

(2012) 09 AHC CK 0265

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 40305 of 1997

Santosh Kumar Mishra

APPELLANT

Vs

U.P. Madhyamik Shiksha Seva Ayog and Others

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Citation : (2012) 11 ADJ 520

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : K.P. Shukla, Anil Bhushan, Satyam Singh, Shiv Nath Singh and Suresh Narain Pandey, for the Appellant; Ashok Khare, Haider Zaidi, Siddharth Khare, Adarsh Bhushan, A.K. Yadav and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rajesh Kumar, J.—Sri Santosh Kumar Misra, since deceased, (hereinafter referred to as the "petitioner") has set up a case that initially he was appointed as the Assistant Teacher in L.T. Grade in January, 1972 and was confirmed on the said post in 1973 in the Institution, Shri Daivi Sampad Inter College, Mumukshu Ashram, Shahjahanpur, a recognised institution, under the U.P. Intermediate Education Act, 1921. The institution has an approved scheme of administration and a recognised Committee of Management. It was receiving grant in aid from the State government and is under the purview of the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971. The petitioner was promoted as the Lecturer in Hindi on ad hoc basis in 1985 and his promotion was approved by the U.P. Secondary Education Services Commission in December, 1986 and he had started working as a permanent Lecturer from 5.1.1987. The petitioner was appointed as Chief Proctor in the institution in 1985 and continued as such up to 1992. The petitioner was elected as the Joint Secretary of Madhyamik Shikshak Sangh (Sharma Group), Shahjahanpur and he was an active worker of the Shikshak Sangh. It was the allegation of the petitioner that the Principal of the institution

was biased against him, therefore, he made a false complaint against him before the Committee of Management in 1993. The Committee of Management appointed an Enquiry Committee, consisting of two members of the Committee of Management, namely, Surendra Singh Rathore and Brijesh Chandra Saxena. Since the petitioner did not expect justice from Brijesh Chandra Saxena, therefore, he made a request from the Committee of Management to change him and appoint some other person in his place. Copy of the letter making such request is Annexure-1 to the writ petition. The Committee of Management accepted the request of the petitioner and appointed Surendra Singh Rathore alone as the Enquiry Officer to conduct the enquiry and give report. Surendra Singh Rathore conducted the enquiry and had given report dated 15.4.1993. In the enquiry, he found that the charges were false and there was no ground to take any action against the petitioner. True copy of the allegations and the enquiry report, dated 15.4.1993, are Annexures-2 and 3 to the writ petition.

2. Thereafter, the petitioner was placed under suspension by the committee of management on 14.10.1995 on the charges of embezzlement, misconduct and insubordination. The suspension order was approved by the District Inspector of Schools on 11.12.1995, but subsequently it was revoked on 18.7.1996. Against the revocation order, the Committee of Management filed Writ Petition No. 24433 of 1996. No interim order was passed in the writ petition. Meanwhile, it appears that Brijesh Chandra Saxena, against whom the petitioner made allegations of being biased, became Manager of the institution and also was appointed as the Enquiry Officer by the Committee of Management.

3. It was the allegation of the petitioner that no charge-sheet was given and only on the instruction of the District Inspector of Schools, the charge-sheet was given on 21.7.1995. The petitioner had given a detailed reply to the charges levelled against him and submitted that the disciplinary proceeding initiated against him was mala fide and there was no substance in any charge. It was the allegation of the petitioner that some of the witnesses, who have been examined, during the course of the enquiry, they deposed in favour of the petitioner. Their statements were recorded. It was also the allegation of the petitioner that he was not given opportunity to cross-examine the witnesses and even relevant documents were not supplied to him. By the letter dated 3.2.1996, the petitioner made such allegation and reminder letter was also written on 12.2.1996. Another letter was written by the petitioner on 6.4.1996 in this regard. However, without paying any heed to such letters, Brijesh Chandra Saxena proceeded with the enquiry and has submitted the enquiry report, dated 7.4.1996. Copy of the said report, according to the petitioner, was not supplied to him.

