
(2007) 11 AHC CK 0069
In the Allahabad High Court

Ram Shiroman Singh

APPELLANT

Vs

The District Inspector of Schools and Others

RESPONDENT

Date of Decision : 15-11-2007

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 36, 37

Citation : (2008) 2 AWC 2147 : (2008) 1 UPLBEC 37

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Judgement

Ashok Bhushan, J.—These two writ petitions have been heard together and are being disposed of by this common judgement.

2. Sri S.K. Pal, learned Advocate has been heard for Ram Shiroman Singh and Sri R.C. Gupta appeared for Shiv Lal, the respondent No. 5 in writ petition No. 12171 of 1991 and petitioner in writ petition No. 32180 of 1991. Learned Standing Counsel has appeared for the State respondents.

3. Civil Misc. writ petition No. 12171 of 1991 (hereinafter referred to as "First writ petition") has been filed by Sri Ram Shiroman Singh seeking a writ of certiorari for quashing the order dated 10.3.1989, passed by the Principal of the institution, terminating the services of the petitioner and the order dated 22.6.1989, passed by the Committee of Management, deciding the appeal of petitioner against the termination order. A prayer has also been made for quashing the orders of the District Inspector of Schools dated 20.12.1990, rejecting the representation of the petitioner of the first writ petition, affirming the decision of the Principal, terminating the petitioner's services. A mandamus has also been sought for commanding the respondents to treat the petitioner throughout in service and pay him the salary w.e.f. 1.11.1988.

4. The second writ petition has been filed by Shiv Lal praying for a writ of certiorari, quashing the order dated 31.7.1991, by which the District Inspector of Schools communicated the Principal that selection of Shiv Lal as a class IV

employee cannot be approved. A mandamus has also been sought, directing the respondents to pay salary of the petitioner from 15.6.1991 and onwards.

5. The brief facts necessary to be noted for deciding these two writ petitions are that Gramodyogik Intermediate College, Ashok Nagar, Bharsawan, Fatehpur is a recognised institution under the provisions of U.P. Intermediate Education Act, 1921. The institution is also governed by the provisions of U.P. High Schools and Intermediate Colleges (Payment of salaries of Teachers and Other Employees) Act, 1971. The petitioner of the first writ petition, Ram Shiroman Singh was appointed as a class IV employee "Prahari" on 1.7. 1973. The Principal of the institution had taken a decision on 31.12.1982, terminating the services of the petitioner, which decision was set aside by the Committee of Management vide its letter dated 11.12.1983 and the petitioner was reinstated in the said service. When petitioner was not paid his salary, a writ petition being Civil Misc. writ petition No. 4987 of 1984 was filed by the petitioner in which an interim order was granted on 8.8.1985 for payment of salary of the petitioner. In pursuance of the aforesaid interim, the salary was being paid to the petitioner. The salary of the petitioner was stopped w.e.f. 1.11.1988. The petitioner objected to non payment of salary and sent several representations to the District Inspector of Schools and Manager of the institution. Letters were issued by the Principal of the institution informing the petitioner that he was absent from the institution. Vide letter dated 11.2.1989, the Principal asked the petitioner to appear and join on 28.2.1989 failing which his services would be deemed to be terminated. The Principal thereafter issued a letter dated 10.3.1989, informing the petitioner that his services had been terminated as per earlier notice dated 11.2.1989. The petitioner filed an appeal to the Committee of Management against the order of the Principal dated 10.3.1989. The Committee of Management decided the appeal on 22.6.1989 by which the Manager approved the action of the Principal. However, the Manager also observed that incase, the petitioner did not appear within three days from the date of the receipt of the letter, his services would be deemed to be terminated from that date. The petitioner filed a representation to the District Inspector of Schools, which was rejected vide order dated 20.12.1990. The District Inspector of Schools observed that petitioner being absent from 1.11.1989 and he having failed to join his duties, had committed indiscipline hence, there was no merit in the appeal/ representation of the petitioner. The petitioner filed the "first writ petition" on 19.4.1999, praying for the aforesaid reliefs.

