
(2016) 01 AHC CK 0082
In the Allahabad High Court
Case No : Writ A. No. 68417 of 2015

Rajeshwar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-01-2016

Acts Referred:

Citation : (2016) 01 AHC CK 0082

Hon'ble Judges : B. Amit Sthalekar, J.

Bench : Single Bench

Advocate : Sanjeev Singh, for the Appellant; C.S.C. and Surya Nath Pandey, for the Respondent

Final Decision : Dismissed

Judgement

B. Amit Sthalekar, J.—1. The petitioner is seeking quashing of the order dated 7.11.2015 passed by the District Magistrate, Ghaziabad rejecting the petitioner's representation dated 4.9.2015 as well as the order dated 30.8.2014 whereby the petitioner has been placed under suspension.

2. Heard Shri P.N. Saxena, learned senior counsel assisted by Shri Sanjeev Singh for the petitioner, Shri Himanshu Pandey, learned counsel appearing for the caveator, respondent No. 5 and Shri Mata Prasad, learned Addl. Chief Standing Counsel for the respondents No. 1 to 4 and perused the material on record.

3. Briefly stated the facts of the case are that the petitioner was placed under suspension by an order dated 30.8.2015. The said order of suspension was also approved by the District Inspector of Schools, Ghaziabad (DIOS) by his order dated 27.10.2014. The contention of the petitioner is that the approval was granted by the DIOS on the basis of some enquiry got conducted by him through the Principal, Government High School, Kushliya. Aggrieved the petitioner filed writ petition No. 61503 of 2014 challenging the order dated 27.10.2014. The said writ petition is stated to have been disposed of by order dated 19.11.2014 with a direction to the District Magistrate, Ghaziabad to set up an independent enquiry

into the matter with some senior officials of the district administration to constitute the enquiry committee, who would be free from the members of the committee of management as the allegations against the petitioner were very serious in nature made by a group of girl students alleging misbehaviour towards them by the petitioner. Aggrieved by the said order, the petitioner filed Special Appeal No. 1195 of 2014 which was also dismissed by order dated 13.1.2015. Accordingly a four member committee was constituted comprising the Additional District Magistrate, Ghaziabad, Sub Division Magistrate, Sadar, Ghaziabad, District Inspector of Schools, Ghaziabad and Finance and Accounts Officer (Secondary Education), Ghaziabad. The committee submitted its report dated 4.2.2015 holding that although there appeared to be some dispute between the Principal of the College, one Sri Kuber Dutt Kaushik and the petitioner regarding the post of Principal of the institution but the allegations made against the petitioner prima facie appeared to be correct and the students were not happy with his teaching or with his "conduct". It is also stated that on coming to know about the report of the four members' committee as well as the allegations made by the girl students against the petitioner, the girls as well as their parents/guardians submitted affidavits denying the allegations stated to have been made by the girls or by their guardians against the petitioner. The District Magistrate however disagreed with the enquiry report dated 4.2.2015 by his order dated 10.3.2015 and marked the same to the Additional District Magistrate (City) for a fresh enquiry in the light of the affidavits given by the students and their guardians and thereafter a note dated 12.3.2015 was marked by the A.D.M. City to the District Inspector of Schools, Ghaziabad and the District Magistrate, Ghaziabad thereafter marked the same to the Principal, Government Higher Secondary, Nahali, Ghaziabad who was appointed as a fresh enquiry officer. The Principal, Government Higher Secondary, Nahali, Ghaziabad proceeded with the fresh enquiry and tried to verify the genuineness of the affidavits and called upon each of the students and their guardians and found that the allegations made against the petitioner were on forged papers. This enquiry noted that the statement given by the students earlier were on blank sheet dated 5.8.2014. The enquiry report of the Principal, Government Higher Secondary, Nahali, Ghaziabad was forwarded by the District Inspector of Schools to the A.D.M. (City) who forwarded the same to the District Magistrate, Ghaziabad, who in turn directed the A.D.M. (City) to proceed accordingly. The A.D.M. (City) by his letter dated 10.6.2015 called upon the District Inspector of Schools to give his comments on the report submitted by the Principal, Government Higher Secondary, Nahali, Ghaziabad but the District Inspector of Schools, expressed his inability to do so. Thereafter the A.D.M. (City) passed an order dated 27.6.2015 addressed to the District Magistrate, Ghaziabad accepting the enquiry report dated 4.2.2015 in pursuance of which the order of suspension dated 30.8.2014 was upheld. Aggrieved by the order dated 27.6.2015 and its approval, the petitioner submitted a representation on 5.8.2015. In the meantime against the order dated 27.6.2015 approved by the District Magistrate on 1.7.2015, the petitioner filed writ petition No. 47309 of 2015 which was disposed of by the Court by order

dated 21.8.2015 with a direction to the District Magistrate to take into consideration the objections of the petitioner and also the material which came into existence after 10.3.2015 and thereafter pass fresh orders. The petitioner thereafter submitted a representation before the District Magistrate, Ghaziabad dated 4.9.2015 alongwith the copy of the order of the Court.

