

(2005) 12 AHC CK 0138

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4740 of 1999

Ram Bahadur Verma

APPELLANT

Vs

Ram Piyaray Verma and others

RESPONDENT

Date of Decision : 08-12-2005

Acts Referred:

Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 — Rule 14, 15, 7, 9

Citation : (2005) 12 AHC CK 0138

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. The petitioner was appointed as an Assistant Teacher on 1.7.1974 in Sri Lal Bahadur Shastri Laghu Madhyamik Vidyalaya, Sarai Khas, Sadullah Nagar, Tahsil Utraula, District Balrampur (hereinafter referred to as the Institution). The Institution was accorded temporary recognition in Session 1974-75, which was confirmed on 3.12.1982. In the mean time the petitioner was promoted as Headmaster of the said Institution on 1.4.1976.

3. It appears that there is a controversy regarding the fact that the petitioner resigned from service on 3.8.1985.

4. The contention of the petitioner is that a resignation letter purported to be of the petitioner was forwarded by respondent No. 1 after he forged the signatures of the petitioner. It is submitted that it was falsely represented that the petitioner had resigned from service. It appears that the Basic Shiksha Adhikari declined to accept and approve the resignation letter of petitioner. It is stated that as the petitioner did not succumb to the pressure of illegal demand of gratification, respondent No. 1 thereafter got a resolution passed by the Management Committee for initiation proceedings against the petitioner for removing him from service. The Basic Shiksha Adhikari approved the resolution passed by the Committee of Management suspending the petitioner from service on 30.6.1985.

Consequently the petitioner was suspended on 7.11.1985. Aggrieved the petitioner filed Civil Misc. Writ Petition No. 6263 of 1985 challenging the order of suspension as well as the resolution of the Committee of Management which were stayed by the High Court vide interim order dated 30.11.1985. It appears that a chargesheet dated 1.6.1985 was also issued to the petitioner for certain irregularities alleged to have been committed by the petitioner.

5. It appears that in the mean time the earlier Writ Petition No. 6263 of 1985 was dismissed as infructuous in view of the averments made in the counter affidavit therein that the disciplinary proceedings against the petitioner were pending and he was continuing in service and that his services would not be disturbed till the conclusion of the enquiry. The petitioner also moved an application to the authorities for payment of his salary. A request was made to respondent No. 1 to allow the petitioner to work on his post but he has not been allowed to mark his attendance and he worked in the Institution till 30.6.1985.

6. It also appears that the Basic Shiksha Adhikari by his letter dated 27.2.1987 represented to the respondents for complying with the order of this Court, but instead the respondent Nos. 1 and 2 orally terminated his services which has given cause for filing this writ petition.

7. The contentions of the learned Counsel for the petitioner are that:

(1) After receipt of chargesheet, he demanded copies of certain documents to be supplied to him which were not supplied to him and thus he was denied the opportunity to defend him and thereby the principles of natural justice were violated;

(2) The complainant Manager who was biased to him has acted as punishing authority;

(3) The punishment order was not communicated to him; and

(4) The punishment order had not been approved by the Basic Shiksha Adhikari under Rule 14 of 1978 Rules.

8. The learned Counsel for the petitioner submits that no enquiry was actually held and the petitioner has been illegally removed from service due to personal bias of the Manager, opposite party No. 1 as the petitioner was unable to fulfil his illegal demand of gratification as a consequence of which a forged letter of resignation alleging that to be of the petitioner was forwarded to the Basic Shiksha Adhikari which was accepted vide letter dated 30.8.1985. He submits that the copy of the enquiry report dated 25.5.1985 is filed as Annexure CA2. Copies of the order of termination dated 17.7.1990 and resolution dated 16.7.1990 in pursuance, of the termination order were not served upon the petitioner. He has relied upon Rule 15 of the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 which requires approval of the Basic Shiksha Adhikari and submits that it was not accorded vide letter dated 8.7.1990 contained in Annexure CA7.

9. During the course of arguments it has been submitted on behalf of the petitioner that he was promoted from the post of Assistant Teacher to that of Headmaster. It is submitted that under 1978 Rules aforesaid there is no provision of appointment of Headmaster of a Junior High School through promotion. The appointment can only be made through direct recruitment as is evident from Rule 9 of the aforesaid Rules 1978. It is stated that Rule 7 of the aforesaid Rules, 1978 further provides that a vacancy of Headmaster shall not be filled up except by advertisement at least in two newspapers one of which must have wide circulation all over the State and the other in locality where the Institution is situated. He urged that there is no averment in the writ petition that the appointment of the petitioner had been made in accordance with the aforesaid prescribed Rules, 1978 nor that the Selection Committee was ever constituted or his appointment was recommended by the statutory Selection Committee.

10. It is lastly urged that the Manager who was the complainant acted as a Punishing Authority in the instant case which is an example of appeal from Caesar to Caesar.

11. The learned Counsel for the respondents has submitted that the petitioner was charged for embezzlement of funds of the Institution and after conclusion of disciplinary proceedings against him he had been removed from service vide order dated 17.7.1990 which is based on the resolution of the Committee of Management of the Institution dated 25.3.1989 contained in Annexure CA8. It is vehemently denied that the appointment of the petitioner as Headmaster of the Institution was never approved by the Zila Basic Shiksha Adhikari which is dated 8.7.1990 written by the Zila Basic Shiksha Adhikari appended as Annexure7 to the writ petition. The suspension of the petitioner was approved by the Zila Basic Shiksha Adhikari vide letter dated 28.10.1985.

