
(2009) 12 AHC CK 0041
In the Allahabad High Court

Shiv Shanker Lal Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G, 16G(6), 16G(7)

Citation : (2010) 4 AWC 3278

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri K. K. Singh, learned Counsel holding brief of Sri I. B. Singh, senior advocate for the petitioner in Writ Petition No. 3876 (MS) of 2007 and Sri Somkartik Shukla, learned Counsel for the petitioner in Writ Petition No. 971 (SS) of 2008 and learned standing counsel.

2. With the consent of learned Counsel for the parties as common question and facts are involved in the above two writ petition as such both are heard together and disposed of by common judgment.

Brief Facts of Writ Petition No. 3876 (MS) of 2007:

3. The brief facts as arises out of Writ Petition No. 3876 (MS) of 2007 are that in the city of Lucknow there is an institution known as Janta Inter College, Alambagh, Lucknow (hereinafter referred as institution), which is governed by the provisions of U.P. Intermediate Education Act, 1921 and the Regulation framed therein as well as by the Payment of Salary Act, 1971 and Secondary Education Service Selection Board, 1982.

4. One Sri Shiv Shanker Lal Sharma working as Assistant Teacher (L.T. Grade) in the institution was placed under suspension by order dated 30.4.2007, passed by Manager of the Institution alongwith suspension order a charge-sheet was also served to the petitioner on the same day. Thereafter, the suspension order was

forwarded to the District Inspector of School, Lucknow for approval, however, the same had not been approved within the period of 60 days as provided u/s 16G(7) of the U.P. Intermediate Education Act, 1921. Further by order dated 24.7.2007, passed by the District Inspector of Schools, Lucknow, the same had been disapproved hence the present writ petition has been filed by the Committee of Management of the institution thereby challenging the order dated 24.7.2007, passed by the District Inspector of School, Lucknow. On 6.8.2007 this Court was pleased to pass the following interim order:

Till the date of next listing, implementation and operation of the impugned order dated 24.7.2007, passed by opposite party No. 3, as contained in Annexure-1, to the writ petition shall remain stayed.

5. The order dated 6.8.2007 was challenged by Sri Shiv Shanker Lal Sharma, who is impleaded as respondent in the said writ petition filed by the Committee of Management before this Court by Special Appeal No. 756 of 2007 and on 10.9.2007, the special appeal was dismissed with the following observations:

Heard Sri C.B. Tripathi for the appellant and Sri L. B. Singh for the respondents.

Order under appeal is an interlocutory order passed by learned single Judge by means of which the order revoking the suspension of a teacher passed by the D.I.O.S. has been stayed. Apart from the fact, it is an interlocutory order against which an appeal under Chapter VIII, Rule 5 of the High Court Rules would not lie. It is also a case of both the sides that the enquiry has already been completed and enquiry report has been submitted to the D.I.O.S. for approval by the Selection Board.

Under the circumstances, we do not interfere with the impugned order. We expect that the Selection Board shall take decision in the matter without any delay.

With the aforesaid observations, the appeal is dismissed.

Brief Facts of Writ Petition No. 971 (SS) of 2008:

6. The brief facts arises out of the Writ Petition No. 971 (SS) of 2008 filed by Shiv Shanker Lal Sharma are that he is regularly appointed as Assistant Teacher (L.T. Grade) in the institution. By order dated 30.4.2007, passed by the Manager of the Committee of Management he was placed under suspension alongwith suspension order a charge-sheet was also served on him.

7. Thereafter, the matter regarding his suspension was forwarded to the District Inspector of School, Lucknow for necessary approval as per provisions of Section 16G(7) of the U.P. Intermediate Education Act, 1921. However, District Inspector of School by order dated 24.7.2007 had disapproved the order dated 30.4.2007 by which he was placed under suspension in spite of the said fact the petitioner was not allowed to work and discharge his duties so the Writ Petition No. 971 (SS) of 2008 was filed before this Court with the following main relief:

(i) issue a writ order or direction in the nature of certiorari quashing the impugned suspension order and charge-sheet dated 30.4.2007, as contained in Annexure-1 to this writ petition.

