

(1998) 11 AHC CK 0017
In the Allahabad High Court
Case No : C.M.W.P. No. 18126 of 1995

Sarvesh Chandra Shukla

APPELLANT

Vs

U.P. Higher Secondary Education Services Commission,
Allahabad and others

RESPONDENT

Date of Decision : 11-11-1998

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 31, 32, 33, 34, 36
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 21

Citation : (1998) 4 AWC 616 : (1998) AWC 616

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Rakesh Pande, for the Appellant; S.C., Haider Zaidi and M.C. Singh,
for the Respondent

Judgement

D.K. Seth, J.—A punishment was inflicted upon the petitioner pursuant to the resolution dated 12th of October, 1991, which was approved by the Commission by its order dated 8th of June, 1995, communicated by communication dated 13th of June, 1995 being Annexure-11 to the writ petition. The petitioner has challenged the said order in this writ petition.

2. Mr. Rakesh Pandey, learned counsel for the petitioner contends that no enquiry report was ever shown to the petitioner neither any copy of the enquiry report was given to him. Therefore, relying on the decision in the case of Union of India and others Vs. Mohd. Ramzan Khan, , he contended that the order of punishment cannot be sustained. He further contended that after the reply was submitted by the petitioner on 14th of September. 1991. a report was forwarded to the Committee of Management by the Inquiry Committee on 20th of September. 1991 and the petitioner was asked to appear in the enquiry on 12th of October, 1991 on which date the punishment was inflicted. The resolution inflicting the punishment was forwarded to the Commission for its approval u/s 21 of the U. P. Secondary Education Services Commission and Selection Boards Act. 1982. Thus,

the case is made in paragraphs 29, 30 and 31 of the writ petition. appears to be a case of no enquiry no opportunity. Therefore, according to him. the approval granted by the Commission cannot be sustained.

3. Mr. Vijai Kumar Singh, learned counsel for the respondents, on the other hand, contends that the case of Mohammad Ramjan Khan (supra), was prospective in nature and cannot be attracted in the present case, where the resolution was taken according to decision in Mohd. Ramjan Khan. He also contends that the petitioner had refused to receive the charge-sheet and that despite giving opportunity he did not participate in the enquiry. Therefore, the petitioner cannot challenge the said order. The writ petition, therefore, be dismissed.

4. I have heard both the learned counsel at length.

5. Whether the question of non-service of enquiry report is material in the present case need not be gone into, if it is found that there was no enquiry before the enquiry report was prepared or in case it appears that no opportunity was ever given to the petitioner to defend the charges. Be that as it may, the decision in the case of Mohammad Ramjan Khan was given on 2nd of November, 1990. It was anterior on point of time when the resolution was taken. Therefore, Mr. Vijai Kumar Singh learned counsel in his usual fairness has conceded that the ratio decided in the case of Mohammad Ramjan Khan would be attracted in the present case. But he contends that the enquiry report was shown to the petitioner, which is, in fact, sufficient compliance of the requirement of the said decision. The petitioner had never asked for a copy of the enquiry report nor he had ever objected to the said report. Therefore, whatever right, he had, was waved and therefore, now it cannot take resort of the ratio decided in the said case.

6. A statement was made in paragraph 31 of the writ petition, which was replied to in paragraph 28 of the counter-affidavit, where it has been stated that the enquiry report was shown to the petitioner on 12th of October, 1991. This fact remains that the enquiry report was not shown before the order of punishment was inflicted. Inasmuch as it was alleged to have been shown to petitioner on 12th of October, 1991 in the meeting and the resolution to inflict the punishment was taken on 12th of October. 1991 in the said meeting. Therefore, such showing cannot be taken to be a sufficient opportunity to take any objection to the said report. That apart, it was not asserted that the copy of the report was served on the petitioner. On the other hand, it was stated that it was only shown to him. Showing of the report of enquiry does not amount to service of the report. Therefore, the same does not satisfy the condition as enunciated in the case of Mohammad Ramjan Khan (supra).

