
(2003) 07 AHC CK 0234
In the Allahabad High Court
Case No : C.M.W.P. No. 6514 of 1987

Raja Ram

APPELLANT

Vs

Inspector of Schools, and Others

RESPONDENT

Date of Decision : 21-07-2003

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 31

Citation : (2003) 5 AWC 4548

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : R.K. Jain and Rahul Jain, for the Appellant; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

S. N. Srivastava, J.—Present petition having been instituted in the year 1987 for the relief of quashing the impugned orders dated 23.12.1986, 11.6.1986 and 23.3.1986 passed by Respondent Nos. 1, 2 and 3 respectively has come out of hibernation for hearing and disposal.

2. I have heard the learned Counsel for the parties. By means of the order dated 23.3.1986 the services of the Petitioner who was a Class IV employee came to be terminated. The order terminating the services of the Petitioner was communicated to the Petitioner on 29.3.1986. The assertion of the Petitioner is that against the order of termination, the Petitioner processed the matter for appeal and he went to the opposite party No. 2 in person with the request to accept memo of appeal but the same was declined and consequently, the Petitioner sent the appeal by registered post to opposite party No. 2 on 26.4.1986 which it is stated was received at the end of opposite party No. 2 on 1.5.1986. The aforesaid appeal met the fate of dismissal vide order dated 11.6.1986 on the assumption that the same was filed beyond the period prescribed and, therefore, it was time-barred. The dismissal led the Petitioner to file a statutory representation before the District Inspector of Schools who is envisaged as final authority in the regulations which too met the fate of dismissal

vide order dated 23.12.1986. It is in this backdrop that the present petition was filed.

3. The short question involved in the petition whether the appeal preferred by the Petitioner before the Respondent No. 2 was time-barred. It is not repudiated that the copy of order terminating the services of the Petitioner was served to the Petitioner on 29.3.1986. The Petitioner initially tried to submit memo of appeal to the Respondent No. 2 in person but it was declined and consequently, the appeal was mailed to the Respondent No. 2 by registered post on 26.4.1986. It brooks no dispute that it was received at the end of the Respondent No. 2 on 1.5.1986. Regulation 31 Chapter III of the Regulations envisages one month's period for filing appeal from the date of communication of the order appealed against. In the instant case, the termination order passed by the Principal-Respondent No. 3 was indisputably served to the Petitioner on 29.3.1986 and on refusal to accept the memo of appeal sought to be served in person, the Petitioner dispatched the appeal by registered post on 26.4.1986. The period of one month would commence to run from the date of communication, which it is not disputed, was received by the Petitioner on 29.3.1986. In the peculiar circumstances as stated in the petition, the Petitioner sent the memo of appeal by registered post on 26.4.1986 which have not been confuted in the counter-affidavit and in the normal circumstances, it could have reached the end of the Respondent No. 2 by the next date but instead, it was received on 1.5.1986. The assertion in the writ petition that the Petitioner, in the meanwhile, tried persuasive measures but when it failed to bear fruit, he resorted to sending appeal by registered post, has not been refuted by the Respondents. The factum of denial to receive the memo of appeal by hand has also not been denied in the counter-affidavit. By this reckoning, it cannot be assumed that the appeal was filed beyond the period of limitation prescribed in the regulation or that there was any laches on the part of the Petitioner, who it is borne out from the record, dispatched the appeal within time. In the circumstances, the view of the Respondent No. 2 that it was filed beyond the period of limitation prescribed in the regulation, does not commend to me for acceptance. Even if it be assumed that there was delay having regard to the fact that the appeal was received at the end of the Respondent No. 2 on 1.5.1986 beyond the period of limitation, the view taken by the Respondent No. 2 and in deciding representation by the Respondent No. 1 appears to be too rigid particularly having regard to the fact that the Respondent No. 3 was the final authority in the matter who should have scanned the matter on merits and decided it after giving opportunity to the Petitioner and in accordance with law without being swayed or influenced by technicalities in the matter. In this connection, Regulation 31 of the Regulations framed is quoted below for ready reference:

4. The Petitioner is a Class IV employee whose services were terminated on account of certain misconduct as far back as in the year 1986. In my view, it would amount to gross injustice, if the petition is dismissed upholding too technical and rigid view taken by the Respondent Nos. 2 and 1 respectively.

Therefore, in order to do justice between the parties, I feel inclined to allow the petition and quash the impugned orders of District Inspector of Schools and Committee of Management and remit the matter to the Respondent No. 1 for decision afresh on merits within a period of 4 months from the date of presentation of a certified copy of this order after giving due opportunity of hearing to the Petitioner and other affected parties. I feel called to remit the matter to the District Inspector of Schools, Fatehpur at this stage having regard to the fact that District Inspector of School is envisaged as the final authority in Regulation 31 of the Regulations and also regard being had to the fact that after a lapse of 17 years, the matter does not suffer further protraction and should be given quietus by the final authority.

5. As a result of foregoing discussion, the petition is allowed and the impugned orders dated 23.12.1986 and 11.6.1986 passed by Respondent Nos. 1 and 2 respectively are quashed. In consequence, the Respondent No. 1 is directed to decide the representation as the case may be on merits within a period of four months from the date of presentation of a certified copy of this order.