

(1997) 08 AHC CK 0035

In the Allahabad High Court

Case No : C.M.W.P. No. 35627 of 1995, Connected with C.M.W.P. No. 33649 of 1995

Raja Ram Shukla

APPELLANT

Vs

U. P. Secondary Education Services Commission, Allahabad
and others

RESPONDENT

Date of Decision : 20-08-1997

Acts Referred:

Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 9
Uttar Pradesh Secondary Education Services Commission (Procedure for Approval of Punishment) Regulations, 1985 — Regulation 4, 5, 7, 8
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 14, 21, 21(1), 7

Citation : (1998) 1 AWC 513 : (1997) 3 UPLBEC 1862

Hon'ble Judges : O. P. Garg, J

Bench : Single Bench

Advocate : A. K. Yadav and Ajay Yadav, for the Appellant; P. S. Baghel, for the Respondent

Judgement

O. P. Garg, J.—These are two writ petitions in which common question of law and fact have been raised. It is, therefore, proposed to decide them together by this common judgment.

2. Put briefly, the facts of the case are that Raja Ram Shukla, the petitioner in Civil Misc. Writ No. 35627 of 1995, who was Principal of Vinoba Inter College, Kamasin, district Banda was placed under suspension for reasons of financial irregularities, misconduct and insubordination by the Committee of Management (the petitioner in the Civil Misc. Writ No. 33649 of 1995) on 9.11.1992 pending departmental enquiry. A charge-sheet dated 22.11.1992 was served upon Sri Shukla. A supplementary charge-sheet dated 5.10.1993 was also issued to him. Sri Raja Ram Shukla submitted his replies to the two charge-sheets on 13.8.1993 and 25.10.1993. After conclusion of the enquiry, a report was submitted by the Committee of Enquiry on 30.1.1994. The Disciplinary Authority,

i.e., the Committee of Management, issued a show cause notice to Sri Raja Ram Shukla to appear before the Committee of Management and submit his explanation. After taking into consideration the enquiry report, the material submitted therewith and the explanation of Sri Raja Ram Shukla, the Committee of Management passed a resolution on 13.3.1994 to dismiss him from service. The resolution of the Committee of Management and the relevant papers were forwarded to the U. P. Secondary Education Service Commission. However, the Commission did not approve the recommendation of the Committee of Management to dismiss the petitioner of Writ Petition No. 35627/95, namely, Sri Raja Ram Shukla. By order dated 4.11.1995, the Commission directed that Sri Raja Ram Shukla shall be reverted to the post of Lecturer, the post which he earlier held before his appointment as Principal of the College. It is this order which had been challenged, on the one hand, by the Committee of Management in Writ Petition No. 33649 of 1995 primarily on the ground that the Commission was not empowered to substitute the punishment of reversion or reduction in rank in place of the punishment of dismissal from service, as recommended by the Committee of Management, and that in view of the gravity of various charges established against Sri Raja Ram Shukla, the only appropriate and suitable punishment was that of dismissal from service. On the other hand, Sri Raja Ram Shukla has challenged the order dated 4.11.1995 passed by the Commission by filing Civil Misc. Writ Petition No. 35627 of 1995 primarily on the ground that since he was a direct recruit to the post of Principal, he could not be reverted to the lower post of Lecturer and that no order of punishment could be passed against him as none of the charges have been established.

3. In both the writ petitions, counter and rejoinder-affidavits have been exchanged. Sri Ashok Khare, appearing on behalf of Sri Raja Ram Shukla and Sri Vijai Bahadur Singh, on behalf of the Committee of Management, have advanced full-dressed arguments on the merits of the case. Therefore, with the consent of learned counsel for the parties, both these writ petitions are being disposed of finally at the admission stage.

4. It is an indubitable fact that Sri Raja Ram Shukla, who was working as Principal in Vinoba Inter College. Kamasin, district Banda was suspended and proceeded against In a departmental enquiry Initiated against him on account of misconduct, serious financial Irregularities and Insubordination. Various serious charges were established against him after due enquiry. The report of enquiry was taken into consideration by the Committee of Management, which is the disciplinary authority and it finally resolved on 13.3.1994, after taking into account the explanation of Sri Raja Ram Shukla that he deserves the extreme penalty of removal from service. As required u/s 21 of the U. P. Secondary Education Service Commission and Selection Boards Act, 1982 (Act No. 5 of 1982) (hereinafter referred to as "the Act"), the relevant papers were submitted through the District Inspector of Schools to the Commission for approval of the punishment sought to be imposed on Sri Raja Ram Shukla. Section 21 of the Act provides that no teacher (which Includes the post of Principal also) specified in

