
(2015) 04 AHC CK 0167
In the Allahabad High Court
Case No : Writ Petition No. 5375 (SS) of 2006

Ram Pratap Yadav

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 28-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 4 AWC 4100 : (2015) 3 UPLBEC 1873

Hon'ble Judges : D.K. Upadhyay, J

Bench : Single Bench

Advocate : L.P. Mishra, Balram Yadav and Sharad Pathak, for the Appellant; Ashwani Kumar, H.S. Jain, I.B. Singh and Krishna Kumar Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

D.K. Upadhyay, J—Heard Sri Sharad Pathak, learned Counsel for the petitioner, learned Standing Counsel for respondent Nos. 1 and 3, Sri Ashwani Kumar, learned Counsel for respondent No. 2 and Sri Ishan Baghel, learned Counsel who has put in appearance on behalf of respondent No. 7. These proceedings under Article 226 of the Constitution of India have been instituted by the petitioner assailing the validity of the action on the part of respondents whereby the petitioner has been dismissed from service as Principal of Kisan Higher Secondary School, Bankata, Post Gayaspur, District Faizabad, an institution recognized under the relevant provisions of U.P. Intermediate Education Act, 1921 (hereinafter referred to as "Act, 1921"), burden of payment of salary of the teaching and non-teaching staff whereof is borne by the State Exchequer under the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971.

2. The service conditions including the discipline and appeal relating to teaching staff of the institution are governed by the U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as "Boards Act, 1982") and

the Provisions contained in Act, 1921 and the Rules and Regulations made thereunder.

3. The facts of the case which emerge from perusal of the record of the writ petition and the record produced by the Secondary Education Services Selection Board (hereinafter referred to as "Board") make startling revelations as to the manner in which the government aided privately managed institutions are being managed and the manner in which the authorities of the Education Department and those of the Board have been insensitive towards the duty cast on them by the legislative enactments.

4. The petitioner, it has been stated by learned Counsel for the petitioner, was appointed as Headmaster of the institution which was recognized under the Basic Education Act for imparting education upto Junior High School on 4.12.1979. The institution was thereafter upgraded and was recognized under the provisions of Act, 1921 for imparting education upto High School level on 24.2.1984. The petitioner having being appointed as Headmaster in the Junior High School continued to work on the said post and thereafter he was appointed as Principal of the High School, on which post, it has been stated, his services were regularized by means of an order dated 3.8.1995 passed by the District Inspector of Schools.

5. The institution was brought on the grant-in-aid list of the State Government with effect from 1.4.1996. The grant to the institution by the State Exchequer was provided with the object of giving boost to the efforts made by the Management of the institution for providing education to the children of the area, however, it appears that the moment the institution was brought on the grant-in-aid list, the same became bone of contention between the petitioner who was the Principal of the institution and the management.

6. On certain allegations, the petitioner was placed under suspension on 29.11.1997 by the management of the institution, however, the suspension order was not approved by the District Inspector of Schools as required under Section 16G(7) of the Act, 1921. The petitioner was served with a fresh suspension order dated 28.1.1998 and thereafter in succession two more suspension orders were served on the petitioner on 27.3.1998 and 26.5.1998. The inquiry against the petitioner appears to have been instituted which resulted in resolution of the Committee of Management dated 20.7.1998 whereby the petitioner was dismissed from service. The decision of the Committee of Management taken in its meeting dated 20.7.1998 was approved by the Service Selection Board on 12.2.2004 as required under Section 21 of the Boards Act, 1982.

7. It is the decision of the Committee of Management dismissing the petitioner from service taken in its meeting dated 20.7.1998 and the decision of the Board approving the said dismissal on 12.2.2004 which are under challenge in this petition.

