

**(1980) 01 AHC CK 0079**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ No. 3927 of 1975

Ram Kumar Dixit

APPELLANT

Vs

Deputy Director of Education and Another

RESPONDENT

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**Date of Decision :** 09-01-1980

**Acts Referred:**

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G, 31, 32, 33, 34

**Citation :** (1980) AWC 201

**Hon'ble Judges :** S.J. Hyder, J;K.N. Singh, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## **Judgement**

K.N. Singh, J.—This petition is directed against the order of the Deputy Director of Education, Bareilly Region dated 6th March 1975 setting aside the District Inspector of Schools order and directing termination of the Petitioner's services by giving him three months' salary.

2. The Petitioner was employed as Teacher in the Krishak Inter College, Mothi Khidmatpur district Moradabad. On 4-5-1972 a charge sheet was issued to the Petitioner and he was directed to submit reply to the charges. The Petitioner submitted his explanation on 8-6-1972 by post but before his explanation could reach the office of the College the Committee of Management adopted a resolution on June 11, 1972 dismissing the Petitioner from service and forwarded the papers to the District Inspector of Schools for approval. The "District" Inspector of Schools after hearing the Petitioner and the management modified the punishment and directed that the Petitioner's increment be stopped for a period of two years. The Committee of Management filed appeal against the District Inspector of Schools. The Deputy Director of Education by his order dated 6-3-1975 set aside the order of the District Inspector of Schools and upheld the management's proposal for the termination of the Petitioner's services by giving him three months' notice. Aggrieved the Petitioner has challenged the order of the Deputy Director of Education.

3. Learned Counsel for the Petitioner urged that proceedings against the Petitioner were taken in complete disregard of the procedure laid down in Regulations and the Committee of Management took ex parte decision that charges were proved against the Petitioner, without holding any enquiry into the charges as the Committee of Management did not appoint any enquiry officer nor any enquiry was held into the charges. Petitioner was not given any opportunity to lead oral evidence or defend himself. Regulation 37 of the U.P. Education Manual was not complied with at the resolution dated 11-6-1972 terminating the Petitioner's services was adopted by the Committee of Management without giving any notice to the Petitioner to appear before the Comreimol Management to state his case. . On behalf of the Managing Committee of the Institution it was urged that these questions were not raised before Deputy Director of Education a such the Petitioner is not entitled to raise these questions for the first time before this Court. To support his contention the learned Counsel referred to the observation made by Deputy Director that the Petitioner had raised no grievance regarding denial of opportunity.

4. In Para 19 of his affidavit the Petitioner has asserted that she statement contained in the order of the Deputy Director of Education that the Petitioner did not raise any grievance about the denial of opportunity, was indirect. The Petitioner has asserted that the Petitioner did raise a plea that the committee of management had without affording him any opportunity of hearing, passed the resolution dated 11-6-1972. The Deputy Director of Education has not filed any counter affidavit controverting the Petitioner's claim. Duli Singh, Manager of the Institution has stated in paragraph 19 of his affidavit that no motive could be attributed to the Deputy Director of Education for stating in his order that the Petitioner did not raise any objection with regard to denial of opportunity of bearing. Duli Singh's assertion is vague, he has made no positive assertion that the Petitioner had not raised the question of denial of opportunity before the Deputy Director of Education at the time of hearing of the appeal. In these circumstances we find no good reason to discard the Petitioner's positive assertion that be had raised these questions before the Deputy Director of. Education and the statement to the contrary contained in the appellate order si incorrect. The Petitioner is, therefore entitled to raise the question of denial before this Court.

5. Section 16-G of the Intermediate Education Act lays down that teachers employed in a recognized institution shall be governed- by such conditions of service as may be prescribed by Regulations, Reg. Under Sections 31 to 37 prescribe procedure for punishment, enquiry and suspension of a teacher. Regulation 35 lays down tint on receipt of a (sic) the committee may in the case of teacher appoint the Head Master or Principal or Manager as Enquiry Officer to hold enquiry into the charges. Regulation 36 lays down that a teacher shall be required to submit reply to the charter- within three weeks of the receipt of the charge sheet. An oral enquiry shall be held in respect of the allegation which are not admitted. The person charged shall be entitled to cross examine witnesses,

to give evidence in person and to have such witnesses called as he may desire. On completion of the enquiry, the enquiry officer shall submit his own recommendation which is required to be considered by the committee of management. Regulation 37 lays "down that after the report of the enquiry officer is received the committee of Management shall consider the same after notice to the teacher. The teacher shall be allowed if he so desires to appear before the committee of management in person to state his case. Regulation 37 is mandatory in nature and the committee of management is required to comply with that provision before awarding any punishment to the teacher.

6. In the instant case the Petitioner Was served with the order of the Managing Committee dated 9-5-1972 placing him under suspension pending enquiry. A perusal of the resolution of the Committee of Management shows that the Committee unanimously resolved that the Petitioner was guilty of the charges. The resolution shows that the committee of management prejudged the charges against the Petitioner even before obtaining" Petitioner's explanation. Since the committee of management prejudged the issues against the Petitioner even before obtaining, Petitioner's explanation the subsequent proceedings are vitiated. Assuming that the committee of management did not prejudice the charges the entire proceedings| are vitiated as the Petitioner was deprived of defence. The (sic) allowed three (sic) Petitioner to submit (sic).Petitioner sought (sic).by his letter dated 31-5-1972 on the ground of his illness and thereafter the Petitioner submitted his explanation by post on 8-6-1972 which reached the office of the institution on 12-6-1972. Meanwhile the committee of management at its meeting held on 11-6-1972 passed the resolution dismissing the Petitioner from service. No enquiry officer, was appointed, no enquiry was held, no evidence was recorded and no report of the enquiry officer was considered by the committee of management after notice to the Petitioner. Even if the Petitioner had failed to submit his explanation in time it was incumbent on the committee of management to act in accordance with regulation 37 by giving him notice and opportunity to appear before the Committee on the date the matter was finally considered by it. The Committee of Management however did not issue any notice to the Petitioner regarding its meeting dated 11-6-1972 and it did not afford him any opportunity to appear before it on that date to state his case before the members. The procedure adopted by the Committee of Management was in contravention of the statutory provision of Regulations 36 and 37 which rendered the decision of the Committee illegal.

7. In the result we allow the petition and quash the order of the Deputy Director of Education dated 6-3-1975 and direct that the Petitioner shall be treated in service. Since the Petitioner has not claimed any relief against the order of the District Inspector of Schools we are not quashing that order. The Petitioner is entitled to costs.