
(2008) 12 AHC CK 0330
In the Allahabad High Court

Raj Kumar Sharma

APPELLANT

Vs

State of U.P.& Others

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Citation : (2008) 12 AHC CK 0330

Hon'ble Judges : V.K.Shukla, J

Final Decision : Disposed Of

Judgement

V.K.Shukla, J.

Civil Misc. Writ Petition No. 64885 of 2008 has been filed by the petitioner Raj Kumar Sharma for issuance of writ in the nature of mandamus commanding the respondent to allow the petitioner to function as Officiating Principal of Shri Hoshiyar Singh Inter College, Hoshiyar Garhi, District Ghaziabad.

Civil Misc. Writ Petition No. 65395 of 2008 has been filed by Managing Committee of the institution requesting therein that order dated 10.09.2008 be quashed.

This is undisputed position, that Managing Committee of the institution has passed resolution of suspension against Raj Kumar Sharma and transmitted the said papers to the District Inspector of Schools, Ghaziabad. Till date qua the said resolution passed for placing Raj Kumar under suspension no approval order has been accorded and thereafter District Inspector of Schools, Ghaziabad has proceeded to pass order directing therein that as period of sixty days has elapsed as such Raj Kumar Sharma is entitled to function as Principal of the Institution. Managing Committee of the institution on the basis of the disciplinary proceedings being initiated against Raj Kumar Sharma and on the basis of inquiry report dated 10.09.2008 has mentioned that charge has been proved, in this background resolved that Raj Kumar Sharma to be repatriated back and to function as teacher.

Sri Punit Kumar Gupta, learned counsel appearing on behalf of Raj Kumar

Sharma contended with vehemence that such resolution could not have been passed, inasmuch as petitioner is senior most teacher functioning in the institution and has statutory right to function till the candidate comes from Board joins, in this background without there being any approval from the Board under Section 21 of U.P. Act No. V of 1982 such resolution could not have passed, and petitioner could not have been reverted back.

Sri R.K. Ojha, Advocate on the other hand contended that District Inspector of Schools, Ghaziabad is obliged in law to take decision on the validity of suspension and he cannot sit tight over the matter and then proceeded to say that period of sixty days have passed, as such incumbent should be permitted to function.

After respective arguments have been advanced, to this position Sri R.K. Ojha, Advocate conceded that such resolution reverting back the petitioner by way of punishment to the post of teacher could not have been passed by the Managing Committee of the institution without taking prior approval from the selection Board as envisaged under Section 21 of U.P. Act No. V of 1982. Once punishment has been inflicted on the strength of departmental proceedings upon the petitioner and no approval has been taken from the U.P. Secondary Education Services Selection Board, Allahabad and on the strength of same, petitioner has been sought to repatriated back then resolution dated 14.09.2008 as communicated on 15.09.2008 is unsustainable and of no consequence till it is not accorded approval under Section 21 of U.P. Act No. V of 1982. However same will not prevent the Managing Committee of the institution to proceed in accordance with law by transmitting the same to U.P. Secondary Education Services Selection Board, Allahabad for the purpose according approval.

As far as action taken by District Inspector of Schools is concerned, it is true that after sixty days in case suspension has not been approved then it lapses but District Inspector of Schools in all eventuality is obliged to take decision on the resolution and said authority cannot be permitted to sit tight over the matter, as such District Inspector of Schools is directed to take decision on the resolution of the Committee of Management qua suspension preferably within next four weeks from the date of receipt of certified copy of this order, after affording opportunity of hearing to Raj Kumar Sharma, and Basant Lal Sharma both by means of reasoned and speaking order.

With the above direction and observation both the writ petitions are disposed of.