7. At the same time, it is contended in paragraphs 29 and 30 of the writ petition that within six days after submission of the reply by the petitioner, Inquiry Committee had submitted its report on 20th of September. 1991 and the Committee of Management had asked the petitioner to appear on 12th of

October, 1991 in the meeting on which date the Management had proposed to inflict the punishment for stoppage of two Increments. This fact has been dealt with in paragraph 27 of the counter-affidavit, where the said fact has not been denied. Mr. Singh has drawn my attention to the order of approval dated 8th of June, 1995 passed by the Commission. A perusal of the said order shows that on the basis of the allegations made against the petitioner by resolution dated 22nd of July, 1991. It was found that the charges were serious and, therefore, a three-members Inquiry Committee was constituted. The Inquiry Committee had prepared the charge-sheet and sent it under registered post on 12th of August, 1991, which having been refused by the petitioner, the same was published in the "Dalnik Jagran" on 9th of August, 1991. Subsequently, the petitioner had received the charge-sheet on 11th of September, 1991 and had submitted his reply on 14th of September, 1991. In the reply, he denied all the charges. On 20th of September, 1991 the Enquiry Committee submitted its report and had forwarded the same to the management finding that the petitioner guilty of all the charges and recommended termination of service. The Committee of Management thereafter Issued a notice to the petitioner by which he was asked to appear on 12th of October, 1991. The said notice is Annexure-CA-4 to the counter-affidavit. It appears from the said notice that the Inquiry Committee had considered his reply and had prepared the enquiry report on which final decision would be taken on 12th of October, 1991 at 11.00 a.m. In a meeting to be held in the school premises. If the petitioner wants to adduce any evidence or if he wants to submit any objection in respect of the charge-sheet. then he may do so in the said meeting. The text of the above notice clearly indicates that the meeting was fixed for final decision on the enquiry report. Once the enquiry report was prepared and it was set down for final decision by the Committee of Management, in that event the meeting cannot be said to be a meeting for holding enquiry particularly in view of the fact that the meeting was not convened by the Inquiry Committee. It was convened by the Committee of Management for purpose of holding an enquiry. Admittedly, the Inquiry Committee was constituted which had submitted its report. No where the respondents had asserted that the Inquiry Committee had ever called the petitioner to appear in any enquiry to defend the charges. Since the Committee of Management was holding the meeting to take final decision on the report of the Inquiry Committee, there was no scope for giving any evidence or submitting any objection to the enquiry report particularly, when no copy of the enquiry report was given to the petitioner. It was only shown to the petitioner in the meeting dated 12th of October, 1991 after which he did not have any opportunity to meet the said report. Thus from the material on record, it does not appear that any enquiry was ever held against the petitioner.

Sub-section (3) (a) of Section 16G of the U. P. Intermediate Education Act. 1921 provides that no teacher can be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments or served with notice of termination of service except with the prior approval in writing of the

Inspector. Section 21 of the U. P. Secondary Education Services Commission and Selection Boards Act, 1982 provides that prior approval of the District Inspector of Schools would be necessary to reduce emoluments of the teacher or to withhold his increment for any period. Regulations 31 to 45 of Chapter III of U. P. Intermediate Education Act deals with the question of punishment, enquiry and suspensions of the teacher which provides that the punishment can be inflicted only after the enquiry is held and the procedure for holding enquiry is laid down in Regulation 36 " which reads as follows :

"36. (1) The 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 which shall be so clear and precise as to give sufficient indication to the charged employee of the facts and circumstances against him. He shall be required within three weeks of the receipt of the charge-sheet to put in a written statement of his defence and to state whether he desired to be heard in person. If he or the inquiring authority so desires an oral enquiry shall be held in respect of such of the allegations as are not admitted. At that enquiry such oral evidence will be heard as that inquiring authority considers necessary. 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 : provided that the enquiring authority conducting the enquiry may for sufficient reasons to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof. The inquiring authority. conducting the enquiry may also separately from these proceedings, make his own recommendation regarding the punishment to be imposed on the employee.

(2) Clause (1) shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him.

(3) All or any of the provisions of clause (1) may for sufficient reasons to be recorded in writing be waived where there is difficulty in observing exactly the requirements thereof and those requirement can in the opinion of the inquiring authority be waived without injustice to the person charged."

