

(2005) 05 AHC CK 0079

In the Allahabad High Court

Case No : Writ Petition No's. 13853 of 1987, 14323 of 2001, 42900, 54056 of 2002 and 11273 of 2004

Shri Prakash Dwivedi

APPELLANT

Vs

District Inspector of Schools, U.P. Secondary Education
Services Commission and Committee of Management of
D.A.V. Intermediate College

RESPONDENT

Date of Decision : 27-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 172(2)
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 5, 6(3)
Uttar Pradesh Secondary Education Service Commission (Procedure for Approval of Punishment) Regulations, 1985 — Regulation 5, 8
Uttar Pradesh Secondary Education Service Commission (Procedure for Approval of Punishment) Rules, 1985 — Rule 8
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 21, 33A(1C), 35

Citation : (2005) 4 AWC 3349 : (2005) 4 ESC 2482

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Wajahat Husain Khan, Rishikesh Tripathi, P.N. Saxena and Puneet Kumar Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—A clear vacancy of a teacher in Commerce in L.T. Grade arose in D.A.V. Intermediate College, Banda. The Committee of Management appointed Sri Prakash Dwivedi on 1.3.1986 on an adhoc basis up to the period 20.5.1986 or till such time as a regular appointee of the Commission was appointed, whichever was earlier. This appointment of Sri Prakash Dwivedi was approved by the District Inspector of Schools. The appointment of Sri Prakash Dwivedi came to an end on 20.5.1986, even though, no regular appointment was made by the Commission. According to Sri Prakash Dwivedi, when the college re-opened after the vacation, the Committee of Management requested him to

continue and therefore Sri Prakash Dwivedi, continued to teach, but the salary was not paid. It transpires that the Committee of Management by a letter dated 16.8.1986 again sought permission from the District Inspector of Schools for making an adhoc appointment which was granted by an order dated 29.8.1986. On this basis, the post was advertised on 9.10.1986 and Sri Prakash Dwivedi was again selected. The management sought approval of this appointment which remained pending before the District Inspector of Schools. In the meanwhile, Sri Prakash Dwivedi filed writ petition No. 6704 of 1987 praying for a writ of mandamus directing the District Inspector of Schools to treat Sri Prakash Dwivedi as continuous in service till his services were terminated in accordance with law or till a candidate recommended by the Commission or the Board joins the said post. Sri Prakash Dwivedi further prayed that the salary should also be paid to him till a regularly selected candidate was appointed by the Commission. This petition was disposed of at the admission stage itself without inviting any counter affidavit either from the District Inspector of Schools or from the Committee of Management. It was contended in the said writ petition that even though his appointment came to an end on 20.5.1986 but he continued to work on the request of the Committee of Management on the re-opening of the institution and that his salary from 21.5.1986 onwards was not paid. This Court by an *ex parte* judgment dated 9.7.1987 disposed of the writ petition at the initial stage itself, without inviting a counter affidavit either from the District Inspector of Schools or from the Committee of Management, and, directed the District Inspector of Schools to reconsider the case of the petitioner with regard to the payment of salary, in the event, the services of Sri Prakash Dwivedi had not been terminated in accordance with law and, that no selection of a teacher had been made by the Commission. Based on the aforesaid direction, the District Inspector of Schools considered the matter and by an order dated 29.6.1987 rejected the representation of Sri Prakash Dwivedi. The District Inspector of Schools held that the appointment of Sri Prakash Dwivedi was purely on an adhoc basis which came to an end on 20.5.1986 and which was in accordance with the terms and conditions of the appointment letter. The District Inspector of Schools further held that after reopening of the institution after the summer vacation, Sri Prakash Dwivedi did not attend the institution and, therefore, was not entitled for the salary from the period 20.5.1986 onwards. This order was challenged by Sri Prakash Dwivedi by means of writ petition No. 13853 of 1987 which was entertained and an interim order dated 22.7.1987 was passed staying the operation of the order of the District Inspector of Schools. This Court further directed the District Inspector of Schools to pay the salary w.e.f. 20.5.1986. Subsequently, the interim order dated 22.7.1987 was modified to the effect that Sri Prakash Dwivedi shall not be entitled for the salary for the period during which he had not worked in the institution. Based on the interim orders, Sri Prakash Dwivedi was allowed to join the institution w.e.f. 24.11.1987 and this date was also recorded in his Service Book, as the date of joining.

2. After 13 years, Sri Prakash Dwivedi filed an application u/s 156(3) of the

Criminal Procedure Code before the Chief Judicial Magistrate, Banda alleging that the Principal of the institution had committed a forgery in the Service Book of Sri Prakash Dwivedi and had wrongly recorded 24.11.1987 as the date of his joining. The Principal of the institution preferred a criminal revision and his arrest was stayed till the submission of the report u/s 172(2) of the Criminal Procedure Code. The Committee of Management took a serious view of this matter and accordingly resolved on 13.1.2001 to suspend Sri Prakash Dwivedi and by an order dated 1.2.2001 suspended Sri Prakash Dwivedi and forwarded the papers to the District Inspector of Schools for approval. The District Inspector of Schools by an order dated 30.3.2001 disapproved the suspension order on the ground that the Principal was a member of the Committee of Management which resolved to pass the suspension order and that the complaint made by Sri Prakash Dwivedi was against the Principal and that the Principal should not have been a party to that resolution. The order of the District Inspector of Schools dated 30.3.2001 was challenged by the Committee of Management by means of writ petition No. 14323 of 2001. This Court issued an interim order dated 17.4.2001 staying the order of the District Inspector of Schools. As a result of the interim order, Sri Prakash Dwivedi remained under suspension.

