

(2012) 07 AHC CK 0261
In the Allahabad High Court
Case No : Special Appeal No. 1495 of 2004

Ram Govind Tripathi

APPELLANT

Vs

U.P. Secondary Education Service Commission and Others

RESPONDENT

Date of Decision : 18-07-2012

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 21, 34

Citation : (2012) 7 ADJ 438 : (2012) 6 AWC 5924

Hon'ble Judges : S.P. Mehrotra, J;P.K.S. Baghel, J

Bench : Division Bench

Advocate : Krishanji Khare, A.K. Tripathi, Gajendra Pratap and Vijendra Pratap,
for the Appellant; A.K. Shukla, A.K. Singh, R.P. Dubey and S.R. Singh, for the
Respondent

Final Decision : Dismissed

Judgement

Hon'ble P.K.S. Baghel, J.—This Special Appeal has been filed against the judgment and order of the Learned Single Judge dated 6.10.2004 in Writ Petition No. 30341 of 1993. By filing the Amendment Application the appellant has also challenged the order dated 18.7.2005 whereby the Learned Single Judge has dismissed his Review Application also. The short facts leading to filing of the Writ Petition are that the petitioner was appointed as Lecturer of Sanskrit in Vishambhar Singh Bhartiya Vidyalaya Inter College, Auraiya, Etawah, (hereinafter referred to for the sake of brevity as an Institution). The said Institution is governed by the provisions of the U.P. Intermediate Education Act, 1921 the Regulations framed thereunder and U.P. Secondary Education (Service Selection Board) Act, 1982. The Institution is on grant-in-aid list of the State Government. Thus the provisions of The U.P. High Schools & Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 are also applicable to the Institution.

2. The affairs of the Institution are managed by the Committee of Management.

The Institution has its Scheme of Administration and it is established by a Society. However, the petitioner has not brought on the record the Scheme of Administration of the Institution, and the Bye Laws of the Society which governs the affairs of the Committee of Management and the Society, respectively.

3. The petitioner was suspended on 2nd July, 1991 and a charge-sheet dated 13.7.1991 was served on him. There are three charges in the charge-sheet. One of the charge against the petitioner is that he has physically assaulted the Principal of the College in the presence of some of the teachers. The other charges are in respect of negligence of his duties and his indifferent attitude towards the examination work entrusted to him. The Committee of Management appointed the Manager of the Institution as Enquiry Officer for initiating disciplinary proceedings against the petitioner. The petitioner submitted his reply on 13th September, 1991. In the enquiry the petitioner did not participate in spite of the fact that the petitioner was given full opportunity. The Enquiry Officer submitted his report wherein the petitioner was found guilty of all the charges.

4. An Agenda was issued on 30th September, 1991 to hold the meeting of the Committee of Management on 10.11.1991 to consider the enquiry report and take the decision thereon. On 10.11.1991 the quorum was not complete and as such the meeting was adjourned for next day i.e. 11.11.1991. On 11.11.1991 the meeting of the Committee of Management was held wherein 9 members were present. The petitioner was also present in the said meeting. The petitioner has signed the Minutes, a copy of the Minutes has been filed by the petitioner as Annexure-7 to the Stay Application filed along with the Special Appeal. In the said meeting 5 members unanimously passed the resolution and accepted the enquiry report wherein the petitioner was found guilty. The members were of the view that the petitioner was not fit person to continue as a teacher in the Institution and they resolved for dismissal of petitioner. In the said meeting 4 members abstained at the time of voting, thus five members remained present and such quorum was complete. An unanimous resolution was passed. The Committee of Management sent the entire papers to the U.P. Secondary Education Services Selection Board through the DIOS for the approval of his dismissal in terms of Section 21 of the U.P. Secondary Education Services Selection Board, Act 1982.

5. It is pertinent to note that in exercise of the power under Sections 7 and 34 of U.P. Secondary Education Service Selection Board Act, 1982 has made the Regulations U.P. Secondary Services & Commission (Procedure for Approval of Punishment) Regulations, 1985. (For short Regulation). The Commission had constituted a Sub. Committee of its members. The Sub. Committee issued notice to the petitioner on 4.12.1992. The appellant submitted his reply on 1.1.1993. The appellant was heard personally on 25.2.1993. Thus he was given full opportunity by the Commission/Board. The Board by its order has approved the dismissal of the petitioner. The Commission/Board has recorded finding that there was no procedural illegality in the disciplinary proceedings and charges

against the appellant have been proved. Aggrieved by the order petitioner filed the Writ Petition No. 30341 of 1993.

6. The Learned Single Judge vide judgment and order dated 6.10.2004 has dismissed the writ petition. Dissatisfied with the order of the Learned Single Judge the petitioner has filed the instant Special Appeal under Chapter VIII rule 5 of the High Court Rules. During the pendency of the appeal the petitioner's Review Application has also been rejected by the Learned Single Judge vide order dated 18.7.2005. The appellant has challenged the said order also in the present Special Appeal.

