
(1992) 04 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16044 of 1989

Santosh Kumar

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 23-04-1992

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 28, 31

Citation : (1992) 2 AWC 1075

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant;

Judgement

M. Katju, J.—The Petitioner was appointed as Head Clerk in Vaidik Inter College, Somai, district Jalaun. He was charge sheeted vide charge sheet dated 11-9-87 (annexure 5 to the writ petition) on various allegations of financial irregularities and embezzlement etc. By means of this writ petition the Petitioner is challenging the impugned order of District Inspector of Schools dated 13-7-89 (annexure-11 to the writ petition) which purports to approve Petitioner's termination of service.

2. Learned Counsel for the Petitioner has challenged the impugned order dated 13-7-89 on various grounds, but it is not necessary for me to go into other grounds as in my opinion, the petition succeeds on the very first ground. To appreciate the contention of the learned Counsel for the Petitioner, certain facts have to be noted.

3. On 30-9-86 the High Court had directed the District Inspector of Schools to assume charge of the management of the institution. Thereafter it appears that there was some complaint against the functioning of the District Inspector of Schools. Hence by order dated 6-12-1988 the High Court directed the Deputy Director of Education to appoint a Prabandh Sanchalak of the institution to look after the functioning of the management of the institution. Accordingly, the Deputy Director of Education appointed the Principal of the Government Inter

College, Jalaun to function as Prabandh Sanchalak of the institution, and he functioned till 29-8-1989 when the elected committee of management came into existence.

4. A narration of the above facts shows that on 13-7-1989 when the impugned order was passed, the work of the committee of management was being done by the Prabandh Sanchalak appointed by the Deputy Director of Education viz. the Principal of Government Inter College, Jalaun. Under Regulation 28 of the U.P. Intermediate Education Regulations the committee of management after getting the enquiry held by the Inquiry Officer has to propose to the District Inspector of Schools a resolution for terminating the service of a confirmed employee, and such a dismissal requires prior approval of the District Inspector of Schools vide Regulation 31. It is noted that the sequence in such matter is (i) first an enquiry is held by the Inquiry Officer on the direction of the committee of management, (ii) thereafter a resolution is passed by the committee of management proposing dismissal or removal or reduction in rank of the employee, (iii) thereafter the District Inspector of Schools has to grant prior approval and (iv) thereafter the actual termination order can be passed. This is the sequence in accordance with which a dismissal order can be passed. In the present case there was no order of the Prabandh Sanchalak (Principal of Government Inter Collage, Jalaun) proposing the termination of the Petitioner's service. Hence, there was nothing which could be approved by the District Inspector of Schools, There is also no subsequent order of the Prabandh Sanchalak dismissing the Petitioner after the approval granted by the D I.O.S. My attention has been invited to the note on page 66 of the petition (internal page 4 of annexure-11) where it has been stated that a copy of the order dated 13-7-89 has been sent by the Prabandh Sanchalak to the Petitioner. This order does not amount to an order of termination. Thus, the second and fourth events in the sequence of events mentioned above which have to be followed for dismissing an employee in an institution are missing in the present case. The only events are the enquiry and the approval by the District Inspector of Schools. In ray opinion all the four events must exist before a valid dismissal takes place.

5. In view of the above discussion, the impugned order dated 13-7-1989 is clearly illegal and is hereby quashed. However, it is open to the management to take fresh proceedings against the Petitioner in accordance with law.

6. Learned Counsel for the Respondents has submitted that the writ petition should be dismissed on the ground of alternative remedy. In my opinion, it is not a fit case for relegating the Petitioner to avail of the alternative remedy because there has been a clear violation of law. At any event, alternative remedy is not an absolute bar. The writ petition is allowed. There is no order as to costs.