
(2005) 11 AHC CK 0098
In the Allahabad High Court
Case No : Writ Petition No.3006 (S/S) of 2000

Ram Lal

APPELLANT

Vs

Secretary, Board of High School and Intermediate Education,
U.P., Allahabad and Others

RESPONDENT

Date of Decision : 22-11-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Intermediate Education Act, 1921 — Section 16G

Citation : (2005) 11 AHC CK 0098

Hon'ble Judges : K.S.Rakhra, J

Final Decision : Disposed Of

Judgement

K.S. Rakhra, J.—Heard Sri S.P. Singh Somvanshi, learned counsel for the petitioner, Sri R.I. Ojha, learned counsel for opposite party No.5, learned Standing counsel for opposite parties No.1 to 3 and perused the record.

2. The petitioner through this writ petition is challenging the validity of the termination order dated 20.7.1998, passed by the Principal of Rajaram Kisan Inter College, Dabhiyar, District Pratapgarh, by which the services of the petitioner as Class IV employee of the said College have been terminated. It has also been prayed that a direction may be issued to the opposite parties to permit the petitioner to join and resume his duties.

3. The petitioner was appointed as Peon in the year 1965 in the aforesaid College and was later on confirmed in the year 1966. The allegation against him was that he absented from duty for certain period. The contention of the petitioner is that from 16.4.1998 he was ill and was under medical treatment and he could not report for duty till 19.5.1999. On recovering from illness he wanted to join duties but he was not permitted to join. Forced with these circumstances he has to file writ petition in this Court seeking a direction that explanation/representation of the petitioner may be considered and appropriate order may be passed. The petitioner also filed contempt petition but the direction of this Court in his matter

was not complied with by opposite party No.5. It was in the course of the aforesaid contempt proceedings through counter affidavit filed by the Committee of Management/Principal he came to know that his services have been terminated on 20.7.1998. The contention of learned counsel for the petitioner is that no inquiry was conducted and he was not suspended in the inquiry, no opportunity was given to him and the termination order has been passed in violation of the principle of natural justice.

4. Opposite party No.5 is opposing the petition inter alia on the ground that opportunity was duly given to the petitioner and also that under the relevant regulations. Principal of the College is the punishing authority for Class IV employees and the action/order of the Principal can be challenged before Management Committee and the order of the Management Committee before District Inspector of Schools. Contention of learned counsel for the opposite party No.5 is that the petitioner has not availed those remedies and, therefore, the writ petition is not maintainable and should be rejected.

5. Opposite party No.5 has further taken stand that charges were duly served and notice was duly given to the petitioner but he did not participate in the inquiry and, therefore, he cannot now claim that opportunity has not been given to him.

6. So far as maintainability of the petition is concerned it is true that Regulation 31 of the Regulations framed under U.P. Intermediate Education Act, 1921 and Section 16G thereof provides that the order of Principal/Head Master with regard to Class IV employees can be challenged by way of appeal before Management Committee within one month of the date of intimation of the order of punishment and the Management Committee has to dispose of the appeal within six weeks. It further gives opportunity to Class IV employees to appeal against the decision of Management Committee before District Inspector of Schools within one month of the date of intimation of the decision. Admittedly the appeal before Management Committee or District Inspector of Schools has not been made by the petitioner. The question for consideration is as to whether on this shortcoming writ petition before this Court, pending since last five years, should be dismissed and the petitioner should be relegated to the aforesaid procedure despite the fact that the order of termination of the services cannot be sustained being passed in violation of principles of natural justice.

7. I am of the view that if the order of termination of the services is patently illegal and has been passed in violation of the principles of natural justice without affording opportunity to the petitioner, it would not be proper to dismiss the writ petition on the ground that the petitioner has not availed the remedy of appeal before the Management Committee or before District Inspector of Schools.

8. Coming to the merit of the termination order learned counsel for the opposite party No.5 has drawn attention of the Court to Annexures filed alongwith supplementary counter affidavit dated 11.11.2005. Annexure SA1 to the said

affidavit is the order of the Principal whereby explanation has been called from the petitioner on 14.5.1998. It says that the petitioner had remained absent since 6.4.1998 to 14.5.1998 without leave and he has also failed to give any explanation despite notice issued to him on 27.4.1998 and that the petitioner was not reporting for duties despite the fact that he was seen roaming here and there. This notice shows that the petitioner was given written notice to show as to why disciplinary action may not be taken against him. This notice was served on the petitioner and this fact is not disputed. The notice given to the petitioner during inquiry is dated 2.7.1998 which has been issued by the Inquiry Officer appointed by the Principal. Said Inquiry Officer was a Teacher of the School. It is said that the petitioner refused to take this notice and there is endorsement to that effect by another Class IV employee who was entrusted the duty to serve the notice on the petitioner. This notice shows that Shiv Prasad Dwivedi has been appointed as Inquiry Officer to inquire into the charges which have been leveled against the petitioner by the Principal. What are those charges have not been mentioned in the notice. It has further been said in the notice that the petitioner may give his oral or documentary evidence before the Inquiry Officer on 10.7.1998 at A.M. in the College premises. It further says if the petitioner does not appear on the date and time given report may be submitted against him treating the allegations to be true. After this no further notice was given, no charge sheet was served on the petitioner and the Inquiry Officer submitted report on 18.7.1998 holding the petitioner guilty of the charges. The report of the Inquiry Officer shows that the petitioner did not appear before him and from the report of the Principal the charge is proved and the petitioner is negligent in discharge of his duties. It further says that several teachers and employees of the School were of the opinion that it was not proper to retain the petitioner in service. The report of the Inquiry Officer further states that one day the petitioner incidentally met the Inquiry Officer (on 11.7.1998) and in private conversation he was advised to participate in the inquiry but the petitioner informed that he would not participate in the inquiry and would get order from the Court and that he is no more interested in the job.

9. Learned counsel for opposite party No.5 stated that this is the total material with regard to the inquiry and the action taken against the petitioner. On examination of these facts and annexures to the writ petition it is clear that no charge was framed and no charge sheet was served on the petitioner. Even if the notice dated 2.7.1998, issued by Inquiry Officer is treated to be served on the petitioner it does not disclose the facts indicating the charge for which the inquiry is being held against the petitioner. The earlier notice dated 14.5.1998 issued by the Principal was in fact notice calling the explanation and it was not a notice in the inquiry. The petitioner has been awarded major penalty and for awarding such a punishment it was necessary that principles of natural justice ought to have been observed.

10. The petitioner ought to have been associated in the inquiry. Charges should have been properly framed and even if the petitioner had not participated in the

inquiry proper inquiry ought to have been conducted. The way the Inquiry Officer has taken support from the general opinion expressed by the teachers and the staff, mentioning that the petitioner is not fit to retain in service and also the fact that the petitioner once met the Inquiry Officer incidentally on way and he stated that he was no more interested in the job and the material on which the inquiry report has been based, this Court is of the opinion that the impugned termination order is liable to be set aside having been passed in gross violation of the principle of natural justice. The petitioner had put in thirtythree years of service before this penalty was imposed on him.

11. In view of this, the writ petition is allowed. The impugned order dated 20.7.1998 is quashed. In view of the circumstances mentioned above and also in view of the fact that the petitioner had not bothered to give explanation when Principal called to give explanation, it appears proper that for the period between the date of termination of the services and the present order the petitioner shall be paid only half of the salary. Further in view of the time gap between the alleged misconduct and passing of this order as well as the nature of allegations it does not appear proper to start a fresh inquiry against the petitioner.

12. With the above observations, the writ petition is accordingly disposed of.

(Petition allowed)