6. Shiv Lal, the petitioner of the second writ petition, claims to be appointed as class IV employee vide appointment order dated 10.6.1991, issued by the Principal in pursuance of which the petitioner claimed to join on 15.6.1991. The Principal forwarded the papers of Shiv Lal to the District Inspector of Schools. The District Inspector of Schools vide letter dated 31.7.1991, informed the Principal that District Inspector of Schools had already written a letter dated 23.4.1991, directing the Principal not to make any appointment on clear vacancy till approval is obtained from District Inspector of Schools. The District Inspector

of Schools stated in the letter that appointment of Shiv Lal as Class IV employee is against the direction issued by the Department. The District Inspector of Schools stated in the letter dated 23.4.1991 that the direction was issued with object to absorb the dependent of deceased employee. The District Inspector of Schools informed the Principal that appointment of Shiv Lal on a class IV post cannot be accepted. Sri Shiv Lal filed writ petition No. 32180 of 1991, on 29.10.1991, challenging the order dated 31.7.1991, in which this Court passed following interim order on 1.11.1991:

Heard.

Till further orders, the order dated 31.7.1991 Annexure-4) shall not be given effect to. The petitioner shall be deemed in service and entitle for his monthly emoluments.

7. In pursuance of the aforesaid interim order date 1.11.1991, Shiv Lal is being paid the salary for class IV employee in the institution. Counter affidavits have been filed in both the writ petitions by the District Inspector of School. Committee of Management and the Principal of the institution, despite service of notice in both the writ petitions, did not appear and contested any of the writ petitions.

8. Learned Counsel appearing for Ram Shiroman Singh contended that termination of the petitioner's services have been made in violation of Regulations 36 and 37 of Chapter III of UP. Intermediate Education Act, 1921. Learned Counsel submits that neither any chargesheet was issued to the petitioner nor any disciplinary inquiry was held and termination of his services, is in violation of principle of natural justice. Learned Counsel for the petitioner has placed reliance on a Division Bench judgment of this Court in the case of Rajendra Prasad Gond v. District Inspector of Schools, Jaunpur and Ors. reported in and judgment of this Court in the case of Shyam Dhar v. Principal Shri Laxmi Narain Uchhtar Madhyamik Vidyalaya Civil Misc. writ petition No. 3045 of 1992, decided on 18.12.2003. Learned Counsel for the petitioner further submitted that appointment of Shiv Lal was made without proper advertisement and Shiv Lal was over age at the time of his appointment and further there was no vacancy on a class IV post, as the petitioner has already filed writ petition challenging the order of the District Inspector of Schools much before the appointment of Shiv Lal. Learned Counsel for the respondents supported the order passed by the District Inspector of Schools. Learned Counsel for Shiv Lal, contended that the petitioner absented himself without any leave and despite notices given to him to appear and join the institution, he failed to join hence, the Principal has rightly terminated his services. Sri R.C. Gupta, learned Counsel for Shiv Lal submitted that the notices were issued to the petitioner to join the institution hence, there is no error in the order of the District Inspector of Schools, rejecting the representation of the petitioner. Sri Gupta further contended that appointment of Shiv Lal was rightly made as a class IV employee and the order of District Inspector of Schools dated 31.7.1991 was erroneous. He submits that no

approval of District Inspector of Schools was required before appointment of Shiv Lal. Further, there was no dependent of deceased employee waiting for employment hence, the District Inspector of Schools committed error in passing the order dated 31.7.1991. Leaned Standing Counsel supported the decision taken by the District Inspector of Schools in both the writ petitions.

