
(1979) 04 AHC CK 0038
In the Allahabad High Court

Raja Ram Kanauji

APPELLANT

Vs

District Inspector of Schools and others

RESPONDENT

Date of Decision : 06-04-1979

Acts Referred:

Citation : (1979) 04 AHC CK 0038

Final Decision : Disposed Of

Judgement

Mehrotra, J.

The brief facts involved in this petition are these: The petitioner was appointed as a teacher to teach Intermediate classes in B.N. Inter College, Bhagwant Nagar, Mallawan, Tehsil Bilgrami, District Hardoi. The appointment letter or its copy has not been filed by the parties to the writ petition but it seems that the appointment was a temporary one and initially made for the sessions 1972-73. This fact is established by the communication dated October 24, 1972 from the District Inspector of Schools to the Manager of the said College, a true copy thereof is annexure B1 to the counteraffidavit on behalf of the opposite parties 2 and 3. The petitioner joined the post on October 19, 1972. Subsequently, it seems that a point was raised that as the appointment was in a clear vacancy therefore, he should be deemed to have been appointed on one year's probation. The District Inspector of Schools agreed with this contention and by his letter dated March 21, 1973 addressed to the Manager of the said college, the earlier communication dated October 24, 1972 was cancelled and approval was granted for the appointment of the petitioner on one year's probation. A true copy of the said communication dated March 21, 1973 is annexure 1 to the writ petition. The petitioner has alleged that even before the expiry of the period of probation the Management Committee of the College in its meeting held on July 1, 1973 confirmed the petitioner and communicated this fact to the letter by a letter of the same date, a true copy whereof is annexure 2 to the writ petition. In the counteraffidavit filed on behalf of the opposite parties 2 and 3 it has not been denied that the said resolution was passed by the Management Committee

but it has been stated that the effect of the said resolution dated July 1, 1973 was to make the petitioner permanent "after the expiry of his probationary period". The petitioner alleges that Shri Gaya Prasad Verma, Head Clerk of the College, due to reasons stated in the petition, took up a hostile attitude against the petitioner and got him falsely implicated in a criminal case. The petitioner was arrested on August 31, 1973 in the said criminal case and he remained in jail from the said date to September 15, 1973. On his release from the jail he received a letter from the opposite party No. 3 to the effect that he had been suspended from service from September 1, 1973 and that he would remain suspended till the decision by the court in his case. A true copy of the letter of suspension has been annexed to the writ petition as annexure 3. The petitioner says that he received a letter dated April 10, 1974 from the opposite party No. 3 along with the copy of a letter dated December 28, 1973 of the opposite party No. 1. It is averred by him that the letter dated December 28, 1973 had not been earlier received by the petitioner. A true copy of the letter dated April 10, 1974 is annexure 5 to the writ petition. The College authorities took up the position in this letter that in view of the letter dated December 28, 1973 of the District Inspector of Schools the appointment of the petitioner was temporary for the session 197273 and not on one years" probation as had been wrongly given out to him. The session ended on June 30, 1974. This is an obvious mistake as has been clarified in the counter affidavit. It should be June 30, 1973 as the session 197273 ended on June 30, 1973). The letter adds that as no extension was granted to the petitioner after the end of the said session, therefore, his services stood automatically terminated with the end of the session. The petitioner has claimed that as his one years" period of probation expired on October 18, 1973 and the same was not extended, therefore, he became automatically confirmed on October 19, 1973. He also relies on the specific confirmation which was given to him by the Management Committee by its resolution dated July 1, 1973. The petitioner felt aggrieved with the aforesaid communication dated April 10, 1974 and by the order of the District Inspector of Schools dated December 28, 1973 and filed the instant petition to get rid of the said orders. A further prayer has been to treat the petitioner in permanent service and the petitioner should be paid the suspension allowance and other dues to which he may be entitled. In the counter affidavit filed on behalf of the opposite parties Nos. 2 and 3 it has been admitted that the District Inspector of Schools did grant sanction for the appointment of the petitioner on one years" probation by his communication dated March 21, 1973, a true copy whereof is annexure 1 to the writ petition, but the same authority subsequently cancelled the said sanction by his communication dated December 28, 1973, a true copy whereof is annexure B2 to the counter affidavit. In view of annexure B2 the services of the petitioner stood automatically terminated on June 30, 1973 as the sessions 197273 ended on the said date. A reference has been made to paragraph 16G of Regulation No. 24 framed under the Intermediate Education Act. In the counter affidavit it has been asserted that the petitioner was arrested by the police in the office of the opposite party No. 3, and the former was found

in possession of an unlicensed pistol and two live cartridges. The petitioner is alleged to have confessed to the police that Km. Kusum Lata was at his house and subsequently the said girl was recovered from the said house. A point has been taken in the counter affidavit that the petitioner had filed a regular suit in the civil court seeking reliefs and, therefore he was not entitled to maintain the writ petition. In para 10 of the counter affidavit it has been stated that:

".....no doubt the period of probation of the petition was not extended as it could not be done as it evident from Section 16G of the Intermediate Education Act. Besides his services were terminated by the resolution of the Committee of Management, dated October 9, 1973 Annexure B4 which was duly sent to the opposite party No. 1 for approval and is deemed to have been approved after the period of 6 weeks vide Regulation number 44 of Section 16G of the Intermediate Education Act. This fact has been admitted in his plaint against the suspension, termination and dismissal before the court of Munsif, East, Hardoi."

