appellate jurisdiction- recorded finding of "in discipline" against the petitioner when the management itself did not as per impugned order discharge the petitioner from service on any of the charges alleged in the charge-sheet. District inspector of Schools has acted illegally in making observations beyond the scope of appeal itself.

9. Respondents, in brief, allege that petitioner's services were terminated after holding disciplinary enquiry by appointing an enquiry officer and serving a charge-sheet, but the petitioner is blamed to have avoided to receive orders/ correspondence from the college and did not cooperate with the disciplinary enquiry. However, the perusal of Annexures-3 and 4 to the counter-affidavit (sworn by Onkar Nath Dwivedi on behalf of respondent Nos. 2 and 3 - Committee of Management and Principal of the college) shows that management did not rely upon the "Enquiry Report" nor terminated his services on any charge ; instead it drew an inference from his alleged conduct of not accepting notice and ignoring orders of the Management/Principal of the college) : that petitioner had, on his own, voluntarily abandoned the post of peon in the college, a new case was carved out with no opportunity to the petitioner be heard on the said issue.

10. In view of the above, the impugned order dated December 30, 1988 (Annexure-9 to the writ petition) cannot be sustained and is liable to be set aside.

11. Accordingly, writ of certiorari is issued and impugned order dated December 30, 1988, passed by District Inspector of Schools. Kanpur Dehat/respondent No. 1. (Annexure-9 to the writ petition) is set aside. Petitioner is entitled to reinstatement, payment of arrears of salary with 12% per annum simple interest which the respondents are directed to pay within two months of receipt of certified copy of this judgment.

12. Writ petition allowed as indicated above.

13. No Costs.