8. Learned Counsel for the petitioner has assailed the impugned action on the

part of the respondents dismissing him from service mainly on three grounds:-- (i) that the decision of the dismissal did not precede any departmental proceedings against the petitioner; neither was he given adequate opportunity of hearing and presenting his case at the time of inquiry and hence, the entire proceedings having been conducted in utter violation of principles of natural justice are vitiated; (ii) that the course adopted by the Board in dealing with the matter relating to grant of approval to the decision of the Committee of Management dismissing the petitioner is absolutely unlawful inasmuch as that it is not only in deviation with the provisions contained in the Boards Act, 1982 and the Regulations framed thereunder but it has assumed the role of Inquiry Officer itself which is clearly outside the ambit of authority of the Board; and lastly (iii) he has contended that the two members of the Board who had, in fact, conducted the proceedings before the Board did not take the decision and the decision has been taken by some other members which clearly vitiates the decision taken by the Board.

9. Apart from the aforesaid grounds, learned Counsel for the petitioner has also stated that the record of the proceedings drawn by the Board would reveal various discrepancies which are not only procedural in nature but which have ultimately impacted and affected the substantive right of the petitioner to defend himself.

10. Opposing the aforesaid pleas taken by the learned Counsel for the petitioner, learned Counsel appearing for the Committee of Management has strenuously attempted to defend the decision to dismiss the petitioner by stating that even after several attempts made by the Inquiry Committee since the petitioner did not participate in the same, hence, the Inquiry Committee did not have any option but to submit its report in absence of the reply and participation of the petitioner. He has also stated that the charges against the petitioner for which the departmental proceedings were conducted are serious in nature and the petitioner himself chose not to participate in the inquiry, thus, for the said reason, the course adopted by the Committee of Management cannot be faulted with.

11. Learned Counsel representing the Services Selection Board has produced the record and has submitted that the action of the Board can be judged from perusal of the record.

12. Section 21 of the Boards Act, 1982 provides that the Management of an institution shall not dismiss any teacher or remove him from service or reduce him in rank or even reduce his emoluments or withhold his increment, except with the prior approval of the Board. Section 21 further provides that any such act done without such prior approval shall be void. Section 21 of the Boards Act, 1982 is quoted below:--

"21. Restriction on dismissal etc. of teachers.--The Management shall not, except with the prior approval of the Board, dismiss any teacher or remove him from

service, or serve on him any notice of removal from service, or reduce him in rank or reduce his emoluments or withhold his increment for any period (whether temporarily or permanently) and any such thing done without such prior approval shall be void. "

13. For the purposes of conducting its business relating to procedure to be adopted for approval of punishment, the Board has made Regulations in exercise of powers conferred on it under Section 7 read with Section 34 of the Boards Act known as "Uttar Pradesh Secondary Education Services Commission (Procedure for Approval of Punishment) Regulations, 1985." (hereinafter referred to as "Regulations, 1985")

14. Regulation 4 of the said Regulations, 1985 provides that before submitting cases to the Board for its approval under Section 21 of the Boards Act, 1982, the Management shall complete all proceedings as per the procedure prescribed in U.P. Intermediate Education Act, 1921 or the rules and regulations, if any, made thereunder or in terms of the order issued by the Education Department or by the Board of High School and Intermediate Education, U.P. from time to time.

15. Regulation 5 mandates that a case to be submitted before the Board seeking approval of punishment to a teacher shall accompany the documents mentioned therein which include copy of the resolution of the management setting up the Inquiry Committee, charge-sheet prepared and served, explanation submitted by the delinquent teacher, full record of the proceedings including evidence, proceedings of personal hearing, reports of the Inquiry Committee, proposal in regard to the punishment, copy of the resolution of the management regarding proposed punishment and upto date service book and character roll of the charge-sheeted teacher.

16. Regulation 6 casts a duty on the District Inspector of Schools to ensure that the documents as required under Regulation 5 are complete. It further provides that such documents shall be forwarded by the District Inspector of Schools within 30 days from the date of receipt of the papers in the first instance from the management. It has also been mandated that the District Inspector of Schools shall point out the defects, if any, in the proceedings of the management.