7. We have heard Sri Krishna Ji Khare, Learned Counsel for the appellant and Sri S.R. Singh Learned Counsel for the respondent No. 1 as well as learned Standing Counsel.

8. Learned Counsel for the petitioner submits that the appellant has raised only one point before the Learned Single Judge that the meeting of the Committee of Management dated 11.11.1991 in which the resolution was passed to dismiss the appellant was illegal for the lack of notice and quorum, no other point was raised before the Learned Single Judge. Learned Counsel for the appellant contends that the finding of the Learned Single Judge that the resolution was passed by 2/3rd majority and there was no illegality in convening the meeting dated 11.11.1991 is not correct. He further submitted that when the Learned Single Judge reserved the judgment in the Writ Petition the learned Single Judge expressed his opinion that he was satisfied that the meeting was illegal and as such the Counsel for the Appellant who argued before the Learned Single Judge did not raise other points with regard to illegality of the disciplinary proceedings and violation of the principles of natural justice.

9. Sri Krishan Ji Khare, Learned Counsel for the appellant has further invited our attention to the ground No. 8 of the Review Application wherein he has raised the above submission. The ground No. (8) is reproduced below :

Because learned single Judge had, in the open Court clearly expressed that he had accepted the submission of the case of the appellant that notices were not given to all members of committee of management for convening the meeting and therefore further submissions on other points were not raised by the counsel and if at all the learned Single Judge had changed his earlier expressed view and was taken a contrary view he ought to have deferred the judgment and posted the case for further hearing. In not doing so the learned Single Judge has not only committed manifest illegality but against the propriety as well.

However, the Learned Single Judge has rejected his Review Application on 18.7.2005. The said order has also been challenged by him in the present Special Appeal.

10. In the background of the aforesaid facts we have permitted Sri Krishan Ji Khare, Learned Counsel for the appellant to argue other grounds also to satisfy

the Court that there was violation of principles of natural justice as he was not afforded opportunity in the disciplinary proceedings.

11. We have heard at length Sri Krishan Ji Khare on the other points also raised by him. He contended that the meeting dated 11.11.1991 was illegal as it was in the teeth of Regulation 28 of Chapter III of the U.P. Intermediate Education Act, 1921 as the resolution was passed only by 5 members and it was not 2/3 majority as the strength of the Committee of Management at that point of time was 13 members.

12. Indisputably the agenda was issued on 30th September, 1991 for holding a meeting of the Committee of Management on 10.11.1991. On 10.11.1991 at 2 p.m. the meeting was convened. However, only Dr. Beni Madhav Gupta, Bhuvnesh Bhushan Sharma, Ram Govind Tripathi, Ram Avtar Chaturvedi were present. In the absence of the quorum the meeting was adjourned till 11.11.1991. A copy of the Minutes is annexed as Annexure-5 to the Stay Application filed alongwith the Special Appeal. On the next day i.e. on 11.11.1991 the meeting was held, wherein 9 members were present including the appellant. A copy of the Minutes is annexed as Annexure-7 to the Stay Application filed alongwith the Special Appeal. The appellant has also signed the Minutes. A perusal of the Minutes would go to show that the enquiry report was considered in the said meeting and it was unanimously resolved to accept the enquiry report and the members were satisfied that the petitioner was guilty of gross mis-conduct. However, at the time of voting 4 members abstained, this fact is also evident from the Minutes. Sri Khare, Learned Counsel for the appellant has further contended that there was no notice to all the members and as such the meeting dated 11.11.91 was illegal.

13. Respondent Nos. 3 and 4 have filed their Counter Affidavits. In the Counter Affidavit filed by the respondent No. 4 in paragraph 16 it was stated that intimation of this meeting was given to the members. In paragraph 22 of the Rejoinder Affidavit the said fact has not been specifically denied.

14. On 11.11.1991 as 9 members were present out of 13 members and as such the issue of the quorum does not arise. Moreover, at the time of voting only 5 members were present who had passed the resolution unanimously. Thus the finding of the Learned Single Judge that the quorum was complete and there was no illegality in convening the meeting does not suffer from any error. It may also be noted that petitioner has not brought on record the bye-laws of the Society which provides detail procedure for calling the meeting and quorum etc.

15. As stated earlier, we have, permitted Sri Krishan Ji Khare, Learned Counsel for the appellant to raise the other issue as in the Review Application he has stated that before the Learned Single Judge he could not raise the other issues, as he was under the impression that the Learned Single Judge was satisfied on the first ground alone that the meeting dated 11.11.1991 was illegal for want of notice and quorum. Sri Khare, Learned Counsel for the appellant submitted that

the petitioner was not afforded the opportunity of hearing in the disciplinary proceeding and hence there was violation of natural justice.

