
(2002) 12 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition No. 1315 (S/B) of 2002

Rashtriya Inter College

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 17-12-2002

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G

Citation : (2003) 1 AWC 845 : (2003) 2 UC 1419 : (2003) 1 UD 316

Hon'ble Judges : Ashok A. Desai, C.J;M.M.Ghildiyal, J

Bench : Division Bench

Advocate : Alok Singh, for the Appellant; S.C. and B.D. Upadhyaya, for the Respondent

Judgement

M. M. Ghildiyal, J.—The present petition has been filed by the Management of Rashtriya Inter College, Bhalsavagaz, Haridwar (for the short "College") challenging the order dated 17.9.2002, Annexure-8 to the petition passed by the District Inspector of Schools, Haridwar (for the short D.I.O.S.) treating the suspension order Inoperative. The reason given in the order is that more than sixty days have passed from the date of suspension of the Principal as such the suspension will not be in force and further that in spite of the letter of the D.I.O.S. dated 11.9.2002 seeking clarification from the Management of the school on certain points in respect of the suspension of the Head of the institution, the Management has not replied.

2. The facts of the case are that the Committee of the Management passed a resolution on 29.6.2002 placing respondent No. 3 under suspension for serious charges against him. The resolution was forwarded vide letter dated 1.7.2002 to the D.I.O.S. u/s 16G (6) of the U. P. Intermediate Education Act, 1921 (hereinafter referred to as the Act). The suspension order was also served upon respondent No. 3 on 3.7.2002. On 6.8.2002 the Committee of the Management requested the D.I.O.S. to approve the suspension order dated 3.7.2002. The charge-sheet was sent by hand on 28.7.2002 on which date the respondent No.

3 was not available. Again the peon of the College went to serve charge-sheet upon the respondent No. 3 on 29.7.2002 but the same was refused by the respondent No. 3 : consequently the same was also sent through speed post on 31.8.2002. A copy of the charge-sheet was submitted to the D.I.O.S. on 2.9.2002 : the D.I.O.S. sent a letter on 11.9.2002 to the Management seeking clarification in respect of certain points related to the suspension of the respondent No. 3. This letter was dispatched according to the D.I.O.S. on 11.9.2002 and on 17.9.2002 the impugned order has been passed by the D.I.O.S.

3. Heard Sri Alok Singh, learned counsel for the petitioner, learned standing counsel and Sri B.D. Upadhyaya learned counsel for the respondent No. 3.

4. The power to suspend a Head of the Institution or a teacher is provided in Section 16G (5), (7) and (8) of the Act, which runs as, follows :

"16G (5). No Head of the Institution or teacher shall be suspended by the Management, unless in the opinion of the management--

(a) the charges against him are serious enough to merit his dismissal, removal or reduction in rank ; or

(b) his continuance in office is likely to hamper or prejudice the conduct of disciplinary proceedings against him ; or

(c) any criminal case for an offence involving moral turpitude against him is under investigation, inquiry or trial.

(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 commencement of the Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975. 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, the report shall contain such particular 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.

(8) If, at any time the Inspector is satisfied that disciplinary proceedings against the Head of Institution or teacher are being delayed for no fault of the Head of Institution or the teacher, the Inspector may, after affording opportunity to the Management to make representation revoke an order of suspension passed under this section."

5. Sub-clause (7) 6f Section 16G requires the approval of the D.I.O.S. with regard to the order of suspension without which the order of suspension would cease to be ineffective after expiry of sixty days.

6. In the case of Chandra Bhushan Misra v. District Inspector of Schools, Deoria and others, (1995) 1 UPLBEC 460, the Full Bench of Allahabad High Court while interpreting sub-section 7 of Section 16G had held :

"According to Sub-section (7) no order of suspension shall "remain in force for more than sixty days" unless approved in writing by the Inspector. "In force" means "in operation". A statutory enactment or an order does not lapse merely because it has not come or brought into force. The only effect of an order, which is not in force is that it is ineffective and inoperative. But such an order is not obliterated and continues to exist though ineffective. Similarly when the order, which was in force, has ceased to be operative due to supervening event, will come into force again and will become effective after the infirmity caused by supervening event is removed. In view of the provisions of Subsection (7), an order of suspension of Head or a teacher of an Institution shall remain in force for a period of sixty days from the date of such order even if it is not approved in writing by the Inspector, but in the absence of the approval by the Inspector such an order will cease to operate on expiry of sixty days from the date of the order, although it will continue to exist though inoperative. But if the order of suspension is approved even after the expiry of sixty days, it will come into force again and will become effective immediately on such approval. Any other interpretation will lead to serious consequences. In-action on the part of the Inspector either deliberate or otherwise may frustrate the object of the provision itself."