17. Regulation 7 empowers the Commission to call for any documents either from the management or the District Inspector of Schools. The relevant excerpts of the Regulations, 1985 are quoted below:--

"4. Proceeding to be completed.--Before submitting cases to the Commission for approval of the Commission under Sub-section (1) of Section 21, the management shall complete all the proceedings as per procedure prescribed in Intermediate Education Act, 1921 or the rules, if any, and regulations made thereunder or orders issued by the Education Department and/or Board of High School and Intermediate Education, U.P. from time to time in regard to any action mentioned in sub-section (1) of Section 21 of the Act, proposed to be taken.

5. Documents to accompany.--Such cases shall be submitted to the Commission through the Inspector while submitting cases to the Commission, the following documents will invariably be submitted to the Commission:

- (i) Copy of the resolution of management setting up the inquiry committee;
- (ii) Charge-sheet prepared and served on the teacher;
- (iii) Explanation furnished by the charged teacher in reply to the charge-sheet;
- (iv) Full record of proceedings including evidence taken and cross-examination, if any, done and personal hearing, if any, given by the Inquiry Committee appointed for the purpose;
- (v) Reports of the Inquiry Committee;
- (vi) Proposal in regard to the punishment to be inflicted;
- (vii) Copy of the resolution adopted by the Management in regard to the proposed punishment;
- (viii) Up-to-date service book and character roll of the charge-sheeted teacher.

6. Inspector to forward the papers.--The Inspector shall ensure that the documents are complete as required in Regulation 5 and shall forward the same ordinarily within 30 days from the date of receipt of the papers in the first instance from the management. He may point out the defects, if any, in the proceedings of the Management.

7. Power of Commission to call for documents.--The Commission may call for any documents considered relevant to the case from the Management, or the Inspector.

8. Disposal by Commission.--The Commission shall after due consideration approve or disapprove the punishment proposed or may issue any other directions deemed fit in the case".

18. Thus, the Regulations, 1985 contain mandatory provisions that before submission of the papers seeking approval of the Board for any decision of punishment against a teacher, the proceedings as contemplated and envisaged in the U.P. Intermediate Education Act, 1921 and the rules/regulations framed thereunder are to be completed.

19. The procedure related to conduct of the inquiry against a teacher has been prescribed in Chapter III of the Regulations framed under the U.P. Intermediate Education Act, 1921.

20. Regulation 35 of Chapter III of the Regulations, 1985 provides that in case any adverse report is received by the Committee of Management against a teacher, the same shall be enquired into.

21. Regulation 36 provides that a charge-sheet shall be served to the charged

employee or the teacher containing definite charge or charges which shall be clear and precise. It further prescribes that charge-sheeted employee or the teacher shall be required to submit a written statement of his defence and to state whether he desired to be heard in person.

22. Regulation 36 also provides that if charge-sheeted teacher so desires, an oral inquiry shall be held and oral evidence shall also be produced. The provision further states that charged person shall be entitled to cross-examine the witnesses, to give evidence in person or to have such witnesses called as he may desire. It further provides in an unambiguous term that the proceedings shall contain sufficient record of evidence and statement of findings and the grounds thereof.

23. Regulation 37 provides that once the inquiry report is submitted, notice shall be served to the charge-sheeted person whereafter the Committee of Management shall conduct its meeting for deliberation on inquiry report and will take decision. It further provides that in case charge-sheeted person desires to be present before the meeting of the Committee of Management, the Committee will permit him to be present so that he could make his submissions and reply to the query, if any, from any members of the Committee of the Management. The Committee under Regulation 37 is further required to send entire report along with all the documents etc. to the District Inspector of Schools who, as observed above, under Regulation 6 of the Regulations, 1985 is mandated to send the documents to the Board only after ensuring that the documents as mentioned in Regulation 5 are complete.

24. Regulation 8 of the Regulations, 1985 provides that the Board after due consideration will either approve or disapprove the punishment proposed or may issue any other direction which may be deemed fit in the case.

25. It appears that after passing the resolution on 20.7.1998 for dismissal of the petitioner from service, the Manager of the institution wrote a letter on 23.7.1998 stating therein that on the basis of report submitted by the Inquiry Committee, the Committee of Management has decided that the petitioner be dismissed with immediate effect. With the said letter, the Manager appears to have annexed the resolution dated 20.7.1998 and the inquiry report submitted by the Inquiry Committee dated 10.7.1998.