9. I have considered the submissions and perused the record.

The issue which is to be first considered is as to whether the termination of Ram Shiroman Singh as class IV employee was valid or not. From the materials brought on record, it is clear that the petitioner was confirmed class IV employee, who was working since July, 1973. The petitioner's case is that w.e.f. 2.11.1988, he was not permitted to sign the attendance register. The petitioner claims to have submitted representation to the Principal against not permitting him to sign. The petitioner wrote to the District Inspector of Schools several representations to the effect that the petitioner is not being permitted to sign and he is not being paid salary from November. A letter was received by the petitioner from the Manager dated 20.12.1988 in reference to the letter dated 13.12.1988. The Manager asked the petitioner to give details of his allegations made against the Principal in unfairly treating the petitioner. The petitioner replied the said letter vide letter dated 26.12.1988. He submitted that he had not made any allegation against the Principal but had only told the truth. The petitioner wrote to the Principal on 7.1.1989, praying for payment of his salary, copy of which was marked to the District Inspector of Schools. A letter dated 11.12.1989 was written by the Principal to the petitioner that the petitioner was informed by earlier two letters to join the institution but he had not yet joined. The letter stated that if the petitioner does not join by 28.7.1989, his services would be deemed to be terminated. The said letter dated 11.2.1989 was replied by the petitioner by letter dated 18.2.1989, objecting to the letter dated 11.2.1989. The Principal on 10.3.1989, issued a letter informing termination of the petitioner. The petitioner filed appeal before the Committee of Management, which approved action of the Principal vide order dated 22.6.1989. A detailed representation against the said order of the Committee of Management was filed before the District Inspector of Schools. The District Inspector of Schools decided the representation vide his order dated 20.12.1989 Annexure-22 to the writ petition. The District Inspector of Schools took the view that the petitioner remained absent from 1.11.1989 and despite notice for joining, he did not turn up, which is nothing but misconduct and dereliction of duty hence, the order of the Principal deserved to be approved. Counter affidavit was filed by District Inspector of Schools and Shiv Lal, who have been impleaded in the first writ petition, reiterating the same fact that the petitioner despite notice, did not join and was absent from 1.11.1988. The District Inspector of Schools in his order has also noted that a direction was issued on 2.1.1989 to the Principal for payment of salary to the petitioner and permit him to sign the combined attendance register. The District Inspector of Schools took notice of the letters written by the Principal asking the petitioner to join, in reply to which the

petitioner insisted for payment of salary from December and assurance from the Principal that he would be protected from physical assault in the institution.

10. The petitioner being a confirmed employee, his services could be terminated in accordance with the decision of the appointing authority by way of punishment. The procedure for awarding punishment to the employees included a class IV employee, have been laid down in Regulations 36 and 37 of Chapter III of U.P. Intermediate Education Act, 1921. Regulations 36(1) provides that grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the employee charged and the employee shall communicate within three weeks as to whether he desired to be heard in person. Regulation further states that if the employee or the inquiring authority so desires, an oral enquiry shall be held in respect of such of the allegations as are not admitted. The person charged shall be entitled to cross-examine the witnesses, to give evidence in person, and to have such witnesses called as he may wish. Regulation 36(1) further provides that Clause (1) shall not apply where the person concerned has absconded or it is for other reasons impracticable to communicate with him. Regulation 37 requires consideration the matter after receipt of the inquiry report. The employee is entitled to be given a notice for appearing before the Committee.

11. From the materials it does not appear that any inquiry was ever held as contemplated under Regulation 36(1). As noted above, neither any chargesheet within the meaning of Regulation 36(1) was prepared nor sent to the petitioner communicating the charges. The notice which was issued to the petitioner to come and join by a particular date, failing which his services would be deemed to be terminated, cannot be said to be sufficient compliance of Regulation 36(1). Disciplinary authority never gave any opportunity to the petitioner to have his say either against the charges or before awarding any punishment by the Disciplinary Authority. The present was not a case, where the petitioner could have been said to have been absconding, since the petitioner was replying the letters and notice issued by the Principal and the Manager. The Division Bench judgment in the case of Rajendra Prasad Gond (*supra*) fully supports the petitioner's case. While considering the aforesaid case, which was more or less on similar facts, the Division Bench held following in paragraph 9.

