
(2009) 05 AHC CK 0824
In the Allahabad High Court

Ram Kripal Katiyar

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 19-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 4 AWC 3202

Hon'ble Judges : S. Rafat Alam, J; Krishna Murari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Rafat Alam and Krishna Murari, JJ.—This is intra Court appeal against the order of Hon'ble single Judge dated 28.4.2009, dismissing the appellant's Writ Petition No. 21323 of 2009. It appears that the appellant being aggrieved by the order of the District Inspector of Schools dated 6.4.2009 granting approval to the order of the Committee of Management placing him under suspension, filed writ petition which is dismissed by the order impugned in this appeal.

2. Sri P.K. Jain, learned Counsel for the appellant vehemently contended that the District Inspector of Schools while considering the grant of approval ought to have afforded opportunity of hearing, in the absence of which the impugned order suffers from the vice of natural justice. It is submitted that the appellant had made complaint against the Manager in respect of various irregularities committed by him on account of which he was having grudge against the appellant and to satisfy the same, mala fide placed him under suspension.

3. We have considered the submissions. The power to suspend any head of the institution or teacher is vested in the Committee of Management. However, the Committee of Management has to report to the District Inspector of Schools within thirty days, as provided u/s 16G(6) of the U.P. Intermediate Education Act, 1921, (in short "the Act"), together with the particulars and documents as provided in Regulation 39 of Chapter III framed under the Act. Sub-section (7) of

Section 16G read with Clause (HI) of Regulation 39, Chapter HI provides that the order of suspension shall not remain in force beyond a period of sixty days unless it is approved in writing by the District Inspector of Schools. For ready reference, Section 16G and (7) of the Act and Regulation 39 of Chapter III are extracted below:

Section 16G(6).--Where any Head of Institution or teacher is suspended by the Committee of Management, it shall be reported to the Inspector within thirty days from the date of the commencement of the Uttar Pradesh Secondary Education Laws (Amendment) Act, 1976, in case the order of suspension was passed before such commencement, and within seven days from the date of the order of suspension in any other case, and the report shall contain such particulars as may be prescribed and accompanied by all relevant documents.

(7) No such order of suspension shall, unless approved in writing by the Inspector, remain in force for more than sixty days from the date of commencement of Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975, or as the case may be, from the date of such order, and the order of the Inspector shall be final and shall not be questioned in any Court.

Regulation 39(a).--The report regarding the suspension of the Head of Institution or of the teacher to be submitted to the Inspector under Sub-section (6) of Section 16G shall contain the following particulars and be accompanied by the following document--

(a) the name of the persons suspended alongwith, particulars of the (posts including grades) held by him since the date of his original appointment till the time of suspension including particulars as to the nature of tenure held at the time of suspension, e.g., temporary, permanent or officiating;

(b) a certified copy of the report on the basis of which such person was last confirmed or allowed to cross efficiency bar, whichever later;

(c) details of all the charges on the basis of which such person was suspended;

(d) certified copies of the complaints, reports and inquiry report, if any, of the Inquiry Officer on the basis of which such person was suspended;

(e) certified copy of the resolution of the Committee of Management suspending such person;

(f) certified copy of the order of suspension issued to such person;

(g) in case such person was suspended previously also, details of the charge, on which and the period for which he was suspended on previous occasions accompanied by certified copies of the orders on the basis of which he was reinstated.

(2) An employee other than a Head of Institution or a teacher may be suspended by the appointing authority on any of the grounds specified in Clauses (a) to (c)

of Sub-section (5) of Section 16G.

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4. From a perusal of the above provision, it is evident that the Committee of Management has jurisdiction to place Head, of the Institution or a teacher under suspension but it has to report to the District Inspector of Schools about such order of suspension and the same would be operative for a period of sixty days unless approved by the District Inspector of Schools. Sub-section (8) of Section 16G of the Act further empowers the District Inspector of Schools to revoke the order of suspension passed u/s 16G(6) of the Act, if it is found that the disciplinary proceeding is being delayed for no fault of the delinquent teacher after affording opportunity to the Committee of Management to make representation. Obviously, the Legislature provided for taking approval of the District Inspector of Schools by introducing Sub-section (7) to protect the Head of the Institution or the teacher from arbitrary and mala fide order of suspension.

