

(2003) 09 AHC CK 0274

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33367 of 1996

Ram Dular Yadav

APPELLANT

Vs

District Inspector of Schools and Another

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 39(3)

Citation : (2003) 5 AWC 4586 : (2004) 1 UPLBEC 503

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Indra Raj Singh and R.S. Singh, for the Appellant; Ganga Prasad and S.C., for the Respondent

Final Decision : Allowed

Judgement

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

2. This petition has been filed challenging the validity and correctness of the order dated 19.9.1996 passed by District Inspector of Schools, Jaunpur, respondent No. 1 approving the order of termination.

3. The brief facts of the case are that Brijesh Inter College, Gulalpur, Jaunpur is a recognized Intermediate College under the U.P. Intermediate Education Act, 1921 and the Payment of Salary Act, 1971 (U.P. Act No. 24 of 1971) is also applicable to it. It is alleged that the petitioner was initially appointed on the post of Assistant Clerk on 10.8.1966 and was subsequently promoted to the post of Head Clerk w.e.f. 1.7.1991. It is further alleged that on the basis of a false complaint dated 20.7.96 made against him, he was placed under suspension by the Committee of Management.

4. It is submitted by the Counsel for the petitioner that neither disciplinary proceedings have been initiated against the petitioner nor he has been paid salary. The petitioner made a representation dated 4.6.1996 to the District Inspector of Schools against his continued suspension. However, the District

Inspector of Schools vide order dated 19.9.1996 approved the suspension order passed by the Committee of Management dated 15.10.95. It is further submitted by the Counsel for the petitioner that the petitioner was never served with the alleged complaint nor the report of Accounts Officer of the office of District Inspector of Schools, Jaunpur hence the suspension order dated 15.6.96 passed by the respondents is arbitrary, mala fide and amounts to punishment.

5. It is contended that the State Government exercising power u/s 9(4) of the U.P. Intermediate Education Act, 1921 inserted Sub-regulation (3) after Regulation 39(2) in the Act which provides that the suspension order unless approved in writing by the District Inspector of Schools within a period of 60 days from the date of order of suspension will cease to operate. It is further contended that the amended Regulation came into operation on 8.7.96 and as such the order of suspension dated 15.10.95 lost its existence after 60 days i.e., on 6.9.96 of its coming into force. He also contends that by the impugned order the said suspension order cannot be revived by the D.I.O.S. by according subsequently approval to it and in view of the aforesaid amended provisions of law there was no suspension order existing against the petitioner which could be approved by the District Inspector of Schools on the day when the impugned suspension order was passed.

6. Counter-affidavit has been filed on behalf of respondent No. 2, the Committee of Management.

7. On the basis of averments made in the counter-affidavit Counsel for the respondents submits that the petitioner was involved in misappropriation and embezzlement and in defalcation of money as such, the disciplinary proceedings have been started against him. He further submits that the controversy involved in the present writ petition has been resolved by the decision of Full Bench of this Court (1995) 1 UPLBEC 460 Chandra Bhushan Misra v. District Inspector, Deoria and Ors.

8. It is next submitted by the Counsel for the respondents that the services of the petitioner were allegedly terminated after enquiry and the resolution of Committee of Management dated 7.7.96 was duly communicated to the District Inspector of Schools for grant of approval of the order of alleged termination but the District Inspector of Schools has not communicated his decision granting approval to the Committee of Management. It appears that the District Inspector of Schools by his letter dated 3.12.99 called for certain records relating to the termination of the services of the petitioner which are alleged to have been sent by the Principal of the Institution under covering letter dated 4.12.99, to the District Inspector of Schools.

9. It is urged by the Counsel for the respondents that the petitioner is hand-in-glove with the office of the District Inspector of Schools in the matter of granting approval on the order of termination of his services and no decision has been taken by the D.I.O.S. in this regard. It is further urged that inspite of repeated

reminders the D.I.O.S. has not taken any decision on the resolution passed by the Committee of Management dated 7.7.96 terminating the services of the petitioner.

10. From the facts narrated above it is established beyond doubt that whatever may be the reason, the D.I.O.S. has neither granted approval to the order of suspension nor to the order of termination of the services of the petitioner. In Chandra Bhushan Misra's case (supra), one of the questions raised before the Full Bench was whether the order of suspension of Principal or a Teacher of an Intermediate College, if not approved by the District Inspector of Schools within sixty days from the date of such order, lapses or it merely ceases to operate and become effective after it is approved by the Inspector? The Full Bench has held in Para 3 of the judgment that:

"According to Sub-section (7) no order of suspension shall "remain in force for more than sixty days" unless approved in writing by the Inspector. "In force" means "in operation". A statutory enactment or an order does not lapse merely because it has not come or brought into force. The only effect of an order, which is not in force is that it is ineffective and inoperative. But such an order is not obliterated and continues to exist though ineffective. Similarly when the order, which was in force, has ceased to be operative due to supervening event, will come into force again and will become effective after the infirmity caused by supervening event is removed. In view of the provisions of Sub-section (7) an order of suspension of Head or a Teacher of an Institution shall remain in force for a period of sixty days from the date of such order even if it is not approved in writing by the Inspector, but in the absence of the approval by the Inspector such an order will cease to operate on expiry of sixty days from the date of the order, although it will continue to exist though inoperative : But if the order of suspension is approved even after the expiry of sixty days, it will come into force again and will become effective immediately on such approval. Any other interpretation will lead to serious consequences. In action on the part of Inspector either deliberate or otherwise may frustrate the object of the provision itself."

11. In the instant case, the petitioner was suspended- by the Committee of Management on 15.10.95 which was approved by the D.I.O.S. on 19.9.96. The petitioner was suspended prior to amended rule came into force but the order of suspension would not loose its effect in view of the ratio laid down by the Full Bench decision in the aforesaid case of Chandra Bhushan Misra (supra). It will not be obliterated and continue to exist even if approval was not granted within a period of sixty days.

12. The petitioner was entitled to an opportunity before passing of the termination order under the U.P. Education Act, 1991. Admittedly no opportunity has been granted to the petitioner and the alleged termination order passed against him has also not been approved by the D.I.O.S., as required under the law. As a natural consequence the petitioner shall be deemed to be in service

and is entitled to his salary. Since, termination order has not been approved by the D.I.O.S. the petitioner is entitled to be continue in service. Since prior approval was not obtained to the decision of the Committee of Management, the dismissal of the petitioner from service without approval of the D.I.O.S. is, therefore, void.

13. From the records it appears that the petitioner is drawing subsistence allowance and the work is not taken from him by the Institution. In these circumstances, the respondents are directed to reinstate him forthwith and pay his salary.

14. The petition succeeds and is allowed with the aforesaid directions. No order as to cost. Petition allowed.