4. A meeting was convened on 19-6.1996 to consider the enquiry report, dated 7.4.1996, submitted by Brijesh Chandra Saxena. According to the petitioner, on 19.6.1996, the Vice President, Sri Pradeep Pandey, Sri Ashok Agrawal, Swami Bhagwata Nand Saraswati, Dr. S.K. Pandey, Principal of the Institution and the petitioner were present in the meeting and only five members were present in

the meeting. Sri Pradeep Pandey, the Vice President of the Committee of Management, who presided over the meeting, sent a letter dated 25.6.1996 to the District Inspector of Schools, stating therein that no decision could be taken in the meeting relating to the termination of the petitioner due to want of quorum. Copy of the said letter dated 25.6.1996 is Annexure-11 to the writ petition.

5. According to the petitioner, no valid meeting was held on 19.6.1996 and no decision was taken regarding acceptance or rejection of the enquiry report of the Enquiry Officer, dated 7.4.1996 nor any resolution was passed as the quorum was not complete.

6. When the Writ Petition No. 24433 of 1996 came up for consideration on 8.8.1996, filed by the Committee of Management, through its Manager, it was stated on behalf of the Manager that a resolution dated 19.6.1996, proposing removal of the petitioner from services of the institution was passed and the said proposal was sent to the respondent No. 1 (District Inspector of Schools) alongwith other records to be transmitted to the respondent No. 3 (Commission), which is the competent authority to decide the matter to accord or reject the approval to the resolution/proposal of the Committee of Management. The Court has declined to interfere with the impugned order and has issued directions that (1) the respondent No. 1 (DIOS) shall examine the entire record sent by the petitioner alongwith the proposal within period of ten days from date of production of a certified copy of this order, which the petitioner shall file before him within a period of ten days from today and thereafter he will transmit the entire record to the respondent No. 3 (Commission) and (2) the respondent No. 3 (Commission) is directed to decide the matter within a period of four weeks from the date of receipt of the said documents.

7. The District Inspector of Schools, Shahjahanpur, vide its letter dated 24th September, 1996 has sent the report to the Commission, which is Annexure-2 to the Rejoinder Affidavit. In the report, he has stated that the letter dated 12.9.1996 is addressed to this office with copy to the Commission by which the papers relating to the approval of the resolution of punishment against Sri Santosh Kumar Misra, Lecturer have been sent for necessary action. It has been categorically stated that before this letter, earlier no other letter has been received by him by which aforesaid proposal has been sent to this office. It has been further stated that by the letter dated 17.9.1996, issued by the Manager, addressed to the District Inspector of Schools and copy sent to the Commission, a copy of the order passed in Writ Petition No. 24433 of 1996 has been submitted for necessary action. The District Inspector of Schools stated that in pursuance of the order of the High Court dated 8.8.1996, necessary papers are being remitted pointing out following irregularities:

(i) The Enquiry Officer has not sent the evidences collected in the enquiry dated 10.2.1996 in accordance to Regulation 36(1) of Section 16(Chha) of Madhyamik Shiksha Adhiniyam.

(ii) The enquiry report, dated 7.4.1996 has been furnished and it appears that the notice dated 10.6.1996 is irregular and in the notice, the enquiry relating to the delinquent Lecturer, the report of the Enquiry Officer and the approval has not been confronted.

(iii) The resolution, passed in the alleged meeting dated 19.6.1996, appears to be doubtful for the following reasons:

(a) The names of the members, present, and the President etc. have not been mentioned.

(b) Sri Pradeep Pandey, Vice President of the Committee of Management, vide letter dated 25.6.1996, photocopy enclosed, informed this office that on 19.6.1996, in the absence of the President, the meeting has been held under his Presidentship and in the meeting alongwith the Principal, five members were present. Sri Santosh Kumar Misra, Lecturer (Hindi) was also present. In the absence of quorum, no resolution has been passed relating to the termination of Sri Santosh Kumar Misra.

(c) Sri Santosh Kumar Misra, vide letter dated 20.6.1996, has informed to this office that in the absence of the quorum, the meeting of the Committee of Management could not be held on 19.6.1996.

8. It appears that on the receipt of the report and the necessary documents from the District Inspector of Schools, the Commission has issued show-cause notice to the petitioner. The petitioner filed a detailed reply to the show-cause notice. The copy of the reply, dated 4.1.1997 is annexed as Annexure-12 to the writ petition. The Commission, vide order dated 22.8.1997, has approved the resolution, dated 19.6.1996, terminating the services of the petitioner, in its meeting held on 16.8.1997. In pursuance thereof, the Manager of the Committee of Management, Brijesh Chandra Saxena, issued a letter dated 8.9.1997, terminating the services of the petitioner. The order of the Commission dated 22.8.1997 and the order of the Manager of the Committee of Management, terminating the services of the petitioner, dated 8.9.1997, are impugned in the present writ petition.

