

(2004) 10 AHC CK 0060

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 30341 of 1993

Ram Govind Tripathi

APPELLANT

Vs

U.P. Secondary Education Service Commission and Others

RESPONDENT

Date of Decision : 06-10-2004

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 28
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 21

Citation : (2005) 6 AWC 5415 : (2005) 1 UPLBEC 74

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Gajendra Pratap and K.J. Khare, for the Appellant; A.K. Shukla, A.K. Singh, A.K. Dwivedi, S.C. Verma and A.K. Yadav and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The petitioner was appointed as a lecturer in Sanskrit w.e.f. 1st March, 1971 in Chaudhary Vishambhar Singh Bhartiya Vidyalaya Inter College, Auraiya, District Etawah. On the basis of certain charges, the petitioner was suspended and thereafter, he was charge-sheeted. A full-fledged enquiry was initiated in which the petitioner participated and full opportunity was given to the petitioner to defend himself. The Enquiry Officer submitted an enquiry report before the Committee of Management, which was convened for this purpose on 10.11.1991, but the same was adjourned on account of lack of quorum. The meeting of the Committee of Management was adjourned for 11.11.1991, on which date, a resolution was passed resolving to dismiss the petitioner. This resolution and necessary papers was forwarded for approval to the Commission u/s 21 of the U.P. Secondary Education Services Commission Act 1982. The Commission issued a show cause notice on 4.12.1982 and after considering the objection of the petitioner passed an order dated 18.5.1993 approving the dismissal of the petitioner. Consequently the petitioner has filed

the present writ petition praying for the quashing of the order dated 18.5.1993 passed by the respondent No. 1 and the resolution dated 11.11.1991 passed by the Committee of Management resolving to dismiss the petitioner.

2. Heard Sri Gajendra Pratap alongwith Sri K.J. Khare, the learned Counsels for the petitioner, Sri A.K. Shukla, the learned Counsel for respondent No. 3, Sri A.K. Singh, the learned Counsel for respondent No. 4 and the learned Standing Counsel for respondent Nos. 1 and 2.

3. The learned Counsel for the petitioner submitted that when the meeting was adjourned for 11.11.1991, no fresh notice was sent to the members of the Committee of Management for the adjourned meeting. Further the resolution was not passed by 2/3 rd of the members of the Committee of Management while passing the resolution dated 11.11.1991 and, therefore, submitted that since the resolution was not passed by 2/3rd of the members present and voting, the resolution dismissing the services of the petitioner was invalid and he was therefore, liable to be reinstated as a lecturer in Sanskrit.

4. In Paragraph No. 17 of the writ petition, the petitioner has alleged that no notice of the adjourned meeting was given to the members of the Committee of Management. The respondent No. 3 in paragraph No. 15 of his counter affidavit has denied the contents of the Paragraph No. 17 of the writ petition and contended that five members of the Committee of Management were given notice of the adjourned meeting. The respondent No. 4 in Paragraph No. 16 of his counter affidavit has also denied the contents of Paragraph No. 17 of the writ petition and contended that the intimation of the adjourned meeting was given to the members of the Committee of Management. This fact has not been seriously disputed by the petitioner in paragraph No. 22 of the rejoinder affidavit nor has the petitioner submitted any proof while denying the allegations made by the respondents.

5. The stand taken by respondent Nos. 3 and 4 are contradictory. Respondent No. 3 alleges that 5 members were given notice whereas respondent No. 4 alleges that all the members were given intimation of the adjourned date of meeting. This being a factual controversy, the question as to whether all the members were given notice of adjourned meeting cannot be decided in the writ jurisdiction. However, the fact remains that a number of members attended the adjourned meeting on 11.11.1991. There is no allegation that there was no proper quorum of the members when it met on the adjourned date, i.e. on 11.11.1991. Therefore, irrespective of the fact as to whether a notice was given or not to the members of the Committee for the adjourned date, it is clear that some of the members of the Committee of Management attended the meeting on 11.11.2001 and that the quorum was complete. Thus the first contention of the learned Counsel for the petitioner that since proper notice was not given to the members of the Committee of Management, the meeting held on 11.11.1991 was illegal, is incorrect and is accordingly rejected.

6. The contention of the learned Counsel for the petitioner that the resolution dated 11.11.1991 passed by the Committee of Management was illegal and invalid inasmuch as it was not passed by 2/3rd members is also devoid of any merit. Rule 28 of Chapter III framed u/s 16G of the Intermediate Education Act states as follows :

"28. The Committee shall not propose to the Inspector the termination of services of a confirmed employee unless a resolution to this effect has been passed at its meeting specially convened for the purpose and by a two-thirds majority of members present and voting."

7. The submission of the learned Counsel for the petitioner was that the total strength of the Committee of Management was 13 members and that the resolution was passed by only 5 members which was less than 2/3rd majority and therefore, the resolution was invalid.

8. Admittedly from a perusal of Annexure No. 7 to the writ petition, it is clear that the resolution was passed by five members of the Committee of Management and that four members had abstained and left before the voting took place. The question which arises for consideration is whether the resolution was passed by 2/3rd majority of members present and voting.

9. In *D. Jayaraman Vs. Govt. of Tamil Nadu and Another*, , it was held that the words "present and voting" meant only those who were physically present and voting and would not include those persons who withdrew from the house at the time of voting. In *Lily Thomas (Ms), Advocate Vs. Speaker, Lok Sabha and Others*, , a question arose as to whether a member who abstained from voting would be deemed to have supported the motion, the Supreme Court held :

"When the Constitution mandates that a Judge can be removed for proved misbehaviour or incapacity only when out of the members present two third express their opinion in favour of such a Motion by exercising their right of voting then there is no scope for assumed voting or assumed expression of opinion by invoking the principle that silence amounts to acquiescence in favour of the Motion."

10. In view of the aforesaid, it is clear that in order to find out as to whether the resolution was passed by 2/3rd majority, only the members who were physically present at the time of voting alone could be taken into account. In the present case at the time when the resolution was put to vote there were 5 members and others had abstained. Thus, the votes of five members alone are required to be considered. From a perusal of the proceedings, it is clear that all the five members had unanimously passed the resolution for dismissing the services of the petitioner. Therefore, in my view, the resolution was passed by 2/3rd majority of the members present and voting.

11. In view of the aforesaid, I do not find any merit in the writ petition and is accordingly dismissed. However, in the circumstances of the case, there shall be

no order as to costs.