5. In the instant case it is admitted position that the District Inspector of Schools has given approval. The only grouse of the appellant is that opportunity of hearing ought to have been extended while considering the grant of approval. In support of this contention, Sri P.K. Jain, learned Counsel for the appellant could not point out any statutory provision wherein such opportunity was necessary. While considering the grant of approval the District Inspector of Schools is required to ensure that there exists some reasonable ground for proceeding against the Head of Institution or teacher and there exists necessary reason to place him under suspension. However, while considering the grant of approval he would not embark upon the merits of charges. In other words, he cannot hold a parallel inquiry as Regulation 39 does not require furnishing proof of charges. Under Regulation 39 the Committee of Management is required to forward together with the order of suspension, details of charges, certified copies of complaints, reports and inquiry report, if any, in order to find out as to whether charges are non est or does not constitute misconduct. The Act and the Regulation nowhere envisages about providing opportunity of hearing at the stage of grant of approval by the District Inspector of Schools. However, the person aggrieved by such resolution of the Committee of Management can approach the District Inspector of Schools straightaway to show that the order of suspension is not justified or warranted in the facts of the case. In the case of Govind Swamp Pandey v. Authorised Controller, Adarsh Inter College, Manlkpur Banda and Anr. 1981 UPLBEC 17, this Court has held that it is open to the person aggrieved to approach the District Inspector of Schools straightaway and to satisfy him that the order of suspension has been passed illegally or mala fide even undeservedly. No reason or explanation has come before us as to what prevented the appellant from approaching the District Inspector of Schools against the decision of the Committee of Management placing him under

suspension. It is well-settled legal position that the order of suspension is not a punishment and, therefore, while placing a delinquent employee under suspension, no notice or show cause or any opportunity of hearing is mandatory. The only requirement is that there must exist some prima facie misconduct on the part of the employee and for which regular departmental proceeding is under contemplation or is already initiated.

6. In the case of *Badri Prasad Vs. President, District Board*, a Division Bench of this Court has held that the order of suspension in a pending departmental enquiry is something temporary and does not involve punishment. Similar view has been expressed by the Apex Court in the case of *Khem Chand Vs. Union of India (UOI)*, where in para 15, Their Lordships observed that the real effect of the order of suspension is that the employee continues to be a Government servant except that he is not permitted to work.

7. The employer or the appointing authority before taking decision to initiate proceeding may hold a fact finding inquiry wherein the employee cannot claim right to be heard or to participate. Right of delinquent employee of hearing or affording opportunity arises only from the stage when the charges are framed against him in the disciplinary proceeding and not at any stage anterior to the framing of charges. The order suspending an employee in a pending proceeding or contemplated proceeding is not a quasi-judicial order but an administrative order and, therefore, it is not necessary to obtain explanation of the Government servant before placing him under suspension. At the time of passing of order of suspension the authority is only required to consider that the alleged charge does not appear to be groundless, non-est or mala fide and it requires inquiry, and to hold fair inquiry it is necessary to keep him away from duty. (See *Mohammad Ghouse Vs. State of Andhra*, We are, therefore, clearly of the view that at the stage of passing of order of suspension in a contemplated or pending departmental proceeding, there is no requirement of any opportunity of hearing to the Government servant or even to call for show cause. Thus, in view of the above legal position, non-affording of opportunity of hearing to the petitioner-appellant would not vitiate the impugned order of suspension.

8. The allegation of mala fide is also not substantiated by giving conclusive evidence. Besides that in view of the order of approval passed by the District Inspector of Schools, wherein on the basis of papers sent to him he has found that the allegation against the appellant is that while working as ad hoc Principal, he. committed serious financial irregularities and embezzlement of college fund and has committed various other administrative lapses, the District Inspector of Schools has passed a detailed reasoned order which is self explanatory and from a perusal thereof it is apparent that after having satisfied that the order of suspension is not passed on account of mala fide or arbitrary reason and is justified in the facts of the case, granted the approval. In view of above, it is difficult to hold that the order of suspension suffers from the vice of mala fide.

9. We are, however, conscious of the fact that since the charges are yet to be

investigated and departmental proceeding is yet to be concluded, it would not be appropriate for us to express any opinion on the merit of allegations otherwise it may prejudice the case of either of the parties. We, therefore, make it clear that our observation in this order is only for the purpose to find out as to whether the order of District Inspector of Schools granting approval requires interference by this Court at this stage under Article 226 of the Constitution of India or not. As noticed above, the District Inspector of Schools has considered all the relevant materials placed before him and to ensure fair and impartial enquiry, approved the order placing the appellant under suspension. We, therefore, do not find any error in the order of the District Inspector of Schools and thus, there is no reason to differ with the view taken by the Hon''ble single Judge.

10. At this stage learned Counsel for the appellant submits that the salary of the appellant is withheld since last several months and the salary of even prior to suspension has not been paid. Learned standing counsel appearing for the State respondents fairly states that in the event the appellant makes an application before the District Inspector of Schools for making payment of arrears of salary for the period prior to his suspension and the subsistence allowance if not being paid since from the date of suspension, the same would be considered and appropriate decision would be taken expeditiously.

11. In view of above, it is directed that in the event such an application is moved by the appellant, the District Inspector of Schools shall look into the matter and take steps for payment of arrears of salary for the period when the appellant was working and was not under suspension and also ensure payment of subsistence allowance during the period of suspension expeditiously, preferably within a fortnight from the date of filing of such application.

With the above observation the Appeal stands dismissed.