9. There is no dispute, on the point that neither charges were framed, nor inquiry was held as required under Regulation 36(1). According to the learned Counsel for the opposite- parties, as the petitioner has absconded since 20.5.1979 till the date of passing the impugned order on 3.10.1979, the compliance of the provisions of Regulation 36(1) could legally be dispensed with by virtue of Regulation 36(2). This is vehemently challenged from the side of the petitioner. "Absconding" referred to under Regulation 36(2) is not the same thing as absence from duty. The initial case of the opposite parties has been that the petitioner absented from duty since 20.5.1979 despite the notices were sent to him asking upon him to join duty. The case of the opposite party No. 2 is that the

petitioner has refused to take the notices dated 3.6.1979 and 20.7.1979 when they were taken for delivery to him. Further in the counter-affidavit filed from the side of the opposite party No. 2 it has also been set out that the service of the notice dated 16.8.1979 were effected by registered post and the same was served on the petitioner. Thus, even according to the averments of the opposite-party No. 2 it is obvious that the petitioner was not hiding or concealing himself and on the other hand he was duly served with all the three notices, inasmuch as he refused to take the earlier two notices and took delivery of the third notice sent by registered post. Despite that he did not join duty and continued to remain on unauthorised absence and it was deliberate. These facts and circumstances go counter to the case of the contesting opposite-party that the petitioner was absconding and in no case warrant to give rise to such inference. The meaning of the word "abscond" given in Chambers 20th Century Dictionary, 1987 Edition given at page 4 is "to hid or get out of the way, esp. to escape a legal process". Such were not the circumstances in the instant case. As it was not a case of "absconding" by the petitioner, so it was not permissible to dispense with requirements of Regulation 36(1) which made it obligatory to frame charges and make enquiry. Neither charges were framed, nor enquiry was made before terminating the petitioner's services. In view of the violation of these mandatory provisions of Regulation 36(1) the order of termination of the service of the petitioner is held to be invalid and illegal.

12. The judgement of this Court (delivered by me) in the case of Shyam Dhar (supra), also fully supports the case of the petitioner. In the said case also notices were issued to a class IV employee to appear failing which his services were terminated. This Court took the view that procedure prescribed under Regulation 36(1) having not been followed, there was violation of Regulations 36 and 37.

13. The submission of learned Counsel for Shiv Lal that notice issued by the Principal can be said to be a show cause notice, cannot be accepted. There is no chargesheet brought on record which was ever issued to the petitioner asking him to submit reply to the charges. Letters asking the petitioner to join by particular date, cannot be said to be a chargesheet. Even the petitioner failed to join on a particular date, the same could have given a cause of action to the appointing authority to draw the disciplinary proceedings but without drawing any disciplinary proceedings, the petitioner's services could not have been terminated. The District Inspector of Schools has not adverted to regulations 36 and 37 and has not adverted to the procedure which was adopted by the Principal in terminating the petitioner's services. The District Inspector of Schools committed error in approving the action of the Principal. Considering the above facts and submissions of the parties, the termination of the petitioner's services dated 10.3.1989 and the orders passed by the Committee of Management and District Inspector of Schools thereafter, cannot be sustained and are liable to be set aside.

14. Now comes the second question as to writ petition filed by Shiv Lal challenging the order dated 31.7.1991, passed by the District Inspector of Schools disapproving his appointment. In the writ petition of Shiv Lal, the petitioner Shiv Lal himself has brought on record the earlier letter of District Inspector of Schools dated 23.4.1991 and the Government Order dated 23.9.1981. By Government Order dated 23.9.1981, the State Government provided for giving the compassionate appointment to the dependent of deceased employees of a recognised institution. Paragraph 4 of the said Government Order also states that the subordinate officers including Principal and Management be informed to make necessary arrangements for compliance. In the background of the above Government Order, the letter dated 23.4.1991 was issued by the District Inspector of Schools to all the institutions, which provided that no appointment be made on any vacant post without obtaining approval of the Inspector. The said direction was issued to ensure the appointment of dependent of deceased employees on a vacant posts and the such vacant posts be first offered to the dependent of deceased employees.

