

(2007) 04 AHC CK 0345
In the Allahabad High Court
Case No : C.M.W.P. No. 4766 of 1981

Satendra Kumar Tyagi

APPELLANT

Vs

Deputy Director of Education, I Mandal and Others

RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 31, 35, 37

Citation : (2007) 7 AWC 7745

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : M.A. Zaidi, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—This writ petition is directed against the order dated 5.2.1981, passed by the Deputy Director of Education, I Mandal, Meerut-Respondent No. 1 allowing the appeal filed by Respondent Nos. 3 to 5 against the order of District Inspector of Schools and approving the resolution dated 14.2.1979 whereby the Petitioner was dismissed from service.

2. The Petitioner was Head Clerk in Kisan Mazdoor Inter College, Atfara, District Meerut. He was appointed as Assistant Clerk by the Manager of the aforesaid College on 1.8.1973 and was confirmed as such w.e.f. 1.8.1974. He was promoted to the post of Head Clerk w.e.f. 29.4.1978.

3. The case of the Petitioner is that on 26.6.1978, election of the office bearers and members of the Committee of Management of the College was held in which one Sri Chandra Kiran Singh Tyagi was elected as Manager of the College. The papers for approval of the aforesaid election were sent to the Respondent No. 2 on 27.6.1978 which was disputed by one Sri Jaswant Singh who claimed himself to be the elected member of the College. However, election of Sri Jaswant Singh was approved by Respondent No. 2 vide order dated 8.8.1978.

4. Thereupon, Original Suit No. 440 of 1978 was filed by Sri Chandra Kiran Singh Tyagi before Ist Additional Civil Judge, Meerut. An application for interim injunction was also moved in the said suit. Application for interim injunction was disposed of by the Additional Civil Judge with the observation that Sri Chandra Kiran Singh Tyagi was prima facie elected member of the College, but he was not in effective control of the affairs of the College and that since there was no prayer for mandatory injunction, no relief could be granted to him. However, District Inspector of Schools was directed to review his order dated 8.8.1978.

5. Thereafter, review application filed by Sri Chandra Kiran Tyagi was allowed vide order dated 21.8.1978 and he was recognized as Manager of the College vide order dated 13.10.1979. Validity and correctness of the aforesaid order dated 13.10.1979 was challenged in Civil Misc. Writ Petition No. 8207 of 1979 by Sri Jaswant Singh and Ors. which was dismissed vide judgment and order dated 9.1.1980, passed by this Court.

6. Sri Jaswant Singh challenged the aforesaid order of this Court before Hon''ble the Apex Court in Civil Appeal No. 206 of 1980. The aforesaid civil appeal was disposed of by Hon''ble the Apex Court vide judgment and order dated 28.1.1979. The operative portion of the order is as under:

We feel that the observations of the civil court in disposing of the interlocutory application were erroneous and subsequent proceedings by the District Inspector of Schools and the High Court are not sustainable. The civil court is seized of the matter and any interim relief which the parties may seek will have to be decided and adjudicated upon by the civil court. We set aside the order of the District Inspector of Schools on review and the order of the High Court. The parties would be at liberty to apply to the civil court and the civil court will dispose of the claims of the parties according to law.

7. When matter came up before the civil court, in view of amendment of Order XXXIX, Rules 1 and 2 of the CPC Code, it declined to issue any interim order. Sri Chandra Kiran Tyagi again approached Hon''ble the Apex Court for review of its aforesaid order, which is said to be still pending.

8. Original Suit No. 440 of 1978 is also said to have not been decided till date.

9. In view of above legal pronouncements, the Petitioner obeyed the orders of Sri Chandra Kiran Tyagi, who, in the opinion of the Petitioner was the validly elected Manager of the institution, in question.

10. It is alleged that the Petitioner fell ill and went on medical leave. However, in the meantime, Sri Jaswant Singh, who was annoyed with the Petitioner in collusion with the Principal served letter dated 5.9.1978 upon the Petitioner to immediately join his duties failing which, he would face dire consequences. As the Petitioner was seriously ill, he informed accordingly and did not join his duties.

11. It is stated that thereafter charge-sheet dated 15.11.1978 was served upon

the Petitioner and that he was not allowed to participate in the enquiry nor was afforded opportunity of being heard or to cross-examine the witnesses. The services of the Petitioner were dispensed with vide impugned order dated 9.1.1979. It is also alleged by the Petitioner that the copy of the alleged enquiry report dated 7.2.1979 was never served upon him. Vide resolution dated 14.2.1979, the Petitioner was dismissed from service.

12. When the matter went before the District Inspector of Schools for approval of the dismissal order of the Petitioner, he considered the entire case and directed reinstatement of the Petitioner vide order dated 3.5.1980 which order was challenged in appeal by Sri Jaswant Singh before Respondent No. 1 who allowed the appeal vide impugned order dated 5.2.1981.

13. A perusal of record of the case shows that copy of the enquiry report was not supplied to the Petitioner by the Committee of Management. This fact has been admitted by the Deputy Director of Education in his order dated 5.2.1981. Relevant portion of the order is as under:

14. In *Kanhaiya Lal v. District Inspector of Schools, Bareilly and Ors.* (1991) 2 UPLBEC 1106: 1991 AWC 596, it has been held that:

...The order terminating Petitioner's services is vitiated for non-compliance of natural justice. It is not disputed that the Petitioner was not afforded opportunity of hearing by the Committee of Management and that the report, if any, of the Enquiry Committee was not supplied to him, nor any evidence which could be read against him was made available to him. This has violated the principles of natural justice besides the procedural safeguard contemplated by Regulation 37 of Chapter III of the Regulations made under the Act. The action on the part of the Respondents was not in consonance with the principles of fair play. As such, the impugned order is liable to be quashed.

15. The Petitioner has been dismissed from service without prior approval of District Inspector of Schools, which is condition precedent under Regulation 31 of Chapter III of U. P. Intermediate Education Act. This view finds support from the decision in *Committee of Management, Janta Inter College, Karni, Farrukhabad v. District Inspector of Schools, Farrukhabad and Ors.* 1981 UPLBEC 135.

16. From perusal of record, it also appears that Sri Jaswant Singh was the Enquiry Officer and his appointment as such is in violation of Regulation 35 of Chapter III of U. P. Intermediate Education Act, 1921. This view finds support from the decision of Division Bench of this Court in *Ramesh Chandra Mishra v. U.P Secondary Education Services Commission, Allahabad*, 1990 (1) UPLBEC 488 wherein it has been held that:

In the instant case, Regulation 35, is relevant. It provides that on receipt of a complaint or an adverse report of fact of serious nature, the Committee may in the cases of teachers appoint Headmaster, Principal or Manager as the Enquiry Officer and in the case of Headmaster or Principal, as sub-committee can be

appointed with the instruction to submit report at the earliest.

17. Admittedly, no sub-committee was appointed to enquire into the matter. The Petitioner was Head Clerk of the institution and in his case, a sub-committee ought to have been appointed as Enquiry Officer. That having not been done, the enquiry proceedings are vitiated.

18. In view of what has been discussed above, it is crystal clear that the impugned orders are not sustainable in law and the Petitioner deserves to be reinstated in service with consequential benefits.

19. Accordingly, the writ petition is allowed. Impugned orders dated 5.2.1981, 14.2.1979 and 9.1.1979 contained in Annexures-XVI, X and VII respectively are hereby quashed. The Petitioner is entitled to be reinstated in service with all consequential benefits. No order as to costs.