(ii) issue a writ order or direction in the nature of certiorari quashing the impugned resolution dated 30.6.2007 including further proceeding pursuant thereto, after summoning the entire records from the respondents.

(iii) issue a writ order or direction in the nature of mandamus commanding the respondents to reinstate the petitioner in service on the post of Assistant Teacher with all consequential benefits alongwith full salary giving no effect of orders impugned in the writ petition.

8. This Court initially by order dated 9.4.2009 had dismissed the said writ petition taking into consideration the facts that the order dated 24.7.2007, passed by the District Inspector of School, Lucknow by which the order of suspension of Sri Shiv Shanker Lal Sharma was disapproved had already been challenged by the Committee of Management of the institution before this Court by way of Writ Petition No. 3876 (MS) of 2007 and this Court had stayed the said order as such no relief can be granted to the petitioner in the present Writ Petition 971 (S/S) of 2008 and it was also mentioned in the said order that specially in view of the fact that the petitioner (Shiv Shanker Lal Sharma) is also a party in the Writ Petition No. 3876 (M/S) of 2007. It was further observed by the Court while passing the order dated 9.4.2009 that the effective remedy for him would be if permissible in law, to approach the High Court as respondent in the writ petition filed by Committee of Management.

9. Aggrieved by the order dated 9.4.2009, passed by this Court in Writ Petition No. 99 (SS) of 2008, Shiv Shanker Lal Sharma challenge the same by way of Special Appeal No. 325 of 2009 and this Court on 9.9.2009 had allowed the special appeal with the following directions:

We, therefore, set aside the order dated 9.4.2009, passed by the learned single Judge and remand the matter to the learned single Judge having jurisdiction to decide the matter on merit.

Let this petition be connected with Writ Petition No. 3876 (MS) of 2007. Both the writ petitions be listed for hearing in the next week before appropriate Bench and the same shall remain on the Board till they are finally decided.

In the meantime the parties may exchange their affidavits.

The special appeal is allowed.

Submission by learned Counsel for the parties:

10. Sri K. K. Singh, learned Counsel holding brief of Sri I. B. Singh, senior advocate on behalf of petitioner In Writ Petition No. 3876 (MS) of 2007 while assailing the order dated 24.7.2007, passed by the District Inspector of School thereby disapproving the order of suspension dated 30.4.2007 had submitted

that once the disciplinary proceeding concluded in the matter for all practical purposes after submission of the inquiry report, issuance of show cause notice and the resolution of the Committee of Management dismissing the delinquent teacher (Shiv Shanker Lal Sharma) awaiting approval by the U.P. Secondary Education Services Selection Board, Allahabad then there is no occasion for District Inspector of School, Lucknow to exercise his power for inconsequential and fruitless purposes u/s 16G(7) of U.P. Intermediate Education Act.

11. So in view of the above said facts and keeping in view of the order passed by this Court dated 10.9.2007 in Special Appeal No. 756 of 2007 the District Inspector of School should not have passed the order dated 24.7.2007 and awaited for the decision of the Board.

12. In view of the above said facts, the learned Counsel for the petitioner Sri K. K. Singh has submitted that as the matter regarding termination of Shiv Shanker Lal Sahrma has already been referred to the Board and is pending till date and no decision has been taken by the Board and charges, which are mentioned in the charge-sheet are proved during enquiry proceeding so the order passed by the District Inspector of School for disapproving the order of suspension of Shiv Shanker Lal Sharma is arbitrary in nature and liable to be set aside.

13. Sri Somkartik Shukla, learned Counsel for the petitioner in Writ Petition No. 971 (SS) of 2008 submits that he is not pressing the relief Nos. 1 and 2 as taken by the petitioner (Shiv Shanker Lal Sharma) in the instant writ petition and the relief No. 3, is being pressed.

14. Sri Somkartik Shukla, learned Counsel for the petitioner further submits that in view of provision as contained in Section 16G(7) of the Intermediate Education Act, the order of suspension unless approved in writing by the District Inspector of Schools, shall not remain in force for more than 60 days so the order of suspension dated 30.4.2007 become inoperative after sixty days not being approval in writing by the District Inspector of Schools within 60 days, moreover by order dated 24.7.2007, the District Inspector of Schools had disapproved the same as such the petitioner is entitled to be paid salary and be permitted to work as teacher, staying of the disapproval order, by this Hon"ble Court could not be interpreted by the respondent as revival of order of suspension.

