
(2007) 05 AHC CK 0149
In the Allahabad High Court

Sankarshan Mishra

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 09-05-2007

Acts Referred:

Citation : (2007) 4 AWC 4217

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsels for the parties and perused the record.

2. Briefly stated, the facts of the case are that the petitioner, who was Head Clerk of Shri Krishna Pandey Inter College. Basti (for short "College"), and the Principal were removed from service vide order dated 14.6.1979. District Inspector of Schools, Basti refused to accord approval to the resolution dated 14.6.1979 removing the petitioner and Principal of the College from service vide letter dated 25.6.1979.

3. Show cause notice dated 12.7.1979 was issued to the petitioner by the Committee of Management and thereafter vide letter dated 2.8.1979, the Committee of Management informed the District Inspector of School (for short "DIOS") about reiteration of its earlier decision of punishment. The District Inspector of Schools again refused to accord approval to aforesaid Resolution of punishment vide his letter dated 31.8.1979/1.9.1979. 3. Thereupon, the Committee of Management preferred an appeal before the Regional" Deputy Director of Education (for short "DDR") Gorakhpur against the order of DIOS dated 31.8.1979/1.9.1979. which was allowed by the DDR vide order dated 18.7.1980 who directed the DIOS to reconsider the matter again. The DIOS thereafter sought reply of the petitioner and principal by means of show cause notice dated 4.2.1981. Ultimately, the DIOS accorded approval to the punishment order vide his letter dated 11.3.1981. Accordingly, the petitioner and

the Principal of the College were terminated from service vide order dated 13.3.1981.

4. Aggrieved by the aforesaid order of termination the Principal of the College as well as the petitioner preferred appeals before the Dy. Director of Education, VIIth Region, Gorakhpur which were allowed vide order dated 12.4.1982 and the order dated 11.3.1981 passed by the DIOS was set aside. Consequently, the DIOS vide letter dated 20.4.1982 directed the Committee of Management for reinstatement of the petitioner and the Principal in Service and for payment of salary to them.

5. Aggrieved, the Committee of Management filed Civil Misc. Writ No. 5438 of 1982 against the order of Deputy Director of Education dated 12.4.1982 in which an interim order was passed by this Court directing that the salary be paid to the petitioner and the Principal but it was left open for the Committee of Management to take or not to take work from the principal

6. In the meantime, term of the Committee of Management came to an end in 1986 and one Sri Chandra Bhushan Tripathi was elected as Manager in the elections held for constitution of new Committee of Management. His Signatures were not attested between 1986 to 1989 due to dispute raised by the rival Committee of Management.

7. Thereafter, vide resolution dated 25.2.1990, majority of members of the Committee of Management recommended reinstatement of the petitioner on the ground that he was innocent. Accordingly, vide letter dated 25.2.1990, the Manager of the Committee of Management directed the petitioner to take charge.

8. Civil Misc. Writ No. 5438 of 1982 was also allowed vide judgment and order dated 31.8.1994 with the direction to the DIOS to re-examine the case, in compliance whereof the DIOS vide order dated 4.10.1995 accorded approval to the punishment order dated 14.6.1979 with the observation that the earlier DIOS accorded approval on 11.3.1981 and audit report was submitted on 27.10.1979. as such, order of punishment as well as approval thereof were not based on the consideration of audit report.

9. Aggrieved, the petitioner filed Civil Misc. Writ No. 32975 of 1995 before this Court and the Principal preferred appeal before the Dy. Director of Education, VIIth Region, Gorakhpur. The appeal of the Principal was rejected by the Deputy Director of Education, VIIth Region. Gorakhpur.

10. Aggrieved by the order of rejection of appeal, the Principal of the college filed Civil Misc. Writ No. 36852 of 1995 *Ved Vyas Dixit v. DDR and Ors.*, which was allowed vide judgment and order dated 13.5.1997 holding that the appeal was maintainable.

11. Special Appeal preferred against the judgment and order dated 13.5.1997 was disposed of by this Court directing the Deputy Director of Education to decide the matter afresh.

12. In compliance of the aforesaid order, the Deputy Director of Education allowed the appeal of the Principal vide order dated 22.1.1999 and set aside the order of DIOS dated 4.10.1995 approving the order of punishment.

13. Aforesaid order dated 22.1.1999 passed by the Deputy Director of Education was challenged in Civil Misc. Writ No. 5713 of 1999 by the Committee of Management which was dismissed by this Court vide judgment and order dated 30.3.2000.

14. Consequent upon dismissal of Special Appeal, the Principal joined his duties and was paid his salary. On attaining the age of superannuation, he retired from service and was sanctioned all his retiral benefits.

15. In the meantime, the petitioner also died and was substituted by his wife

16. Contention of counsel for the petitioner is that on the basis of order of the Deputy Director of Education dated 22.1.1999 as well as judicial pronouncement by this Court dated 30.3.2000, the petitioner had been sanctioned all his post retirement benefits except some nominal retiral benefits including family pension.

17. Undisputedly, services of the Principal of the College and the petitioner had been terminated by the same common order. Admittedly, in pursuance of various orders, which have been stated in the body of this judgment, the Principal of the College was paid arrears of salary as well as retiral benefits. The case of the petitioner is that his case is on the same footing. Civil Misc. Writ No. 5713 of 1999 filed by the Committee of management having been dismissed, the petitioner has also become entitled for his retiral benefits including family pension.

18. Admittedly, the petitioner has been paid all his retiral benefits except a nominal amount, which includes family pension.

19. For all the reasons staled above, the petitioner is entitled to all his post retiral benefits, including family pension.

20. Accordingly, the writ petition is allowed. The respondents, including the Committee of Management and the DIOS are directed to forthwith take necessary action for payment of outstanding retiral dues of the petitioner, including family pension, preferably within three months from the date of production of a certified copy of this judgment. They will also ensure that the legal heirs of the petitioner are paid all retiral dues, including family pension, within the aforesaid period. No order as to costs.