

(1991) 09 AHC CK 0075

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13159 of 1984

Ram Bux Singh

APPELLANT

Vs

Har Narain Singh and Others

RESPONDENT

Date of Decision : 18-09-1991

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 21

Citation : (1991) 2 AWC 100

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : A.N. Bhargawa, for the Appellant; R.N. Singh, for the Respondent

Final Decision : Disposed Of

Judgement

R.R.K. Trivedi, J.—This writ petition has been filed challenging order dated 18-7-1984 passed by District Inspector of Schools Respondent No. 3 (hereinafter referred to as D.I.O.S.) rejecting the representation of Petitioner arising out of order dated 11-12-1978 passed by principal of Shri Shankar Ji Inter College, Katwa Gahji, district Azamgarh (hereinafter referred to as the College) terminating Petitioner from service and order dated 21-4-1978 passed by the Committee of Management in appeal filed by Petitioner.

2. The facts, in brief, giving rise to the aforesaid dispute are that Petitioner was appointed as lab assistant in the College on 1-2-1973. On 8-11-1977 a show cause notice was served on him as to why legal action may not be taken against him. The notice was replied by Petitioner. However, it followed by a charge sheet dated 20-12-1977 which has been filed as Annexure III to the writ petition. Eight charges were levelled against Petitioner in the aforesaid charge sheet. By order dated 11-2-1978 principal terminated him from service. This order is Annexure VII to the writ petition. It has been observed in the order that Petitioner failed to adduce evidence in his defence in spite of opportunities given. On 23-1-1978 he was given the last opportunity. However, instead of adducing evidence, the Petitioner submitted a letter making irrelevant allegations and he also said in the

letter that he does not want to say anything in writing or orally. Against this order Petitioner filed an appeal which was dismissed by the Committee of Management on 21-4-1978. The order is Annexure VIII to the writ petition. Aggrieved by the aforesaid two orders, Petitioner filed a representation before the D.I.O.S. under Regulation 21 of Chapter III framed under the U.P. Intermediate Education Act, 1921. The representation has been dismissed by the D.I.O.S. on 18-7-1984. The order is Annexure IX to the writ petition. Aggrieved by the aforesaid three orders, this writ petition has been filed.

3. I have heard Shri A.N. Bhargava, learned Counsel for Petitioner, and Shri R.N. Singh, learned Counsel for Respondents Nos. 1 and 2 and learned standing counsel appearing for Respondents Nos. 3 and 4.

4. Shri Bhargava has submitted that Petitioner has been illegally terminated from service in violation of principles of natural justice. He has not been afforded opportunity to adduce evidence. Before the D.I.O.S. he prayed for opportunity to cross-examine the principal but he was denied the same as he was required to give an undertaking not to put any question unconnected with the case. Shri Bhargava has placed reliance on the order dated 22-2-1980 filed as Annexure V to the writ petition. It has also been pointed out that the D.I.O.S. illegally deputed Assistant District Inspector of Schools for a local inspection who submitted a report on 25th August, 1979 behind the back of Petitioner. A true copy of this report was never served on the Petitioner nor was he given any opportunity to have his say in respect of the same. The report has been relied on by the D.I.O.S. while rejecting the representation of Petitioner. It has also been submitted that D.I.O.S. without applying his mind to the facts of the case has confirmed the charges without discussing evidence and without appreciating the nature of the allegations made against Petitioner. Sri Bhargava has relied on a judgment of this Court, *ShanKar Saran v. Besali Inter College, Azamgarh* 1991 UP LBEC 467.

5. Shri R.N. Singh learned Counsel for Respondents, on the other hand, has submitted that the report dated 25-8-1979 of the Assistant District Inspector of Schools can be ignored as irrelevant material on record. Shri Singh has submitted that satisfaction of the D.I.O.S. is objective and not subjective, hence even if the irrelevant material has been referred to in the order it can be ignored if the order can be sustained validly on the basis of the relevant material on record. Shri R.N. Singh has relied on cases: *Zora Singh*, and *Sawarn Singh and Another Vs. State of Punjab and Others*, . It has been further submitted by Shri Singh that the orders passed by the three authorities are concluded by findings of fact and there is no ground for interference by this Court.

6. I have thoroughly considered the rival contentions advanced by learned Counsel for parties and I have also perused the orders impugned in the present writ petition. It cannot be denied that D.I.O.S. obtained a report through Assistant D.I.O.S. which has been referred to and used extensively for passing the impugned order dated 18-7-1984 dismissing the representation of the

Petitioner (mentioned as appeal). This report running over 13 pages was prepared after making an enquiry in the college on each point raised in appeal. Statements in writing were obtained from the concerned teachers and Class III and IV employees of the college. This report concluded by saying that from perusal of the papers and from local inspection the conclusion arrived at is that the charges levelled against Petitioner are true and have been proved and his appeal can be dismissed. For better appreciation the relevant portion from the impugned order dealing with his report is being extracted below:

Zila Vidyalaya nirikshak, Sri Pancham Lal ke adesh par Sri Ramadhar Tewari, Saha Zila Vidyalaya nirikshak ne sthalia bistrut janch karke aapnee report dinank 25-8-79 ko Zila Vidyalaya nirikshak ke abalokanarth prastut kiya. Sri Tewari ne aapnee report me aapeal ke pratyek bindu par janch kiya tatha Vidyalaya ke sambandhit sabhi adhyapakou, tritiya abang chaturth shranee karmachariyon se likhit jankaree prapta kee tatha terah pannoe ke bistrut report prastut kiya. Unhone aapnee aakhya ke nishkarsh me likha hai kee astu patrabali me lage huye salenee Kagajanto ke abalokan se tatha sthaniya janch ke phalswarup main isi nishkarsn par panhucha hun kee Sri Singh par lagaye gaye sabhee aarop sidgh abang satya hain. Ata aapeal aswekar kee ja sakti hai.