the Schedule, shall be dismissed or removed from service or reduced in rank and neither his emoluments may be reduced nor he may be given notice of removal from service by the management unless prior approval of the Commission has been obtained. Under Sections 7 and 14 of the Act, U. P. Secondary Education Service Commission (Procedure for Approval of Punishment) Regulations, 1985 have been framed to provide the procedure for transmission of the papers to the Commission through the District Inspector of Schools (for short. D.I.O.S.). These regulations also provide the manner in which the recommendation made by the Committee of Management has to be dealt with.

5. In the instant case, the Commission, In its wisdom, did not approve the recommendation of the Committee of Management to dismiss Sri Raja Ram Shukla from service, but ordered, on humanitarian grounds, to revert him to the post of Lecturer, which he originally held.

6. The sheet anchor of the case of the petitioner Sri Raja Ram Shukla is that the order passed by the Commission to revert him to the post of Lecturer is Illegal and without Jurisdiction for one simple reason that Sri Raja Ram Shukla was directly recruited to the post of Principal and a person, who is recruited directly to a particular post, cannot be reduced in rank or reverted to a post, which is lower In rank to the post to which he was directly recruited. In support of his submission, learned counsel for Sri Raja Ram Shukla placed reliance on P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others, ; State of U.P. and others Vs. Smt. Jaya Quddusi, ; Hussain Sasan Saheb Kaladgi Vs. State of Maharashtra, ; and Nyadar Singh v. Union of India and others (1983) 4 SCC 170.

7. I have thoroughly studied the aforesaid rulings and after having scanned them, it is found that the gamut of all these ruling is that a person who is directly recruited to a particular post, cannot be reverted or reduced in rank to a post which he never held. A direct recruit, therefore, cannot be reverted to the post which he never held. A distinction was also sought to be created in the said rulings In the two expressions--"reversion" and "reduction in rank". The expression "reversion" connotes and means that an employee is to return to the original post which he had earlier held. This expression, therefore, envisages that the lower post to which the employee is reverted should necessarily be amongst those earlier held by him and from which he had come on promotion. The expression "reduction in rank" has no such limitation. Reduction-in-rank can take place even to a rank which the delinquent employee never held. A reading of the aforesaid rulings makes it clear that reversion of an employee is possible and permissible to the post which he had held earlier and from which post he was promoted, meaning thereby, the post to which the employee is reverted is in line of promotion and is a "feeder service". None of the abovementioned cases is an authority on the point that a person cannot be reverted to a post which he had earlier held in the background of above law, now let us consider the case of the present petitioner, namely. Sri Raja Rajn Shukla. To say that he was direct

recruit, is nothing, but a misnomer, twisting the facts and hair-splitting the matter. Admittedly, Sri Raja Ram Shukla had risen to the post of Principal by promotion. He was initially appointed as Assistant Teacher in the College in 1967, in due course, he was promoted to the post of Lecturer in the year 1973. When the vacancy to the post of Principal occurred, the name of two senior most teachers including that of Sri Raja Ram Shukla were sent under Rule 9 of the U. P. Secondary Education Commission and Selection Board Rules, framed under the provisions of the Act. The appointment of Sri Raja Ram Shukla as Principal came to be made by virtue of the fact that he was the senior most Lecturer in the institution it is not a case where Sri Raja Ram Shukla has been brought by direct recruitment from some other institution to the institution in which he was serving as Principal. By no stretch of Imagination, Sri Raja Ram Shukla can be termed to be a direct recruit. He was holding the post of Lecturer in the College just before his promotion to the post of Principal. Since he had gone on promotion from the post of Lecturer, which belonged to the feeder cadre, on the establishment of various charges against him, as a result of the disciplinary enquiry, there is nothing wrong or illegal to revert him to the post of Lecturer, which he admittedly held earlier.

