

(2012) 07 AHC CK 0090

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 65494 of 2011

Principal Bundelkhand Inter College and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Citation : (2013) 3 ADJ 592

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Rajendra Rai, for the Appellant; S.B. Singh and R.P. Dubey, for the Respondent

Judgement

Arun Tandon, J.—Petitioner, who is the Principal of Bundelkhand Inter College, Veer Nagar, Madhogarh, District-Jalaun, before this Court seeks quashing of the order of the District Inspector of Schools, Jalaun at Orai dated 3.11.2011, whereby, in exercise of power under Regulation 31 under Chapter 3 of the Regulations framed under the Intermediate Education Act, he has allowed the representation made by the employees concerned against the order of dismissal of service affected by the Principal of the Institution. The order is being challenged on the grounds that the District Inspector of Schools has recorded for three (3) reasons for allowing the representation; (a) the Principal of the Institution did not lead any evidence before the District Inspector of Schools in support of the charge. (b) The charges as alleged are not as detailed in Regulation 32(1) of Chapter III and lastly (c) that prior approval had not been obtained from the District Inspector of Schools before proceeding to dismiss the class-IV employees from the institution.

2. Learned counsel for the petitioner submits that all the reasons mentioned in the impugned order are illegal. Enquiry proceedings had taken place in accordance with the Intermediate Education Act and the regulations framed thereunder. Principal is not required to lead any evidence at the appellate stage. Charges of indiscipline and misbehaviour were found proved against the

employees concerned, which is a misconduct as defined covered by Regulation 32(1). Lastly, in view of the Full Bench judgment of this Court in the case of *Rishikesh Lal Srivastava v. State of U.P. and others*, (2009) 4 UPLBEC 2933, no prior approval of D.I.O.S. in the matter of punishment to be inflicted upon Class-4 employees of the recognized Intermediate institution is required.

3. Sri S.B. Singh, learned counsel for respondent Nos. 5, 6 and 7 contends that the enquiry as conducted against the petitioner was in violation of principles of natural justice. The principal of the institution on the basis of an ex parte enquiry report without affording opportunity of hearing to the employees concerned inflicted the punishment. It is stated that the complainant was the principal, he did not appear as the witness during enquiry. Therefore, the charge of indiscipline was not substantiated. He contends that all these grounds were specifically raised before the District Inspector of Schools. He has not adverted to the said grounds raised by the employee in the order impugned despite the objections being recorded in the first part of the order. He therefore submits that even if the reason assigned in the order impugned are found to be unjustified. The Court may insist upon the District Inspector of Schools to examine the basic grievance of the employees that the entire proceeding were vitiated for violation of principle of natural justice afresh.

4. I have heard learned counsel for the parties and examined the records of present petition. From a simple reading of the order of District Inspector of Schools dated 3.11.2011, it is apparently clear that he has recorded only three (3) reasons for allowing the representation made by the employees concerned; (a) the Principal did not lead any evidence at the appellate stage before the District Inspector of Schools; (b) the charges are not referable to Regulation 32(1) of the regulations framed under the Intermediate Education Act and (c) that prior approval of the District Inspector of Schools had not been obtained before inflicting the punishment.

5. This Court may record that first ground raised in the order has no substance, inasmuch as, the Principal is not required to lead any evidence at the appellate stage. The material as available before the District Inspector of Schools in shape of enquiry proceedings should have been examined and the District Inspector of Schools should have satisfied himself as to whether there was sufficient material to bring have the charge and as to whether the principles of natural justice have been followed. The aspect of the matter has been ignored.

6. So far as, the second ground is concerned, suffice is to record that indiscipline and disobedience of the lawful order of the Principal of the College and misbehaviour with him is misconduct within the meaning of Regulation 32(1) of Chapter III of the regulation framed under the Intermediate Education Act. So far as the ground No. (c) is concerned, suffice is to record that the Full Bench judgment of this Court in the case of *Rishikesh Lal Srivastava v. State of U.P. and others*, 2009 (9) ADJ 361 (FB) : 2009 (5) ESC 3073 (A11) (FB), has specifically held that so far as Class-IV employees are concerned, no prior approval from the

District Inspector of Schools is required before inflicting the punishment of dismissal from service.

7. Therefore this Court has no hesitation to record that none of the grounds mentioned in the order impugned are legally justified. The order impugned cannot be legally sustained. However, the issue remains as to whether the District Inspector of Schools was under obligation to examine the basic grievance raised by the petitioner in the matter of violation of principles of natural justice in the conduct of the domestic enquiry.

8. It is the case of the petitioner that the complainant did not enter the witness box and therefore, the basic allegation against the petitioner was not substantiated. It was also his case before the District Inspector of Schools that the enquiry report was ex parte and even otherwise, after the receipt of the enquiry report, the Principal did not afford any opportunity to petitioner to meet the facts recorded therein. Therefore, the order of dismissal was passed in violation of principles of natural justice. These grounds have been noticed by the District Inspector of Schools in the first part of his order. However, he has not recorded any finding either way he has neither rejected the contention nor has accepted the same. In these set of circumstances, in my opinion, the writ petition be disposed with following directions:

(a) the order dated 3.11.2011 passed by the District Inspector of Schools is hereby set aside.

(b) The representation filed by respondent Nos. 5, 6 and 7 are restored before the District Inspector of Schools.

(c) The District Inspector of Schools shall pass a fresh reasoned speaking order after affording opportunity to the petitioners, the employees and Committee of Management after taking into consideration all the objections, which have been raised in the representation.

(d) The said exercise shall be conducted within eight (8) weeks from the date of receipt of the certified copy of this order.