9. Learned Counsel for the petitioner submitted that the enquiry report, given by Brijesh Chandra Saxena, was wholly biased. Initially, he was appointed as one of the member of the enquiry committee, but on the objection being filed by the petitioner, he has been removed from the enquiry committee and only one member enquiry committee of Sri Surendra Singh Rathore has been constituted, which submitted the enquiry report. In the said enquiry report, nothing adverse was found against the petitioner. When Brijesh Chandra Saxena became Manager of the Institution, by the resolution, he himself became the Enquiry Officer and submitted the enquiry report against the petitioner. Brijesh Chnadra Saxena was biased against the petitioner. The petitioner was not given opportunity to cross-examine witnesses and necessary documents have also not been provided to him. He submitted that the District Inspector of Schools in his report has

categorically stated that he has received a letter from Sri Pradeep Pandey, Vice President of the Committee of Management, dated 25.6.1996, stating therein that since President of the Committee of Management was absent, he presided over the meeting, which was attended by the Principal of the Institution and five members of the Committee of Management as well as by Sri Santosh Kumar Misra, but since quorum was not complete no resolution could be passed relating to removal of Sri Santosh Kumar Misra. The District Inspector of Schools, in his report, has also stated that apart from the letter dated 12.9.1996, received by him, no other letter has been received by him earlier. He also referred, in his report, that in the resolution, names of the persons, who were present in the meeting, have not been mentioned. The petitioner in his reply has also stated that in the meeting dated 19.6.1996, no resolution was passed. He referred the letter, dated 25.6.1996, of Sri Pradeep Pandey, Vice President of the Committee of Management. Apart from the above submissions, he made other submissions also.

10. The submission of the learned Counsel for the petitioner is that the Commission, in the impugned order, has not dealt with the irregularities pointed out by the District Inspector of Schools in his report, dated 24.9.1996 and also the reply of the petitioner in this regard and the resolution dated 19.6.1996 has been approved, which, in fact has never been passed.

11. On the submission of the learned Counsel for the petitioner, a query has been made from the learned Counsel for the Commission, Sri A.K. Yadav, that where this issue has been dealt with by the Commission in the impugned order. He is not able to point out from the impugned order of the Commission that where this issue has been dealt with by the Commission in its order.

12. Sri Adarsh Bhushan, learned Counsel appearing on behalf of the Committee of Management, is also not able to point out from the impugned order of the Commission that where this issue has been dealt with by the Commission.

13. In the facts and circumstances, I am of the view that the order of Commission is patently illegal. The vital issue, namely, whether the meeting of the Committee of Management was held on-19.6.1996 and any resolution relating to removal of the petitioner from service was passed or not has not been considered at all by the Commission in its impugned order. It is very shocking that without considering this vital issue, the resolution, which in fact, appears to have not been passed in the meeting held on 19.6.1996, has been approved by the Commission. The order of the Commission is mechanical, without application of mind and illegal and, accordingly, is not sustainable.

14. In view of the above, the Court is proposing not to go into any other question.

15. Before parting with the case, it would be relevant to mention here that the report given by Brijesh Chandra Saxena appears to be biased because when he was initially appointed as one of the member of the enquiry committee and on objection being raised by the petitioner that he being biased, justice could not be

expected from him, he was removed, he should not have been appointed as the Enquiry Officer, when he became Manager of the Institution, but by the resolution he appointed himself as the Enquiry Officer to conduct the enquiry and submitted the report. Such enquiry report cannot be said to be fair in the eye of law. The enquiry report should not only be fair, but it should appear to be fair also. On the facts and circumstances of the case, the enquiry report cannot be said to be fair.

16. Since, Sri Santosh Kumar Misra has died, no enquiry is now possible. In view of the discussions made above, the writ petition is allowed with cost, which is assessed at Rs. 25,000/-(Rupees Twenty Five Thousand only). The impugned order passed by the Commission, dated 22.8.1997 and the consequential order, dated 8.9.1997, terminating the services of the petitioner are hereby quashed. The cost shall be paid by the Committee of Management of the Institution to the heirs of the petitioners.