7. In view of the abovementioned ratio even after the expiry of sixty days the power to approve or disapprove conferred on the D.I.O.S. does not cease. The order of suspension, however, remains ineffective and might revive on the approval granted by the D.I.O.S. even after the expiry of sixty days and would lapse if it is disapproved.

8. Regulation 39 of Chapter III of Intermediate Education Act, 1921 required the Committee of the Management to forward the particulars and documents mentioned in Clauses (a) to (g). The intention to incorporate Regulation 39 (a) to (g) was not for the purpose of enabling the D.I.O.S. to hold parallel inquiry.

9. The documents, which are required to be sent to the D.I.O.S. by the Committee of Management, have been specified in Regulation 39 (a) to (g). The letter dated 6.8.2002 sent by the Management to the D.I.O.S. includes necessary documents as required under Regulation 39, The learned counsel for the petitioner has submitted that since the documents which are required by the Regulation 39 to be sent to the D.I.O.S. for approval were sent to him vide letter dated 6.8.2002 and as such the D.I.O.S. has exceeded his Jurisdiction in issuing letter dated 11.9.2002 before approving or disapproving the suspension order. The learned counsel for the petitioner further submitted that the letter dated 11.9.2002 by which clarification was sought on certain points by the D.I.O.S. from the Committee of Management and impugned letter dated 17.9.2002 were received by the Management on 18.9.2002. By the impugned letter the D.I.O.S.

has referred to letter dated 11.9.2002 stating that since the Management has failed to reply the letter dated 11.9.2002 within three days the impugned order is being passed. As stated above since the petitioner has received the letter dated 11.9.2002 itself after passing the impugned order, there was no question of replying the same and further necessary documents which were required to be sent to D.I.O.S. were already sent by the Management which have not been denied by the D.I.O.S. in his counter-affidavit. The D.I.O.S. has asked the management as to whether charge-sheet has been issued to the Principal within sixty days or not. The record shows that the charge-sheet was sent to the Principal through speed post on 31.8.2002 and a copy was also submitted before D.I.O.S. on 2.9.2002.

10. From the perusal of the record, it appears that serious allegations have been levelled against the respondent No. 3, which amounts to misconduct. The F.I.R. was also lodged against the respondent No. 3 and also there is audit report against him. The learned counsel for the petitioner has drawn our attention to the over-writing in the date of impugned order. The impugned order is signed by the D.I.O.S. on 17.9.2002. It appears that it has been typed prior to 11.9.2002 and has been signed thereafter. As already stated above since the approval was not granted by the D.I.O.S. within sixty days from the date of order of suspension, the suspension cannot be operative after sixty days. However, for the reasons given above since the allegations are of serious in nature against the Head of the Institution and inspite of receipt of necessary documents as required under Regulation 39 of Chapter III of the Act by the D.I.O.S., the D.I.O.S. had no occasion for seeking clarification on the points which were not required under Regulation 39, the order dated 11.9.2002 was overwritten and further since the order dated 11.9.2002 itself was handed over to the peon of the Institution on 18.9.2002 the order dated 17.9.2002 passed by the D.I.O.S. on the ground that the Committee of the Management has not complied the order dated 11.9.2002 is not sustainable.

11. In view of the Full Bench decision of the Allahabad High Court the order of suspension has not been approved by the D.I.O.S. within sixty days, the suspension will not be operative. However, the D.I.O.S. is directed to pass a fresh order approving or disapproving the order of suspension of respondent No. 3 on the basis of documents submitted before him along with the letter dated 6.8.2002 by the Committee of Management.

12. With these observations the writ petition is finally disposed of. No order as to the costs.