4. It is also stated that the District Magistrate on the petitioner's representation made a note to the A.D.M. (City) to obtain opinion from the District Government Counsel (Civil) in the light of the order passed by the High Court dated 21.8.2015 and the District Government Counsel (Civil) opined that the petitioner is entitled for reinstatement in service with all consequential benefits. The matter came up before the A.D.M (Administration) on 30.9.2015 on which date the petitioner was present in the hearing and the other parties exempted themselves and the next date fixed was 14.10.2015. Thereafter the A.D.M. (Administration) addressed a letter dated 19.10.2015 to the District Magistrate recommending that the matter be re-enquired through a lady officer and therefore one Smt. Jyotsna Yadav, Dy. Collector was directed to enquiry into the matter. It is alleged that Smt. Jyotsna Yadav took the statements of the girls students, namely, Km. Shweta, Km. Sheetal, Km. Jyoti, Km. Pooja and Km. Richa and thereafter submitted a report dated 28.10.2015 to the District Magistrate. The statements of the girl students noted by Smt. Jyotsna Yadav in her Report dated 28.10.2015, read as under:--

5. The report of the Dy. Collector was however not accepted by the District Magistrate on the ground that they were oral statements of the girls and not signed by them and therefore fresh statement be taken in writing which was done on 4.11.2015 as mentioned in the impugned order of the District Magistrate, Ghaziabad.

6. From a perusal of the impugned order it is noticed that the written statements given by the girl students has been reproduced in the impugned order of the District Magistrate wherein Pooja Singh, Shweta Kumari, Pooja Kumari, Sheetal Kumari, Richa Yadav and Jyoti have clearly stated that the petitioner used to use deplorable language about the family of the students and also used to utter words carrying double meaning.

7. The Report referring to the statement of Pooja daughter of Rampal reads as under:

8. The Report regarding the statement of Rakhi daughter of Baburam reads as under:

9. As regards the statement of Sheetal daughter of Late Ashok Singh it has been noted as under:

10. Regarding the statement of Richa as well as her father Shri Pappu the Report notes as under:

11. Rest of the students have alleged that the petitioner never used to come on

time to teach and they could not understand what was being taught. In the report of the Principal Government, Higher Secondary School, Nahali, Ghaziabad dated Nil, copy of which has been filed as Annexure-17 to the writ petition, one Smt. Krishna Devi, mother of Sheetal has stated that the petitioner had come to their house and stated that if the statement given by her daughter was incorrect she should give an affidavit to that effect and then everything will be all right and that is why she (mother of Sheetal) had put her thumb impression on the affidavit. The relevant portion of the statement of Smt. Krishna Devi mother of Sheetal reads as under:

12. In the same report of the Principal, one Varsha daughter of Shri Dharam Pal has stated that when the petitioner used to be in anger he used to beat the students but not much but sometimes he used language which he should not have. One Pooja daughter of Rampal on being specifically asked whether she stood by her affidavit she stated that half of it is correct. When she was asked as to what part was correct and what part was not correct she stated that this part is correct that Rajeshwar i.e. the petitioner never misbehaved with her but he used to speak inappropriately with the other girl students.

13. The statement of Km. Pooja has already been quoted above.

14. Smt. Jyotsna Yadav, Dy. Collector has subsequently also taken the written complaints of the girl students and submitted her report on 4.11.2015. The statements of the girls is as under:

15. Thus from the statements of the girl students which are on record and which are stated to have been given by them at some stage may have been denied by them under fear of giving a bad name to the girl students or under the influence of their parents or the guardians. The statements noted above are on record and have come in the independent enquiry conducted by the Principal, Government Higher Secondary School, Nahali, Ghaziabad and the Dy. Collector Smt. Jyotsna Yadav. One cannot lose sight of the fact that the statement regarding alleged misbehaviour against the petitioner has been given by the girl students and on the basis of the material on record the petitioner has been placed under suspension. At places the girls in question have not retracted from their statement but tried to explain the same but from such explanation also, which is reproduced above it cannot be said that there was absolutely no material to proceed against the petitioner or place him under suspension. Ultimately, whether the petitioner is guilty of the charges against him of misbehaviour with girl students or using words carrying double meaning or inappropriately touching the girls are matters which can only be established in a full fledged departmental enquiry and any finding on such material as to whether on the basis of such material, charges against the petitioner stand proved or not is totally uncalled for by the Court, while considering the material which formed the basis for placing the petitioner under suspension. On the documents on record it cannot be said that prima facie, there is absolutely no material to proceed against the petitioner. Therefore I do not find any illegality or infirmity in the impugned orders dated

7.11.2015 or 30.8.2014.

16. The writ petition lacks merit and is accordingly dismissed.