

(2006) 07 AHC CK 0066

In the Allahabad High Court

Case No : C.M.W.P. No's. 6577 of 2005 and 43611 of 2001

Raj Kumar Shukla

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-07-2006

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(3)

Citation : (2006) 6 AWC 5938

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : S.M. Dayal, Manish Goyal and Ranjit Saxena, for the Appellant; P.N. Saxena and Amit Saxena, S.C., for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—The Petitioner Raj Kumar Shukla was appointed as a Lecturer in a minority institution and his services were terminated by an order dated 4.7.1988. The Petitioner filed Writ Petition No. 13428 of 1988 which was allowed by a judgment dated 16.3.1999 and the order of termination was set aside. The Committee of Management filed a Special Appeal No. 298 of 1999 which was allowed by a judgment dated 15.9.1999 holding that previous approval of an order of termination passed by the Committee of Management of a minority institution was not required from the District Inspector of Schools. The Division Bench in its judgment, consequently, approved the order of termination. The Petitioner filed a SLP before the Supreme Court which was dismissed by a judgment dated 10.8.2001. The order of the Supreme Court is quoted herein below:

The view taken by the High Court appears to be correct. Therefore, no interference is called for with the same. The special leave petitions are dismissed. It is made clear that neither the orders of the High Court nor our order will come in the way of the Petitioner pursuing any other remedy that may be permissible under law.

2. The Supreme Court in its order while dismissing the SLP observed that the order of the High Court as well as of the Supreme Court would not come in the way of the Petitioner in pursuing any other remedy that is "permissible" under the law (emphasis is mine). Based on the aforesaid observation, it transpires that the Petitioner filed an appeal before the Deputy Director of Education u/s 16G(3) (c) of the Intermediate Education Act, 1921. The said appeal was entertained and notices were issued to the Committee of Management asking them to file a reply. The Committee of Management filed Writ Petition No. 43611 of 2001 praying for the quashing of the appeal filed before the Deputy Director of Education. The writ petition was entertained and an interim order was passed staying further proceedings in the appeal.

3. During the pendency of the appeal, the Committee of Management issued an advertisement inviting applications for filling up the post of Lecturer in Chemistry, i.e., the post which was previously occupied by the Petitioner. The Petitioner filed a writ petition challenging the issuance of the advertisement and the selection proceedings. Since no interim order was granted, one Prashant Sharma was selected and appointed as a Lecturer. The Petitioner filed an amendment application which was allowed and the writ petition was amended and a prayer was also included for the quashing of the appointment of Sri Prashant Sharma as a Lecturer in the institution concerned.

4. Heard Sri Manish Goel, the learned Counsel for the Petitioner and Sri P.N. Saxena, the learned senior counsel for the Committee of Management.

5. A strong reliance has been made by the Petitioner with regard to the observation made by the Supreme Court in its order dated 10.8.2001. The Petitioner submitted that he had filed the writ petition before the High Court challenging the order of termination on the sole ground that no previous permission u/s 16G (3) (a) of the Intermediate Education Act, 1921 was taken by the Committee of Management from the District Inspector of Schools and therefore, the order of termination was ex facie illegal and without jurisdiction. The learned Counsel submitted that the High Court held that previous approval was not required to be obtained by a minority institution from the District Inspector of Schools and to that aspect the matter was affirmed by the Supreme Court. However, since the order of termination was not challenged on merits, the Supreme Court left the matter open to the Petitioner to pursue such remedy as permissible under the law. Consequently, the Petitioner filed the statutory appeal u/s 16G (3) (c) before the Deputy Director of Education. The Petitioner, therefore, submitted that the appeal filed by the Petitioner was maintainable and that the Petitioner had a right to challenge the order of termination on merit.

6. Sri P. N. Saxena, the learned senior counsel appearing for the Committee of Management, urged that the appeal filed by the Petitioner u/s 16G (3) (c) of the Act was not maintainable since the said provision was not applicable to a minority institution. The learned Counsel further submitted that the appeal before the Deputy Director of Education was against the order of termination,

whereas no appeal lies against the order of termination and that an appeal could only be filed against the order of approval or disapproval of the District Inspector of Schools.

7. In the opinion of the Court, it is not necessary for the Court to decide the questions raised by the Committee of Management since the controversy can be decided on other grounds. In the opinion of the Court, the submission made by the learned Counsel for the Petitioner is bereft of merit. The Petitioner challenged the order of termination in Writ Petition No. 13428 of 1988. The relief claimed in the said writ petition is quoted below:

(a) issue a writ of certiorari order or direction in the nature of certiorari quashing the impugned order dated 4.7.1988 (Annexure XIX) ;

(b) issue a writ of mandamus order or direction in the nature of mandamus directing the Respondents not to interfere in any manner with the Petitioner's functioning as Lecturer in Chemistry in A.B. Vidhyalay Inter College, Kanpur;

(c) issue such writ order or direction as this Hon''ble Court may deem fit and proper in the circumstances of the case;

(d) award the cost of the writ petitions to the Petitioner throughout.

9. There is another aspect of the matter. It has come on record that the Petitioner again filed Writ Petition No. 2972 of 2002 challenging the order of the termination but subsequently the writ petition was dismissed as withdrawn.

10. In so far as the writ petition filed by the Petitioner is concerned, in my view, upon the order of termination, a vacancy arises and it was open to the Committee of Management to fill up the said post. The Petitioner had no legal right to question the advertisement or the selection process or to challenge the appointment of Sri Prashant Sharma.

11. In view of the aforesaid, the Writ Petition No. 43611 of 2001 filed by the Committee of Management is allowed. The appeal filed by the Petitioner u/s 16G (3) (c) of the Act before the Deputy Director of Education, is quashed. The Writ Petition No. 6577 of 2005 filed by the Petitioner challenging the selection process and the appointment of Prashant Sharma is dismissed.

12. In the circumstances of the case, parties will bear their own cost.