16. From the record it is evident that the said fact is not correct. In paragraph 8 of the Counter-Affidavit filed by the respondent No. 4, it is stated that the petitioner was given full opportunity to produce evidence in his defence and he did not also made any request for the change of Enquiry Officer. In paragraph 14 of the Rejoinder-Affidavit the said fact has not been denied. It is, also mentioned in paragraphs 10 and 12 of the same Counter-Affidavit that on 13th September, 1991 the 4 witnesses were examined namely Ram Babu Tripathi, Krishna Kumar Misra, Yogesh Chandra Purwar and Mata Prasad Bajpai. However, on the said date the petitioner did not appear and a notice was sent to him by Registered Post on 27.9.1991 for fixing the next dated 8th October, 1991 (a copy of the said notice is annexed as Annexure- CA-2 to the Counter Affidavit). All those witnesses were again called to provide opportunity to the petitioner to cross-examine them. However, the petitioner again did not appear on 8th October, 1991.

17. In paragraphs 16 and 18 of the Rejoinder-Affidavit the aforesaid fact has not been specifically denied by the petitioner.

18. Paragraphs 10 and 12 of the Counter-Affidavit filed by the respondent No. 4 and the reply of the appellant in paragraph 16 and 18 of the Rejoinder Affidavit are quoted herein below :

Paragraph 10 of the Counter-Affidavgit.-That in reply to the contents of paragraph No. 10 of the Writ Petition it is submitted that on 13.9.1991 deponent Shri Ram Babu Tripathi, Shri Yogesh Chandra Purwar and Shri Krishna Kumar Misra who are lecturer in the college and Shri Mata Prasad Bajpai who is a peon in the college were examined on behalf of the committee of Management. The petitioner did not appear on this date although notice was sent to him by registered Post, on 3.9.1991. He thus himself did not avail the opportunity of cross-examining this witnesses. The true copy of the letter dated 3.9.1991 is being filed herewith as Annexure CA1.

Paragraph 12 of the Counter-Affidavit-That in reply to the contents of paragraph No. 12 of the Writ Petition, it is submitted that the deponent Shri Ram Babu Tripathi, Shri Krishna Kumar Misra Shri Yogesh Chandra Purwar and Shri Mata Prasad Bajpai who were examined on 13.9.1991 were asked to appear again on 8.10.1991 before the enquiry officer in order to provide opportunity for cross-examining to the petitioner but the petitioner did not avail this opportunity too. He did not appear on 8.10.1991 also although admittedly notice was sent to him intimating that 8.10.1991 was the date fixed for his appearance before the enquiry officer. In absence of the petitioner the witnesses reiterated the statement made by them on 13.0.1991. The notice to appear on 8.10.1991 was sent to the petitioner by registered post on 27.9.1991 true copy of which is marked herewith as Annexure CA :2

Paragraph 16 of the Rejoinder-Affidavit.-That the contents of para No. 10 of the affidavit No. 2 are not admitted as stated therein and are denied and the contents of para No. 10 of the writ petition are reiterated.

Paragraph 18 of the Rejoinder-Affidavit-That the contents of para No. 12 of the affidavit No. 2 are not admitted as stated therein and are denied and the contents of para 12 of the writ petition are reiterated.

The aforesaid facts shows unmistakably that the petitioner was given full opportunity in the disciplinary proceedings. However, he failed to avail the said opportunity. His reply was considered by the Enquiry Officer as well as by the Committee of Management. Moreover, the respondent No. 1 U.P. Secondary Education Service Commission has also given opportunity to the appellant to be personally heard. This fact is admitted to the appellant that the Commission had personally heard him.

19. There are serious charges of misconduct against the appellant, he had physically assaulted the Principal of the Institution in presence of the Teachers and this fact has been proved in the disciplinary proceedings. The finding of the Enquiry officer that the appellant is guilty of misconduct does not suffer from any illegality. It is also on the record that earlier the appellant was awarded adverse entries and he was jailed for 125 days under the provisions of the Defence of India Rules.

20. It is also on the record that the appellant has admitted that he did not performed the examination duties which were assigned to him by the Principal.

21. In the similar facts where a teacher allegedly abused and attempted to assault a lady Principal in front of the school was considered by the Supreme Court in the case of Manager, Nirmala Senior Secondary School, Port Blair v. N.I. Khan and others, AIR 2004 SC 499. The relevant portion of the judgment is extracted below :

Educational institutions are temples of learning. The virtues of human intelligence are mastered and harmonised by education. Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshipers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important.

The whole unsavoury episode started on 21.12.1995 when respondent - N.I. Khan allegedly abused and attempted to assault a lady Principal of the appellant's educational institution in front of the school.