15. He further submits that the order of suspension passed against the petitioner dated 30.4.2007 had become inoperative and was not in force after expiry of 60 days not being approved by the District Inspector of Schools, subsequent disapproval by the District Inspector of Schools, being challenged by the Committee of Management of institution in the Writ Petition No. 3876 (MS) of 2007 and the order dated 6.8.2007, passed by this Court in the said writ petition is not permissible under law in view of the decision of the Division Bench of this Court, Smt. Rekha Sharma Vs. Committee of Management, Sarvodaya Kanya Inter College and Others, , in these circumstances the action on the part of the Committee of Management of the institution thereby treating the Shiv Shanker

Lal Sharma under suspension and depriving him the benefit of the statutory provisions is an action, which is without jurisdiction and contrary to law.

16. Sri Shukla further submits that the resolution dated 30.6.2007 by the Committee of Management dismissing the service of Shiv Shanker Lal Sharma without any show cause in pursuance to ex parte arbitrary enquiry without affording any opportunity to him, still awaiting approval and being arbitrary and based on no material, in contravention of principles of natural justice, is illegal void and without jurisdiction as such liable to be quashed after being summoned. He further submits that Writ Petition No. 3876 (MS) of 2007 is liable to be dismissed and Writ Petition No. 971 (SS) of 2008 filed by Shiv Shanker Lal Sharma be allowed and the Committee of Management of the institution be directed to allow the petitioner to work and discharge his duties on the post of Assistant Teacher, L.T. Grade and pay him his regular salary each and every month for the said post.

17. I have heard learned Counsel for the parties in both the writ petitions as well as learned standing counsel and perused the record.

Findings and Conclusions:

18. Admittedly as per the undisputed facts of the present case in the institution in question Shiv Shanker Lal Sharma was working as L.T. Grade Teacher was suspended by order dated 30.4.2007, passed by Manager of Committee of Management and charge-sheet was also served on him, thereafter, the said suspension order was forwarded by the Committee of Management to the District Inspector of School for his approval as per the provisions as provided u/s 16G(7) of the U.P. Intermediate Education Act, 1921.

19. However, the District Inspector of School had not approved the said suspension order within time as provided u/s 16G of the Act later on by order dated 24.7.2007 had disapproved the same.

20. Section 16G(6) of the Act provides that where any Head of the institution or Teacher is suspended by the Committee of Management, the matter shall be reported to the District Inspector of Schools within seven days from the date of order of suspension, and the report shall contain such particulars as may be prescribed and be accompanied by all relevant documents. Section 16G(7) of the Act further provides that no order of suspension shall, unless approved in writing by the District Inspector of Schools, remain in force for more than 60 days from the date of such order and the order of the Inspector shall be final and shall not be questioned in any Court. Section 16G(7) is quoted hereinbelow:

16G. Conditions of Service of Heads of Institutions, teachers and other employees.-(7) No such order of suspension shall, unless approved in writing by the Inspector, remain in force for more than six days from the date of commencement of Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975, or as the case may be, from the date of such order, and the order of the

Inspector shall be final and shall not be questioned in any Court.

21. A Full Bench of this Court in Chandra Bhushan Mishra v. District Inspector of Schools and Ors. (1995) 1 UPLBEC 460 : 1995 (2) AWC 749, has held that in the absence of approval by the District Inspector of Schools to the suspension order, it becomes inoperative after 60- days though it may become effective again if it is subsequently approved by the District Inspector of Schools.

22. In view of above settled proposition of law as in the instant case Shiv Shanker Lal Sharma was placed under suspension by order dated 30.4.2007 while working in L.T. Grade Teacher in the institution and the same was not approved by the District Inspector of School within the statutory period of limitation as provided u/s 16G(7) of the Act. The order of suspension become inoperative after a period of 60 days. Further in the present case, the District Inspector of School had disapproved the order of suspension passed by the Committee of Management by order dated 24.7.2007. So it logically follows that there is no order of suspension thereafter as the order of suspension has lost his life by operation of law.