26. Perusal of the entire record produced by the learned Counsel appearing for the Board reveals that the District Inspector of Schools while forwarding the documents whereby the approval of the dismissal of the petitioner was sought had initially annexed only the resolution of the Committee of Management and the inquiry report. The said papers were sent by the District Inspector of Schools by means of his letter dated 7.9.1998 and thereafter certain other documents were sent by the District Inspector of Schools by means of his letter dated 4.9.2000 to the Board. With the said letter dated 4.9.2000, the documents which were sent, contained the resolution of the Committee of Management dated

28.9.1997 by which the petitioner was suspended and the three members" Committee was constituted to enquire into the charges against the petitioner, charge-sheet dated 2.12.1997, charge-sheet dated 29.1.1998, charge-sheet dated 29.3.1998 and charge-sheet dated 27.5.1998, the inquiry report dated 10.7.1998 and the resolution of the Committee of Management dated 20.7.1998.

27. The District Inspector of Schools, it appears, did not strictly comply with the requirement of Regulation 5 of the Regulations, 1985. Along with the other documents what was required to be submitted before the Board was the full record of the proceedings including the evidence taken in cross-examination, if any, and the proceedings related to personal hearing etc.

28. The entire record which are available with the Board have been perused today by the Court and the same does not contain any proceedings of the Inquiry Committee, but it only contains the inquiry report and the charge-sheet. The record also does not contain any notice ever served to the petitioner or any letter received by the petitioner from the Inquiry Officer or proof of service of charge-sheet, proof of service of the letters requiring the petitioner to appear before the Inquiry Committee etc. In fact, from perusal of the record available the only indefeasible inference which can be drawn is that except for preparing four charge-sheets and thereafter submitting an inquiry report, no other record relating to the proceedings of inquiry allegedly conducted by the inquiry committee is available.

29. The inquiry against a teacher, as observed above, is to be conducted in terms of the provisions contained in Chapter III of the Regulations framed under the U.P. Intermediate Education Act, 1921 which inter alia require that after serving a charge-sheet, the charge-sheeted teacher/employee has to be given at least three weeks time from the date of receipt of the charge-sheet to submit written statement of his defence and to state whether he desired to be heard in person or not. It further requires that such oral evidence will be heard by the inquiring authority and that the charged person shall be entitled to cross-examine the witnesses and to give evidence in person and to have such witnesses called for, as he desires.

30. It further mandates the Inquiry Committee or Inquiry Officer or any other inquiry agency that the proceedings of the disciplinary inquiry shall contain sufficient record of the evidence and statement of findings and the grounds thereof. These provisions are found in Regulation 36 of Chapter III of the Regulations, 1985. These, provisions clearly cast a duty on the inquiring authority to maintain the record of the proceedings which are drawn by the inquiring authority that would include all the correspondence made by the inquiring authority with the charge-sheeted teacher/employee, the proceedings drawn on a particular date fixed for the purposes of inquiry, the evidence which may be advanced either by the management of the institution or by the delinquent officer and all other relevant documents.

31. In the instant case, as observed above, no document except the charge-sheets which are four in number and the inquiry report submitted by the Inquiry Committee is available which were sent by the Committee of Management through the District Inspector of Schools to the Board seeking approval of the decision of the Committee of Management to dismiss the petitioner from service, which was taken in its meeting held on 20.7.1998.

32. Apart from the provisions contained in Regulation 36 of Chapter III of the Regulations framed under the U.P. Intermediate Education Act, 1921, a reference may also be made to the provisions contained in Regulation 4 of the Regulations, 1985 which have been framed by the Boards Act, 1982 itself with the previous approval of the State Government.

33. Regulation 4 clearly mandates the Committee of Management that it shall complete all the proceedings as per the procedure prescribed in U.P. Intermediate Education Act, 1921 or the rules/regulations made thereunder before submitting the cases to the Board seeking its approval as required under Section 21 of the Boards Act, 1982.