The allegations made against respondent-Khan are no doubt of a very serious

nature and certainly if proved do not befit a teacher. The clay like mind of young children are shaped into beautiful moulds by teachers. They shape the future course of the students. To a great measure their behaviour, character, reputation leave imprints in the minds of the young children. If their conduct, behaviour and reputation is full of blemish that would not be for the interest and in the welfare of the students. Respondent-Khan has denied the allegations and has alleged bias. But we do not think it necessary to opine one way or the other. Whatever be the truth, the undisputed fact is that the litigation has continued unabated for long years. It would be neither in the interest of respondent-Khan nor the Institution if respondent-Khan is continued in the Institution. By making this observation, it is not to be construed as if we have found the allegations to be true. On the contrary, the welfare of the Institution, the reputation of respondent-Khan has been considered by us in the proper perspective. If an act or omission of an employee reflects upon his character, reputation, integrity or devotion to duty or is an unbecoming act, certainly the employer can take action against him. In this context, reference may be made to the following observations of Lopes C.J. in *Pearce v. Foster*, (1866 (17) QBD 536, p.542):

If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant.

This view was re-iterated by a three-Judge Bench of this Court in *Union of India and Others Vs. K.K. Dhawan*, and *Indian Railway Construction Co. Ltd. Vs. Ajay Kumar*, .

Sri Khare lastly argued that the Commission has approved the proposed dismissal order of the petitioner without applying its mind.

22. Before advertent the submission of Sri Khare we would like to examine the scope of Section 21 and Regulation 8 of the 1985 Regulations. These provisions have been considered by the Supreme Court and this Court in series of decision. The relevant extract of one of the decision *Committee of Management, Bishambhar Saran Vaidic Inter College v. U.P. Secondary Education* , is being extracted below :

The High Court has also committed an error in holding that the Commission could not have gone into the merits of the case. According to us, in view of the provisions of the said Section 21, the Commission while deciding whether or not to grant approval for the removal of a teacher, has necessarily to go into the merits of the case and apply its mind independently to the question that the Commission appointed under the Act is a high-powered body and as a body entrusted with the important function of supervising the actions taken by the

Management against the teachers, it has to discharge its responsibility circumspectively. It cannot exercise its function effectively unless it scrutinises the material and applies its mind carefully to the facts on record. Hence, if the Commission goes through the entire record and the merit of the action taken, its action cannot be faulted.

23. The same provisions have been considered by the learned Single Judge in Committee of Management, Chiraunji Lal Dharampal Kanya Uchchattar Madhyamik Vidyalaya, Budaun and another v. State of U.P. and others, 2007(6) ADJ 490, the learned Single Judge has considered several decision of this Court and has held that the Commission has a wide power u/s 21 of the Act and it can apply its mind independently to the question whether the evidence on record justified the removal/termination or not. We are in respectful agreement with the view taken by learned Single Judge in above stated case.

24. We have also taken note of judgment of coordinate Bench in Raja Ram Shukla and others v. U.P. Secondary Education Services Commission, Allahabad and others, 2009(9) ADJ 238 (DB): 2009(5) ESC 3434 (All)(DB), wherein the matter has been remanded back to the Board to decide the matter afresh in the light of the observations made therein.

25. We have gone through the order of the Sub. Committee constituted by the Commission (Board) and its finding. The Sub. Committee had issued notice to the appellant and he was personally heard. The entire records were before the Sub. Committee and it has recorded categorical finding of fact with regard to misconduct of the appellant. The Sub. Committee was satisfied that there was no breach of the principles of natural justice and it has approved the proposed dismissal order.

26. We do not find any error in the said order which may warrant any interference by this Court.

27. Before we leave, a word about the scope of the Special Appeal under Chapter VIII Rule 5 of the Rules of the Court. Sri Khare had argued the matter at length on the facts also. The Supreme Court in the case of Baddula Lakshmaiah and Others Vs. Sri Anjaneya Swami Temple and Others, , has laid down the scope of Special Appeal. The Special Appeal is not like that of the First Appeal under the C.P.C. The jurisdiction under Special Appeal is very limited to correct the error of the learned Single Judge and it cannot act as the Appellate Court. The relevant paragraph of the judgment of the Supreme Court is reproduced herein below :

Against the orders of the trial Court, first appeal lay before the High Court, both on facts as well as law. It is the internal working of the High Court which splits it into different "Benches" and yet the Court remains one. A letters Patent appeal, as permitted under the Letters Patent, is normally an intra-Court appeal whereunder the Letters Patent Bench, sitting as a Court of correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of a subordinate Court. In such appellate

jurisdiction the High Court exercises the powers of a Court of Error. So understood, the appellate power under the Letters Patent is quite distinct, in contrast to what is ordinarily understood in procedural language.

In view of the aforementioned reasons, we do not find any error in the impugned judgment of the learned Single Judge and the Special Appeal is dismissed accordingly.

No order as to costs.