8. The said regulation provides that the proposed ground, on which action is taken shall be reduced in the form of a definite charge or charges which shall be communicated to the employee charged. The charge should be clear and precise. He should be required to submit his reply within three weeks from the receipt of the charge-sheet and express as to whether he desired to be heard. If the charges are not admitted. In that event oral enquiry shall be held. At the enquiry, such oral evidence will be as that the Inquiry Authority shall consider it necessary. The charged employee if he so wants he may cross examine the witness or may give evidence in person or may call his witness. The Inquiry Authority, for reason to be recorded in writing, may refuse to call the witness. The Inquiry Authority is required to make its recommendation separately, recording its findings and recommendation of punishment. Such requirement is

to be followed in a manner which may not inflict injustice to the person charged. Except in cases where it is not possible to follow the procedure exactly. The same can be waived without causing any injustice to the charged employee.

9. Thus, it appears that in the present case, as observed earlier, the procedure laid down in Regulation 36 has not been followed in its spirit. In fact, the procedure has been waived to the prejudice of the petitioner inflicting injustice to him.

10. It is apparent from the record in the present case that three weeks" time after receipt of the charge-sheet was not given to the petitioner to put in his written statement of defence. Instead he was given only 3 days" time. Be that as it may, the petitioner had submitted his reply within 3 days. Therefore, such giving of lesser time may not be an infraction of the procedure contained in Regulation 36, Chapter III of the Regulation.

11. In the present case, the charges have been denied by the petitioner. Therefore, an enquiry was a necessity. Admittedly, no enquiry was held. No evidence was adduced in the enquiry in the presence of the petitioner. No witness was examined in his presence. Therefore, he had neither opportunity to inspect the materials used against him for preparing the enquiry report and defend his cause nor he had the liberty to adduce any evidence either by way of production of documents or by examining any witness. There is nothing to show that the proceedings contained any record of evidence. The statement of the finding and the grounds alleged in the enquiry report and the recommendation of punishment do not show that it was based on the record of the evidence as is necessary under sub-Regulation (I) of Regulation 36, Chapter HI of the said Regulation. It is not a case where the petitioner had absconded in order to attract sub-regulation (2). Even if the procedure is waived, in that event the enquiring authority has to record reasons in writing for waiving the requirements of sub-regulation (I) of Regulation 36 above. Such waiver of requirement under sub-regulation [I] is permissible when there are difficulties in observing exactly the requirements. There is nothing to indicate that there was any difficulty in observing the requirements exactly. Then again the waiver would be in respect of one or other part. But it cannot be a case of waiver of whole of the requirement. The waiver may be in respect of a particular part and that too without inflicting injustice on the person charged. The waiver should be to such an extent which will not work injustice to the person charged.

12. In the present case, the whole requirement of holding an enquiry after the receipt of the reply to the charge-sheet has been waived depriving the petitioner either to inspect the documents used against him or to adduce his own evidence either by production of documents or by examining his own witnesses. Thus, it is apparently a case of no enquiry no opportunity, it is clearly in violation of the requirement of sub-regulation (I) of Regulation 36, Therefore, no reliance can, at all be placed on the enquiry report, which is based on an assumed enquiry patently on the face of which it is apparently a case of no enquiry no opportunity.

While granting approval, the Commission was oblivious of this situation. The Commission had overlooked the grave and patent error apparent in the proceedings itself. The absence of non-fulfillment of the requirement of Regulation 36. Chapter III is so obvious and loud that the action of the Commission in granting approval cannot be supported. It was the duty of the Commission, while granting approval, to examine the decision making process. In the present case, the decision-making-process, patently, suffers from non-observance of the requirement of Regulation 36. This aspect having been thoroughly overlooked and omitted, it appears that the Commission had failed to apply its mind or in other words, it is a clear case of non-application of mind.

13. In the facts and circumstances of the case, the grant of approval contained in Annexure-11 and the resolution dated 12th of October. 1991 cannot be sustained and. are. liable to be quashed.

14. Let a writ of certiorari do accordingly, issue quashing the order dated 8th June, 1995 passed by the Commission communicated on 13th of June, 1995, contained in Annexure-11 and the resolution dated 12th of October. 1991 inflicting the punishment to the petitioner.

15. The application is, thus, allowed. However, it will be open to the respondents, if they are advised, to conduct a fresh enquiry in accordance with law. There will, however, be no order as to costs.