34. The occurrence of word "shall" in Regulation 4 makes it mandatory for the management to complete the proceedings strictly in accordance with the regulations framed under the U.P. Intermediate Education Act, 1921.

35. As observed above, in the instant case, the inquiry proceedings were not maintained at all. Any record of the inquiry conducted by the inquiring authority has to necessarily contain the record of the happenings on the dates on which the inquiry is conducted by the inquiring authority. It should also contain the entire correspondence and proof of the service of charge-sheet and the letters, etc. on the charge-sheeted officer/teacher. In absence of the aforesaid documents, it cannot be said that the inquiry against the petitioner by the Committee of Management was conducted in accordance with the aforementioned provisions. In facts the record produced before the Court leave no room of doubt that present case is a case of "no enquiry".

36. As regards the conduct of the Board in this case, the first and foremost issue which is to be noticed is that the resolution to dismiss the petitioner was passed by the Committee of Management on 20.7.1998 and the decision thereon as required under Section 21 of the Boards Act, 1982 was taken on 12.2.2004 i.e. after a lapse of period of more than five and half years.

37. Section 21 of the Boards Act, 1982 clearly provides that unless and until the decision of the Committee of Management to dismiss or remove or reduce either in rank or emoluments any teacher is approved by the Board, same shall be void.

38. However, in complete derogation of the aforesaid provisions, it has been stated by learned Counsel for the petitioner that the petitioner was not even allowed to work and function on the post of the Principal, though from 20.7.1998 till 12.2.2004, no approval to the proposed dismissal was accorded by the

Commission.

39. Time taken by the Board in arriving at its decision on the approval sought by the Committee of Management regarding dismissal of the petitioner cannot be appreciated on any count. In such a situation where the charge-sheeted teacher or Principal of an intermediate institution is actually guilty and the management is not able to remove him only for want of timely action on the part of Board will be detrimental to the interest of education of the students at large. Similarly, in a case where the charges are actually not proved against the teacher or the Principal of institution and timely decision as required under Section 21 of the Boards Act, 1982 is not taken, the same results in demoralizing the teacher or the Principal which ultimately affects the teaching of the students at large. In both the situations ultimate sufferer are the students who are the future of the society and the country. Thus, the Services Selection Board cannot in any situation be permitted to sleep over the matter and take decision in such a situation after such a long period of five and half years.

40. It may also be observed that the records produced by the learned Counsel appearing for the Board clearly reveal a strange procedure, which is alien to the Boards Act and the Regulations framed thereunder has been adopted in this case.

41. The function of the Board in the matter of dismissal or removal or reduction in rank or emoluments of a teacher is to consider as to whether the punishment proposed by the Management of the institution is to be approved or not. Such approval, as observed above, is required under Section 21 of the Boards Act, 1982.

42. Regulation 8 of the Regulations, 1985 provides that the Board, after due consideration, shall either approve or disapprove the punishment proposed or can issue any other direction which may be deemed fit by the Board in a particular case.

43. Thus, what is required of the Board while considering whether the proposed punishment is to be approved or disapproved is to see as to whether the provisions contained in the Act and the Regulations have been followed and the procedure adopted by the Committee of Management in conducting the inquiry and resolving to punish the charge-sheeted teacher is as per law or not. In case the Board comes to the conclusion that the departmental proceedings against the delinquent teacher or Principal has been conducted in accordance with the provisions contained in the Regulations framed under the U.P. Intermediate Education Act, 1921 and the Boards Act which have been referred to hereinabove and as to whether the charge-sheeted teacher has been given appropriate opportunity of putting forth his case before the Inquiry Officer and further as to whether the procedure adopted by the Committee of Management in proposing the punishment is fair or not. In case it is found by the Board that the proceedings against the charge-sheeted teacher/Principal have been conducted in accordance with law then it will approve the same, otherwise, it will

disapprove the proposed punishment.