8. A short and swift reference may also be made to the submission of learned counsel for Sri Raja Ram Shukla that the enquiry report is vitiated on account of insufficiency of material or proof thereof. Learned counsel for Sri Shukla painstakingly took me through the various charges framed against him and the report of the enquiry, as well as observations made by the Commission. The jurisdiction of this Court in the matter, like the present one is quite limited. If the procedure prescribed for enquiry has been adopted, principles of natural Justice followed, and a reasonable view of the evidence has been taken in arriving at a particular conclusion, this Court would be slow enough to interfere with the findings recorded by the enquiry committee or to re-appraise them. Moreover, a court of writ cannot enter upon deciding the disputed questions of fact. The finding of fact that Sri Raja Ram Shukla was guilty of various charges cannot be reversed or interfered with merely for asking unless it is shown that the findings are perverse or are based on no material or are such to which no reasonable man of ordinary prudence can arrive at in my quest to reach the truth, I have however, sifted the report of the enquiry as well as the observations of the Commission made on each one of the charges against Sri Raja Ram Shukla and find that the Committee of enquiry has taken an overall reasonable view of the matter after considering the material placed before it, which includes the replies submitted by Sri Raja Ram Shukla to the two charge-sheets. There are no procedural infirmities in the conduct of enquiry and the conclusions arrived at by the Committee of enquiry in respect of each one of the charges against Sri Raja Ram Shukla. The writ petition, on behalf of Sri Raja Ram Shukla therefore, fails.

9. Now, it is the time to consider the submission made on behalf of the Committee of Management that the Commission had no jurisdiction or authority to modify the punishment recommended for approval by the disciplinary

authority. Sri Vijai Bahadur Singh, learned counsel for the Committee of Management strenuously tried to make out the point that in view of seriousness of the charges, which stood proved against the petitioner (Sri Raja Ram Shukla), the only appropriate and adequate remedy was his dismissal/removal from service as was resolved by the Committee of Management on 13.3.1994. He has also urged that in case "the proposed punishment is diluted by substituting the punishment of reversion to the lower post it would not only amount to turning down the recommendation of the disciplinary authority, but would also lead to indiscipline and chaos in the institution as a person, who has committed serious financial irregularities and has been found guilty of misconduct and insubordination, would continue to remain in the Institution and his presence is likely to disturb the peace and tranquility in the Institution and the possibility of group is and internal intrigues between the teachers and the staff cannot be ruled out. The net result, according to Sri Vijay Bahadur Singh, learned counsel for the Committee of Management of the institution, in question, was that it would be the institution which would ultimately suffer. Though, prima facie, the argument raised by Sri Vijay Bahadur Singh is attractive, but on deeper probe, it is difficult to give acceptance to the contention that the report of the enquiry committee and the decision of the Committee of Management, the disciplinary authority, on the question of punishment were sacrosanct and could not be modified by the Commission, in substance, the submission of the learned counsel was that the Commission has no power to modify the resolution of the Committee of Management relating to the punishment imposed on Sri Raja Ram Shukla. As said above, the order of punishment cannot take effect unless it is approved by the Commission. Under Regulation 4, referred to above, the Management is required to complete all the proceedings as per procedure prescribed under the Intermediate Education Act, 1921, or the Rules framed there under before forwarding the recommendation for approval of the commission under sub-section (1) of Section 21. Regulation 5 provides that the recommendation shall be submitted to the Commission through the D.I.O.S, and while submitting the case to the Commission, the following documents shall be submitted :

- (i) copy of the regulation of management setting up the Inquiry Committee ;
- (ii) charge-sheet prepared and served on the teacher ;
- (iii) explanation furnished by the charged teacher in reply to the charge-sheet ;
- (iv) full record of proceedings Including evidence taken and cross-examination, If any, done and personal hearing, if any, given by the Inquiry Committee appointed for the purpose ;
- (v) report of the Inquiry Committee ;
- (vi) proposal in regard to the punishment to be inflicted :
- (vii) copy of the resolution adopted by the Management in regard to the

proposed punishment ;

(viii) upto date service book and character roll of the charge-sheeted teacher.

If some more documents are required, the Commission may ask for their production under Regulation 7. Regulation 8 is the relevant provision for the purpose of this case and to furnish a complete answer to the submission of Sri Vijai Bahadur Singh, learned counsel for the Committee of Management it is being reproduced herein below :

"8. Disposal by Commission. --The Commission shall after due consideration approve or disapprove the punishment proposed or may issue any other directions deemed fit in the case."

