
(1982) 01 AHC CK 0036
In the Allahabad High Court
Case No : Second Appeal No. 1968 of 1977

Rajdeo Yadav

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 04-01-1982

Acts Referred:

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

Citation : (1982) 01 AHC CK 0036

Hon'ble Judges : K.M.Dayal, J

Final Decision : Allowed

Judgement

K. M. Dayal, J.

These are plaintiff's appeals. The plaintiff filed suit No. 189 of 1972 for a declaration that the termination of his services by notices dated 161970, 261971 and 171971 served on him was illegal, null and void and the plaintiff continued to be in the service as Assistant Teacher of the defendants' Institution.

The brief facts of the case were that the plaintiff was initially appointed as an Assistant Teacher in July 1966. Thereafter his services were terminated and he was appointed elsewhere. Again, the plaintiff was appointed as an Assistant Teacher by the defendants Institution on one year's probation in L. T. Grade on 871969. A notice of termination was issued on 161970. Thereafter he was again permitted to continue. There were certain differences between the plaintiff and the Principal of the Institution in connection with realisation of fees of class X, for the month of December, 1970. Thereafter the Principal ordered the plaintiff not to work as class teacher and ultimately lie, in collusion with the defendant No. 4, i. e. Manager, got the services of the plaintiff terminated by a notice dated 261971. That notice was served on the plaintiff on 761971, but there was no approval of the District Inspector of Schools as required by Section 16F (2) of the Intermediate Education Act. That notice was cancelled by the Principal by another letter dated 1861971. Thereafter another notice of termination was issued to the plaintiff on 171971 which was served on him on 371971). The

plaintiff contended that due to the differences with the Principal his services were terminated as a punishment. No order of approval of termination in writing had been obtained. No opportunity to show cause was given by the Inspector of Schools or the Management, to the plaintiff. The procedure prescribed by the Intermediate Education Act and the regulations framed there under was not followed and the termination of service of the plaintiff was void and ultra vires. The representations filed by the plaintiff were not entertained and thereafter the present suit was filed after issuing notice under Section 80 C. P. C.

The defence of the defendants Nos. 2, 3 or 4 was that the appointment was approved on 1921970 (Ex. A4) by the Inspector of Schools for a fixed period, i.e. for one year. The services of the plaintiff came to an end on 30th June, 1970 automatically and an advertisement was made for appointment of teachers in C. T. and L. T. Grades and the plaintiff again applied for appointment and this time he was appointed in C. T. Grade and not L. T. Grade. This appointment was on a probation of one year and the plaintiff had been receiving his pay as a teacher of C. T. Grade and he was not entitled to claim the pay of the L.T. Grade. By a resolution dated 2351971 the Management Committee decided to terminate the services. The first notice issued for termination was issued under a mistake without the approval of the Inspector of Schools. That notice was, therefore, cancelled. Thereafter the approval of Inspector of Schools was obtained on 3061971. Another notice was issued to the plaintiff on last July, 1971. The services of the plaintiff were terminated after Prior approval as required by law and, therefore, termination was valid. It was further argued that the suit was barred by Section 10G (4) of the U. P. Intermediate Education Act The trial court found that the suit was not barred either by estoppel or Section 16G (4) of the Act. It further found that the plaintiff was appointed afresh on 8th July, 1970 and his appointment was in C. T". Grade and the earlier appointment in the L. T. Grade did not continue. The suit was, thus, partly decreed. The plaintiff and the contesting defendants both filed appeals and the present appeal has been filed against the decision of the lower appellate court in the two appeals. The lower appellate court allowed the appeal of the defendant and dismissed the suit of the plaintiff as a whole.

I have heard the learned counsel for the plaintiff, for the contesting defendants and the State as well.

The first question that is involved is about the appointment of the plaintiff being in L. T. Grade or C. T. Grade. As the Courts below have given a concurrent finding of fact that the plaintiff himself applied for reappointment, the appointment dated 871970 was a fresh appointment in C. T. Grade on probation of one year. The earlier appointment, though on probation according to the appointment letter and for a fixed term according to the approval accorded by the Inspector of Schools, did not subsist thereafter. I agree with the Courts below that the plaintiff after accepting the fresh appointment could not contend that his appointment of July, 1969 in L, T. Grade continued.