23. Further in these circumstances, the matter regarding passing of the interim order dated 6.8.2007, passed by this Court in writ petition filed by the Committee of Management thereby staying operation of the order of suspension dated 24.7.2007, passed by the District Inspector of School thereby disapproving the order of suspension dated 30.7.2007 is not permissible under law as held by Division Bench of this Court in the case of Smt. Rekha Sharma Vs. Committee of Management, Sarvodaya Kanya Inter College and Others, , as under:

The stay order passed by the learned single Judge on 14.9.1998 in Civil Misc. Writ Petition No. 29575 of 1998 is under challenge in this appeal filed by respondent No. 3 of the writ petition. In the writ petition filed by respondent Nos. 1 and 2 herein, the order of the District Inspector of Schools, Muzaffarnagar, dated 6.7.1998, disapproving the order of the Committee of Management suspending the appellant was challenged. The said order was passed after sixty days the suspension order. By the impugned order passed on 14.9.1998 operation of the order dated 6.7.1998 has been stayed. The consequential position that emerges from the order is that the order of suspension, which had become ineffective by efflux of time (60 days), is sought to be served by the said order, which is, in our considered view, is not permissible under law. We feel that the interest of justice will be served by vacating the order of stay and directing the expeditious disposal of the writ petition.

24. The same view was further reiterated in the case of Madan Kant Sharma Vs. Committee of Management, Anglo Sanskrit Inter College and Others, .

25. In the case of Tej Narain Singh Vs. State of U.P. and Others, , a Division Bench of this Court has held that:

Counsel for the appellant contends that the period of 60 days from the date of

suspension of the petitioner had expired in the month of June, 2008 itself and, therefore, the learned single Judge was not justified in staying the order of the District Inspector of Schools disapproving the suspension of the Principal concerned. Reliance has been placed upon the Full Bench judgment of this Court in the case of Chandra Bhushan Misra v. District Inspector of Schools, Deoria and Ors. (1995) 1 UPLBEC 460 : 1995 (2) AWC 749, wherein it has been held that the order of suspension would lose its life automatically after expiry of sixty days from the communication of the same unless it is approved in writing by the District Inspector of Schools. However, it has been clarified that the District Inspector of Schools does not lose the power to approve the suspension even thereafter.

However, in the facts of the present case since decision to suspend the Principal has been disapproved by the District Inspector of Schools, it logically follows that there is no order in writing by the District Inspector of Schools approving the order of suspension till date. Consequently, the suspension order has lost its life by operation of law.

26. In the light of the above said facts once the order of suspension dated 30.4.2007 by which Shiv Shanker Lal Sharma was placed under suspension was not approved by the District Inspector of School within the statutory period of 60 days as provided u/s 16G(7) of the Act so the suspension order had lost its life by operation of law and further the same was also disapproved by the District Inspector of School, Lucknow by order dated 24.7.2007. In these circumstances, the action on the part of the Committee of Management of the institution thereby not allowing Shiv Shanker Lal Sharma to work and discharge his duties on the post of Assistant Teacher, L.T. Grade in the institution in question and not paying him salary each and every month for the said purposes is an action, which are contrary to law.

27. For the foregoing reasons, the Writ Petition No. 3876 (M/S) of 2007 filed by the Committee of Management, Janta Inter College, Alambagh, Lucknow lacks merit and is dismissed.

28. Writ Petition No. 971 (S/S) of 2008 filed by Shiv Shanker Lal Sharma is disposed of with the direction to Committee of Management, Janta Inter College, Alambagh, Lucknow to allow the petitioner to work and discharge his duties on the post of Teacher, L.T. Grade in the institution and paying the payment each and every month.

29. Further, as the matter with regard to termination of Shiv Shanker Lal Sharma, L.T. Grade Teacher of the institution has already sent to the Board for approval and the same is pending, so keeping in view the direction issued by this Court on 10.9.2007 in Special Appeal No. 756 of 2007, Shiv Shanker Lal Sharma v. Committee of Management and Ors. that "We expect that the Selection Board shall take decision in the matter without any delay" the said authority is directed to take the decision in the matter in accordance with law within a period of three

months from the date of receipt of certified copy of this order.

No order as to cost.