A reading of the above provisions contained in the Regulation, referred to above, would make it clear that the Commission has to apply its mind to all the facts and circumstances after wading through the various documents required to be submitted before it under Regulation 5. After due consideration of the matter, the Commission may approve or disapprove the punishment proposed by the Committee of Management or it may issue "any other direction deemed fit in the case." Thus, Regulation 8 gives three alternatives to the Commission : firstly, it may accept as such the recommendation of the Committee of Management Secondly, it may reject the recommendation of the Committee of Management and thirdly it may issue any other direction as may be considered fit in the facts and circumstances, meaning thereby, the recommendation made by the Committee of Management may be modified or altered. The power to affirm or to reverse a particular recommendation implies that the authority has also the power to modify. On this point, there is a recent decision of this Court in *Pradumna Kumar Jain v. U. P. Secondary Education Service Commission*, Allahabad 1997 (30) ALR 339, wherein the following observation is relevant:

"..... unless an act is expressly prohibited by law, the court is not supposed to presume as a matter of general principle that certain act is prohibited beyond what has been expressly conferred to the extent it is acceptable on the principle as enunciated in the foregoing para, namely, to the extent that the power to approve or disapprove a particular order Includes the power to modify such order as well particularly when the structure of the Statute conceives of a liberal interpretation furthering the object and purpose for which the same is Incorporated. The purpose and object of incorporation of the approval and disapproval has been ensured to safeguard the interest of the delinquent from the arbitrary and high handed actions on the part of the Committee of Management. The checks and balances on the high handedness of the Committee of Management, as has been sought to be introduced by reason of incorporation of the power to approve or disapprove surely will further the object and purpose if the construction as is being made herein, is accepted in the light of the observations made above, in the case of *Narsingh Das v. Mangal Dubey* ILR All 176, it was laid down :

"Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly forbidden by the Code but on the perverse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law, as a matter of general principle prohibitions cannot be permitted."

Following the said decision in the case of Narsingh Das (supra), in the case of Smt. Rukmani Devi v. District Judge, Gorakhpur, it was held :

"The Tribunal in absence of express prohibition can be deemed to have possessed a power which was necessary to do the right and undo wrong in course of determination of Justice."

In the backdrop of above law, the decision of the Committee of Management does not receive finality and it is not expected that the Commission, as a matter of course, may accept the recommendation of the Committee of Management. If the contention of the learned counsel for the Committee of Management that the Commission has no power or jurisdiction to deviate from the recommendation of the Committee of Management is accepted, it would denude the Commission of the power to pass appropriate orders as contemplated in Regulation 8, quoted above. The Commission cannot be relegated to the state of helplessness as in that event, its existence would become a mere formality. A reading of the various provisions contained in the Act. Rules and Regulations Indicate that the Commission has been constituted for regulating the recruitment, appointment and proceedings of punishment in respect of teachers. The Commission has to exercise its effective control and supervision over the teachers as well as the Management Committee, in respect of matters falling within its domain.

10. Learned counsel for the Committee of Management made a scathing criticism against the order of modifying the penalty of dismissal/removal of Sri Raja Ram Shukla as recommended by the Committee of Management and substituting the same by the penalty of reversion to lower rank on the ground that the charges established were so serious that they were bound to entail in the removal from service of Sri Raja Ram Shukla it was also pointed out that the Commission itself has found the charges against Sri Shukla as established but even then, on "humanitarian" ground substituted the penalty, which was wholly unwarranted.

11. I have given thoughtful consideration to the matter it is true that maintenance of discipline should be the paramount consideration to run an educational institution smoothly, nonetheless, human factors cannot be ignored while dealing with the Principal. Teachers and other members of the staff. Undoubtedly, proved charges against Sri Raja Ram Shukla are of serious nature. The penalty of removal or dismissal from service not only affects the individual employee but also his family members. These are hard days and to contain various social evils, sometimes it becomes necessary not to award the extreme punishment of dismissal/removal from service, in the domain of punishment, human factor takes its entry and there is nothing wrong if the matter of

punishment is viewed from the humanitarian angle. Taking into consideration the material available on record. Particularly, with reference to the various delinquencies committed by Sri Raja Ram Shukla for which he was found guilty, I find that emphatic denunciation of his misconduct, Insubordination and financial irregularities is amply reflected by imposing the punishment of reversion to his original post of Lecturer. The order dated 16.10.1995, passed by the Commission, as communicated by letter dated 4.11.1995, addressed by the Secretary of the Commission to the D.I.O.S.. Banda does not call for any interference in the writ jurisdiction.

12 In the result, both the writ petitions fail and they are accordingly dismissed. The effect of the dismissal of the two writ petitions would be that Sri Raja Ram Shukla shall stand reverted from the post of Principal to the lower post of Lecturer, which he had held earlier. Interim orders, if any, are hereby vacated.