The next question that is the important question in this case is whether the services of the plaintiff could not be terminated under Regulation 25 of Chapter III framed under the U. P. Intermediate Education Act. Ex. A2 which is the approval accorded by the Inspector of Schools under the aforesaid Regulations mentions that, "The irregular actions of the teacher were proved". It relied upon a letter dated 1961971 sent by the Management. It appears that according to the defendant No. 4, the services of the plaintiff were sought to be terminated on the basis of a resolution dated 2351971. Obviously this letter dated 1961971 must have contained some complaints against the teacher. The Ex. A2, approval of the Inspector of Schools, is the basis of termination of the plaintiff's services. Under these circumstances regulation 25 of Chapter III was not attracted. On the other hand, regulations 31 and thereafter were attracted. Even under Section 16G subsection (3) (b) of the Intermediate Education Act in case of punishment, the Inspector was bound to give an opportunity of the hearing to the teacher concerned before passing his orders. As this statutory requirement has not been complied with by the Inspector of Schools, his order was wholly void and had to be ignored. I accept argument of the learned counsel for the appellant.

Once a complaint against a teacher was received by the Inspector of Schools, before passing any order or approving any action against such teacher, the Inspector of Schools was bound to give an opportunity of hearing to such teacher. The complaint might be wholly frivolous or baseless and unless the teacher concerned was given an opportunity to explain, true facts could not be found. One must not be condemned unheard.

It appears that in the instant case the Inspector of Schools just looked into the complaint of the Management and without a whisper to the plaintiff accepted the same to be true. Under the circumstances the approval loses its effect and as the same was in violation of the provisions of Section 16G (3) (b) of the Intermediate Education Act there was no approval in the eye of law.

It was contended on behalf of the State that as the plaintiff was merely a probationer, his services could be terminated by the management. It is true, a probationer has no right to the post before expiry of the probation. It is also true that if the management is not satisfied with the performance of the probationer it may either terminate his services or extend the probation. The satisfaction of the management is subjective and could not be ordinarily questioned. But in such a case the satisfaction of the management has to be recorded in accordance with the procedure prescribed by Regulations 8 to 14 of Chapter III. At least six weeks before the expiry of period of probation, the management has to call for the report of the Principal about the work of the teacher. Then management has to consider the same and decide the future action. In the instant case no other provision except Regulation 25 of Chapter III appears to have been relied upon by the defendants.

In the result of the termination of the plaintiff's services by notices dated 171Q71 (Bx. A2) was wholly illegal and void. Sri D. S. Sinha, appearing for the

State vehemently contended that as the letter of termination issued by the management did not contain any stigma, the approval of the Inspector of Schools cannot be looked into to "hold that the termination of the plaintiff's services was by way of punishment. Thereafter a? he contended that even if the letter of the Inspector of Schools mentioned a reason for according approval of termination that did not mean that it was not a termination simpliciter. In para 15 of the statement of the D. W. 1 it is mentioned that the plaintiff was called upon to show cause in December, 1970 by the witness. He also admitted in para 16 that thereafter he ordered the plaintiff not to work as Class Teacher. In para 18 of the statement it appears that it was the Principal who was appointing and dismissing teachers. He did not even ask the management before issuing the notice of termination. It has also been found by the Courts below that there were some complaints against the plaintiff about deposit of fees of December, 1970. But the judgments also mention that the amount, though not entered, was deposited by the plaintiff. Letter of approval (Ex. A2) is also based on the irregularities committed by the plaintiff. Under the circumstances there cannot be least doubt that the services of the plaintiff were terminated due to some complaint made on behalf of the management to the Inspector of Schools and the Inspector of Schools accepted the same as correct without any enquiry and in violation of the provisions of Section 16G (3)(b) of the Intermediate Education Act. The procedure that is prescribed in the regulations in paras 31 to 39 also does not appear to have been followed. Before acting on a complaint of management against the teacher the Inspector of Schools should not have blindly accorded approval under Rule 25 of Chapter 3 in violation of the provisions of Section 16G itself. Rule 25 is intended to be invoked in case when due to some reason the services of the teacher or the probationer are not required any more. It cannot be based on any complaint against the plaintiff. If there is the least complaint, the provisions of regulations 9 to 31 to 39 of Chapter 3 of the Regulations framed under Intermediate Education Act have to be complied with. If some complaint and enquiry against the teacher was pending, after considering the gravity of charges against the teacher, termination could be ordered under regulation 38. In any case the provisions of Section 16G (3) (b) of the Intermediate Education Act had to be complied with. I therefore, reject the argument for the State in this behalf.

In the result, the plaintiff is entitled to a declaration that he was a probationer at the relevant time in C. T. Grade. He will not be entitled to a declaration that he was in L. T. Grade. He will also not be entitled to get any difference in the pay of the two Grades and his suit about that relief has to be dismissed. Under the circumstances the appeals are allowed. The judgment and decree passed by the Lower Appellate Court are set aside and that passed by the trial Court are restored with costs throughout.