44. The third course open to the Board is to issue any other direction which may be deemed fit in a given case. This authority vested in the Act would mean that in a case where the departmental proceedings have not been conducted appropriately or in accordance with the rules or the regulations, appropriate directions may be issued to the authorities concerned to conduct the same either afresh or from the stage from where the proceedings are found to be vitiated by the Board. This power of issuing any other direction which finds mentioned in Regulation 8 of the Regulations, 1985 does not extend to the extent of empowering the Board to conduct the inquiry itself.

45. However, in the instant case, the Board took upon itself the task of conducting inquiry which is apparent from perusal of the record of the Board. It appears that after noticing that the charge-sheet was either not served on the petitioner or he could not reply to the same under certain circumstances, the Board served all the four charge-sheets to the petitioner and required him to submit his reply. Such a course adopted by the Board, as observed above, is not provided either under the Boards Act or any Regulations framed therein. The proceedings to the aforesaid extent drawn by the Board are absolutely unlawful, without jurisdiction and not known to law.

46. It may also be observed that on 23.1.2004, the Board heard the petitioner as well as the representative of the management and on asking of the petitioner gave him 15 days time to submit his reply to the charge-sheet and to make his submissions in regard to charges. On 23.1.2004, 15 days time was given to the petitioner, however, before expiry of the period of 15 days on 5.2.2004 itself, it is said, a telegram was sent to the petitioner though, in fact, it was not a telegram but a registered letter which was received by the petitioner only on 16.2.2004 whereby he was required to submit his reply and the last opportunity for the said purpose was given. If counted from 23.1.2004, 15 days time was to come to an end on 8.2.2004 and hence there was no occasion to have given intimation to the petitioner before expiry of the said period. After issuing the intimation to the petitioner on 5.2.2004 requiring him to furnish his reply, as a measure of last opportunity, the two members namely, Sri J.P. Verma and Smt. Chandra Singh submitted their report with the recommendation to approve the resolution of the Committee of Management for dismissal of the petitioner dated 20.7.1998. The said recommendation was approved by the Board in its meeting held on 12.2.2004.

47. Even the report submitted by the Committee comprising of Sri J.P. Verma and Smt. Chandra Singh, the members of the Board, does not disclose that any evidence against the petitioner was even discussed. The said report only makes a mention of the charges and without discussing the evidence, arrives at the conclusion whereby recommendation has been made to approve the decision of the Committee of Management taken in its meeting dated 20.7.1998.

48. The statutory function under Section 21 read with Regulation 8 of the Regulations, 1985 which has been cast on the Board is to consider approval on the basis of documents required for the said purpose. In certain circumstances, the Board has also been given powers to issue direction to the authorities in relation to the punishment and the disciplinary action, however, taking upon itself conducting an inquiry is not a function which is envisaged either under the Boards Act, 1982 or any Regulations framed under the said Act. Thus, I have no hesitation to hold that the procedure adopted by the Board in the instant case is extraneous to the provisions of the law discussed hereinabove and the decision arrived at thus, is illegal.

49. At the cost of repetition, I may observe that the procedures adopted by the Board while dealing with the question of approval relating to proposed dismissal of the petitioner are alien to the Act and Regulations.

50. For the discussions made and reasons given above, the writ petition is allowed. Accordingly, the resolution of the Committee of Management dated 20.7.1998 dismissing the petitioner from service is hereby quashed. The decision of the Secondary Education Services Selection Board taken in its meeting held on 12.2.2004 approving the dismissal of the petitioner is also hereby quashed.

51. It has been admitted at the bar that the petitioner has attained the age of superannuation on 30.6.2014.

52. In view of above, any direction for conducting the inquiry afresh would not serve any purpose. As a result of this judgment, the petitioner shall be entitled to be paid his back wages. Taking into account all the relevant factors including the sufferings and agony through which he had to undergo, the petitioner will be paid back wages which are quantified to 75% of total emoluments payable to him. The petitioner shall be reinstated in service notionally only for the purpose of payment of post-retiral dues and back wages as observed above. The arrears of salary to the petitioner shall be paid within ten weeks from the date of production of certified copy of this order and within the said period all other post-retiral dues shall also be paid.

There will be no order as to costs.