15. From the materials brought on record including the counter affidavit filed by the State, it is clear that after letter dated 23.4.1991, no permission was obtained by the Principal for appointment of Shiv Lal and in view of the such fact, no fault could be found with the letter dated 31.7.1991. The District Inspector of Schools has also brought on record the letter addressed to the Principal of the institution informing that one dependent of deceased employee Viresh Kumar be appointed on the vacancy caused by termination of Ram Shiroman Singh. Shiv Lal has been continuing on the post and receiving salary by virtue of the interim order passed by this Court dated 1.11.1991. It is further to be noted that no stay was granted in writ petition No. 12171 of 1991, filed by Ram Shiroman Singh, stopping the respondents from making appointment on the post of Ram Shiroman Singh. Shiv Lal by virtue of interim order dated 1.11.1991 has been working as class IV employee and getting salary for the last 16 years, learned Counsel for the respondents submitted that the services of Shiv Lal having been confirmed in 1993, even if Ram Shiroman Singh is reinstated on his post that cannot effect the continuance of Shiv Lal. Similar situation arose in the case of Shyam Dhar (*supra*). This Court made following observations:

In view of above, the appointment of class-IV employee made on the post which was in place of the petitioner was subject to the result of the writ petition and the termination of the petitioner being void, petitioner cannot be refused reinstatement only on the ground that another person is claiming appointment. The appointment if any was claimed to be made subsequent to filing of the writ petition, hence, that is not an impediment in granting relief to the petitioner.

16. Thus as observed above, the termination of Ram Shiroman Singh being contrary to the provisions of Chapter III of Regulations framed under UP. Intermediate Education Act, 1921, the same is ineffective and inoperative and Ram Shiroman Singh is entitled to join the institution. Ram Shiroman Singh

cannot be denied joining in the institution on the ground that another class IV namely; Shiv Lal is continuing on the said post and is receiving the salary.

17. As noted above, Shiv Lal has also been continuing for last 16 years as class IV from 15.6.1991. The question before the Court is that in such circumstances, how to adjust the equity between the parties. Shiv Lal has worked and received salary on the strength of the interim order granted in his favour in the writ petition. To throw him out at such stage when he has worked as class IV employee for 16 years, may also be too harsh so far as Shiv Lal is concerned. Considering over all facts and circumstances of the present case and submission of the parties, ends of justice will be served in disposing of both the writ petitions in following manner:

(i) The writ petition of Ram Shiroman Singh is partly allowed and the order passed by the Principal dated 10.3.1989, the letter of the Manager and the order of the District Inspector of Schools dated 20.12.1990 are set aside. Ram Shiroman Singh is reinstated as class IV employee in the institution. Ram Shiroman Singh shall be entitled to be paid salary from the date of his termination except for the period during which salary on the same post has been paid to Shiv Lal. The respondents shall permit Ram Shiroman Singh to join as class IV employee within four weeks from the date of production of a certified copy of this order and pay him salary from the date of his joining thereafter.

(ii) From the date of joining of Ram Shiroman as class IV, Shiv Lal shall not be paid any salary or allowed to continue on the post on which he was working.

(iii) Shiv Lal having worked as class IV employee for more than 16 years, the District Inspector of Schools shall consider and take a decision for absorption of Shiv Lal on class IV post in the respondent institution, if any class IV vacancy is existing or to absorb him in any other class IV vacancy existing in any other recognised aided institution of the district. The said decision shall be taken by the District Inspector of Schools within two months from the date of production of a certified copy of this order.

Both the writ petitions are disposed of accordingly.

The parties are directed to bear their own costs.