7. The D.I.O.S. while concluding has discussed the aforesaid report in the following manner

Bastav men aapeal kee purnataya janch Sri Ramadhar Tewari Saha Zilya Vidyalaya nirikshak ne pahele hee kar liya tha jinkee aakhya upar dee ja chukee hai. Bastuta unkee aakhya dinank 25-9-79 ke aadhar par tatkalin Zila Vidyalaya nirikshak ko usee samay nirnaya lena chahiye tha kintu madhyamik shiksha sangh tatha Sri Ram Bax Singh ke sahayogi arajak tatwon ke bhaya se tatkalin Zila Vidyalayo nirikshak ne koi nirnaya nahi diya aur uske paschat sabhee Zila Vidyalaya nirikshakon dwara isi atank abang bhaya ke karau koi nirnay nahi liya gaya. Zila Vidyalaya nirikshak dwara nirnaya na lene ke spasht abhipraya yaha tha kee inka maun swikriti ka parichayak hai arthat we Prabandh Samiti ke nirnaya se purnata sahamat the aur bhaybas koi nirnaya nahi de rahe the.

8. In view of the aforesaid findings of the D.I.O.S. it cannot be denied that he excessively influenced himself by the aforesaid report. It has been used as additional material without giving any opportunity of explanation to the Petitioner. The D.I.O.S. clearly acted in violation of the principles of natural justice. It is not a case where some irrelevant material has also been relied on for coming to the conclusion which could be independently sustained on the basis of facts and relevant material on record. A perusal of the order will show that D.I.O.S. has discussed mainly those facts on account of which his predecessors could, not decide the case against the Petitioner for one or the other reason. A reading of such reasons recorded by the D.I.O.S. also gives an impression that he adopted biased attitude against Petitioner. It may be noticed here that Petitioner is a Class IV employee of a private institution. Against the orders of termination and dismissal the only statutory remedy provided to such employees

before the public authorities is by way of representation before the D.I.O.S. Thus a serious responsibility lay on him to judge the matter fairly and without being influenced by irrelevant and extraneous facts. If the predecessors of Respondent No. 3 could not decide the representation filed by Petitioner due to fear or undue influence or for any other such reason, it was their weakness which cannot be expected from an authority of this cadre. But, in my opinion, it was wholly unnecessary to devote so much time in discussing this aspect of the case. The order of Respondent No. 3 runs in 11 pages out of which in 8 pages this irrelevant and extraneous aspect of the case has been discussed which creates an irresistible impression that Respondent No. 3 acted under influence of these irrelevant factors.

9. So far the charges against the Petitioner are concerned which required elaborate examination and discussion as serious punishment of termination from service was involved, they have been simply confirmed without disclosing the nature and material in support thereof. It does not appear to be a case where irrelevant or extraneous consideration may be ignored and the order could be sustained on basis of other material on record. The case law relied on by Shri R.N. Singh cannot be applied in the facts and circumstances of the present case and they are clearly distinguishable. Petitioner in his memo of representation has given reasons in detail in respect of each of the charges. The D.I.O.S., however, has disposed of the points raised by the Petitioner almost without any discussion. He has only discussed grounds Nos. 1, 2 and 9 which mainly relate to the procedural part of the proceedings and not the actual charges. As already observed above, in the orders of principal and the committee of management also no material has been disclosed on which basis the charge against Petitioner are said to have been proved. It was probably for this reason that Respondent No. 3 appointed Assistant District Inspector of Schools to hold an enquiry, and to collect material in respect of the charges levelled against Petitioner. However, this report was obtained and has been relied on against Petitioner without affording him opportunity. For these reasons the order of the D.I.O.S. cannot be sustained and it suffers from manifest errors of law.

10. However, another serious aspect of this case is that what relief should be granted to the Petitioner in the facts and circumstances involved. The Petitioner was terminated from service in the year 1978, i.e. 13 years before. In 1984 at the time of filing of the present writ petition, Petitioner has mentioned his age of 50 years. By now, he must be about 58 years of age. The age of superannuation of Class IV employees in private institutions is 60 years. Thus only about 2-3 years have been left for Petitioner to attain age of superannuation. If the order of the D.I.O.S. is quashed and matter is sent back for passing fresh order, normally it shall take long time in concluding the matter. So for Petitioner is concerned as he has been out of job during all this period, even if his representation is allowed, his reinstatement for such a short time after long gap would not be in the interest of justice in any manner. The over all assessment from the charges levelled against the Petitioner and his replies, it appears that he has no aptitude

for service, and if reinstated after such a long time, the peaceful atmosphere of the institution may be spoiled. After such a long time Petitioner cannot be expected to have the natural aptitude and sincerity for work. In these circumstances, in my opinion, it would be proper to close this matter at this stage instead of remanding the same to the D.I.O.S. for fresh decision. The Petitioner may be suitably compensate for being deprived of the opportunity to agitate the matter further in respect of his termination from service. I have heard learned Counsel for parties including learned Standing Counsel on this question and there appeared unanimity that Petitioner may be paid an amount of Rs. 30,000/- in lieu of his claims and matter may be closed at this " stage.

11. For the reasons recorded above, Respondents, 2, 3 and 4 are directed pay an amount of Rs. 30,000/- to the Petitioner within a period of three months from the date a certified copy of this order is filed by Petitioner before them. This payment shall be in lieu of all the claims of the Petitioner. This writ petition shall stand disposed of subject to the aforesaid directions. There will be no order as to costs.