12. The learned Counsel for the respondents has placed reliance upon Rule 10(5) read with Rule 11 of the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 and submits that a perusal of the aforesaid rules shows that the proposal for appointment of a teacher and Headmaster is to be approved by the Zila Basic Shiksha Adhikari and the appointment can only be made after such approval has been accorded unless it is a case of deemed approval. Rules 10(5) and 11 of the aforesaid rules are as under :

"10. Procedure of selection x x x x

(5) (i) If the District Basic Education Officer is satisfied that

(a) the candidates recommended by the Selection Committee possess the minimum qualifications prescribed for the post; and

(b) the procedure laid down in these rules for the selection of Headmaster or Assistant Teacher, as the case may be, has been followed, he shall accord approvals to the recommendations made by the Selection Committee and shall

communicate his decision to the Management within two weeks from the date of receipt of the papers under clause (4);

(ii) If the District Basic Education Officer is not satisfied as aforesaid, he shall return the papers to the Management with the direction that the matter shall be reconsidered by the Selection Committee;

(iii) If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of the papers under clause (4), shall be deemed to have accorded approval of the recommendations made by the Selection Committee;

11. Appointment Appointment by the Management. (1) On receipt of communication of approval or as the case may be, on the expiry of the period of one month under clause (iii) of subrule (5) of Rule 10, the Management shall, first offer appointment to the candidate given the first preference by the Selection Committee and his failure to join the post, to the candidate next to him in the list prepared by the Selection Committee and on the failure of such candidate also, to the last candidate specified in such list.

(2) (a) The appointment letter shall be sent under the signature of the Manager by registered post to the selected candidate.

(b) The appointment letter shall clearly specify the name of post, the pay scale and the nature of appointment, whether permanent or temporary and shall also specify that if the candidate does not join within 15 days from the date of receipt of the appointment letter his appointment shall be cancelled.

(c) A copy of the appointment letter shall also be sent to the District Basic Education Officer."

13. It is vehemently urged by the learned Counsel for the respondents that the petitioner has neither brought on record the letter of his appointment nor has filed the copy of the order of termination of his services impugned to the writ petition and which is sought to be quashed,.

14. The learned Counsel for the respondents next contended that the petitioner was chargesheeted on four counts. Since the chargesheet contained a typographical error as word " Vivaran" was inadvertently mentioned in place of "Apharan" as such it was corrected vide order dated 15.7.1986 and the allegations were communicated to the petitioner afresh vide letter dated 15.7.1986 specifically mentioning that if no reply was submitted within 15 days it would be presumed that the petitioner had nothing to say in the matter. It was also mentioned that the petitioner was not coming to the Institution.

15. The learned Counsel for the respondent has contended that in the letter dated 15.7.1986 and in subsequent letters it is clearly stated that if the petitioner will not file reply within the stipulated period, it would be presumed that he had nothing to say against the allegations of misconduct levelled against

him and the enquiry would proceed ex parte. However, the petitioner did not file reply to the chargesheet during this period of about three months from the date of issuance of the chargesheet to the date of final punishment order. He has relied upon the case of Nagar Palika, Nehtaur v. U.P. Public Services Tribunal, (1998) 2 SCC 400, wherein it has been held by the Hon"ble Supreme Court that if opportunity was granted but was not availed by the delinquent employee then no violation of the principles of natural justice can be alleged.

16. He has further contended that the enquiry proceedings had been conducted by the Disciplinary Committee independently and the decision to punish the petitioner has been taken by the Committee of Management as Appointing Authority of the petitioner. The allegations of bias are based on Annexure RA1 to the rejoinder affidavit which is said to be a forged and fabricated document in the own hand writing of Ram Piyaray Verma, respondent No. 1. Besides this the petitioner is said to have been found guilty of the embezzlement and forgery by a Criminal Court which has already framed chargesheet against him.

17. It is urged by the learned Counsel for the respondents that after reading the punishment order he refused to receive it and returned the same to the peon who submitted a note dated 20.7.1990 to that effect which is evident from Annexure CA8. It is stated that the copy of the termination order together with the copies of the resolutions on the basis of which the termination order was passed have already been served upon the petitioner through the counteraffidavit.

18. It is next contended by the learned Counsel for the respondents that the papers for approval of the punishment order by the Zila Basic Shiksha Adhikari were submitted but as the appointment itself of the petitioner was illegal being not approved by the Zila Basic Shiksha Adhikari he wrote back to the Management that the approval of the punishment order in the circumstances was not necessary.

19. It is lastly contended by the learned Counsel for the respondents that the allegation of passing the punishment order by the complainant Manager is baseless. The enquiry had been conducted independent of the Enquiry Committee and the decision to punish the petitioner had been taken by the Committee of Management which is the Appointing Authority of the petitioner.

20. The questions involved in the writ petition require findings of facts on the basis of evidence which is not feasible in writ jurisdiction under Article 226 of the Constitution of India.

21. In my opinion, the impugned order is illegal and is liable to be set aside as it was incumbent upon the Zila Basic Shiksha Adhikari to have decided the dispute. He has failed to exercise the jurisdiction vested in him by holding that the appointment of the petitioner was void ab initio and as such no approval was required to be given by him in the admitted background of the case that it was never in dispute that the petitioner was promoted as Headmaster of the

Institution and had worked as such.

22. For the reasons stated above, the writ petition is allowed and the matter is remanded back to the authority for redecision in accordance with law.