The petitioner filed an affidavit in rejoinder wherein the averments made in the writ petition were reiterated and it was denied that the petitioner was found to be in possession of unlicensed pistol with two live cartridges and the other allegations made against him in the counter affidavit in respect of Km. Kusum Lata were also denied. It was further stated in the affidavit in rejoinder that the regular civil suit was withdrawn by the petitioner on July 18, 1974.

As will be evident from the affidavits on record various question have been raised by the parties in the writ petition. In my opinion, it is not necessary to go into all these questions as the petition can be disposed of on one short ground. It is not denied that on dated March 21, 1973, where by the District Inspector of Schools granted sanction to the College authorities for the appointment of the petitioner on one year's probation. As stated earlier, a true copy of the said letter is annexure 1 to the writ petition. The District Inspector of Schools purported to cancel the said sanction by his subsequent communication dated December 28, 1973, a true copy whereof is annexure B2 to the counter affidavit. By the subsequent communication the petitioner's appointment was said to be for the session 197273, and not on one years" probation. It is not denied that no opportunity was given to the petitioner to make any representation before the said letter dated December 28, 1972 was issued to the petitioner. He was not given any opportunity to make any representation which in my opinion, he should have been afforded in view of the fact that the said communication was causing detrimental civil consequences to the petitioner. After the College authorities with the approval of the District Inspector of Schools, had intimated to the petitioner that his appointment was on one years" probation then if the College authorities of the District Inspector of Schools wanted change their decision, they should have at least afforded a prior opportunity to the petitioner to show cause when this should not be done. Admittedly, no such opportunity was afforded to the petitioner. In my opinion, therefore, the said order dated December 28, 1973 has to be set aside. The college authorities their

communication dated April 10, 1974, annexure 5 to the writ petition, purported to carry out the directions given by the District Inspector of Schools in the said order dated December 28, 1973, therefore, the letter dated April 10, 1974 has also to be set aside along with the order dated December 28, 1973.

Moreover, in view of the fact that the order dated December 28, 1973 is being set aside, the petitioner's services could not be held to be temporary in nature and could not be deemed to have come to an end on June 30, 1973 at the end of the session 1972-73. Therefore the letter dated April 10, 1974 will also be hit by Section 16G (3) of the Intermediate Education Act.

Learned counsel for the petitioner has placed reliance on Supreme Court decisions reported in *State of Orissa v. Dr. (Miss) Binapani Devi* and *A. K. Kraipak v. Unions of India and others* A.I.R. 1970 S.C. 150. He also placed reliance on the decision dated April 24, 1974 of the Lucknow Bench of this Court delivered in writ petition No. 69 of 1973, *Sri Ram Verma v. Zila Vidyalaya Niriksshak, Hardoi and others*. The last case seems to be fully applicable to the facts of the present case.

Learned counsel for the opposite party placed reliance on *Virendra Singh v. Addl. Director* A.I.R. 1960 All. 647, and *Asiatic Engineer Co. v. Achhru Ram* A.I.R. 1951 All. 746, to contend that an equally efficacious remedy in the shape of a suit was available to the petitioner and in fact he had availed of the said remedy. Therefore, any interference in the instant petition was not called for. In my opinion, these two cases do not lead me to the inference that the instant petition should be thrown out on the ground of the availability of an equally efficacious alternative remedy in the shape of a suit. It is true that the petitioner had filed suit in the first instance but subsequently he withdrew the same and sought to press the instant petition. It is well known that the existence of an alternative remedy is not an absolute bar to the entertainment of a petition under Art. 226. Moreover, the Supreme Court in *B. P. Maheshwari v. Antarim Zila Parshad* 1969 A.L.J. 506, laid down that the failure to follow rules of Natural Justice is a fit situation where the existence of an alternative remedy should not be taken into consideration in adjudging the maintainability of a writ petition.

It may be stated that the learned counsel for the petitioner moved an application to bring on record the certified copy of the judgment in the session trial No. 10 of 1975, *State v. Raja Ram*, whereby he was acquitted of the original charges framed against him the learned counsel was permitted to bring the same on record as the judgment of the original court was delivered on July 2, 1975, i.e., during the pendency of the instant writ petition.

The petition, therefore, succeeds and the order dated December 28, 1973 passed by the District Inspector of Schools is set aside. The order dated April 10, 1974, the original whereof is annexure 5 to the writ petition is also set aside as the same purported to follow and give effect to the earlier order dated December 28, 1973 passed by the District Inspector of Schools so far as the prayer for

suspension allowance and other dues is concerned. I do not think that it is necessary to decide the said matter in the instant petition. A dispute regarding the amount payable to a claimant from the defendant or an opposite party is better decided in a regular suit. Therefore, I direct that the petitioner may file a regular suit for the enforcement of his claims against the employer and decide on the ground of the availability of an equally efficacious alternative remedy the prayer contained in para (b) of the relief claimed in the writ petition is not granted to the petitioner. In the circumstances, the parties shall bear their own costs.