3. Subsequently, a charge sheet was issued and an Enquiry Officer was appointed. Since Sri Prakash Dwivedi did not participate in the enquiry proceedings, the Enquiry Officer submitted his report which was considered by the Committee of Management and it decided to give an opportunity of hearing to Sri Prakash Dwivedi before taking a final decision. Since Sri Prakash Dwivedi did not turn up inspite of receiving the notice, the Committee of Management resolved on 4.2.2002 to terminate the services of Sri Prakash Dwivedi as a teacher of the institution and by letter dated 12.2.2002 forwarded the papers to the U.P. Secondary Education Service Selection Board, Allahabad for approval. While the matter was pending consideration before the Board, the District Inspector of Schools passed an order dated 13.9.2002 u/s 5 of the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 holding that the salary account of the institution would be operated by the Inspector alone. The District Inspector of Schools passed the aforesaid order on the ground that the order of termination of Sri Prakash Dwivedi was passed by the Management without seeking previous approval from the Board and, therefore, the order of termination was void and Sri Prakash Dwivedi was, therefore, entitled for the salary. Further the Committee of Management refused to send the salary bill of Sri Prakash Dwivedi, consequently, the impugned order of single operation of the salary account was passed. The order dated 13.9.2002 passed by the District Inspector of Schools was challenged by the Committee of Management in writ petition No. 42900 of 2002 which was entertained and an interim order dated 21.10.2002 was passed staying the operation of the order of the District Inspector of Schools dated 13.9.2002. This Court further directed that Sri Prakash Dwivedi was entitled to receive the suspension allowance till the matter of approval was decided by the

Board. It transpires that Sri Prakash Dwivedi filed a Special Appeal No. 1214 of 2002 which was dismissed by a judgment dated 13.1.2002.

4. Pursuant to the order dated 13.9.2002 passed by the District Inspector of Schools, a show cause notice dated 27.9.2002 was issued by the Joint Director of Education u/s 6(3) of the Payment of Salaries Act, 1971 to the Committee of Management to show cause why the management should not be suspended and why an Authorised Controller be not appointed for not complying with the order of the District Inspector of Schools dated 13.9.2002. Another show cause notice, for the same reason, was again issued by the Joint Director of Education on 23.10.2002. Subsequently, the Joint Director of Education issued an order dated 10.12.2002 u/s 6(3) of the Payment of Salary Act, 1971 appointing the Principal of Government Inter College, Matundh, Banda as the Authorised Controller and by another order dated 11.12.2002, the Inspector attested the signature of the said Principal and directed the Principal to take over the charge of the institution. These orders were again challenged by the Committee of Management in writ petition No. 54056 of 2002 which was again entertained and an interim order dated 16.12.2002 was passed staying the order of the Joint Director of Education dated 10.12.2002 and the order of the District Inspector of Schools dated 11.12.2002.

5. Eventually, the Board passed an order dated 11.2.2004 disapproving the order of termination issued by the Committee of Management against Sri Prakash Dwivedi, and imposed a minor penalty of stoppage of two increments. This order of the Board was challenged by the Committee of Management in writ petition No. 11273 of 2004, in which an interim order dated 24.3.2004 was passed staying the operation of the order dated 11.2.2004 passed by the Board. As a result of this interim order, Sri Prakash Dwivedi continued to remain under suspension.

6. Heard Sri Rishikesh Tripathi, the learned counsel for Sri Prakash Dwivedi and Sri P.N. Saxena, the learned Senior Counsel assisted by Sri Puneet Kumar Gupta, the learned counsel for the Committee of Management and Standing Counsel for the District Inspector of Schools and Joint Director of Education.

7. Taking up each writ petition, the learned counsel for Sri Prakash Dwivedi submitted that the order dated 29.6.1987 impugned in writ petition No. 13853 of 1987 was illegal and was liable to be quashed on the ground that the District Inspector of Schools did not comply with the direction of this Court dated 9.3.1987 and that his services was never terminated as was clear, from the fact that the Committee of Management eventually terminated his services on 4.2.2002. The learned counsel further submitted that as per the policy dated 28.1.1987, the services of a teacher was liable to continue till a regular selection was made by the Commission. In support of his submission the learned counsel relied upon the decision in Shiva Chandra Mishra and Ors. v. DIOS 1986 UPLBEC 248, Murli Prasad and Anr. v. State of UP. and Ors. 1986 UPLBEC 274, Ramji Pathak and Anr. v. DIOS and Anr. 1986 UPLBEC 344 and Committee of

Management v. DIOS, Mainpuri and Anr. 1995 UPLBEC 496, wherein it was held that if a teacher was working on an adhoc basis and continues in service and no fresh appointment was made by the Commission, in that event, such a teacher would not cease to continue in service on 30th June, but would continue till a candidate was recommended by the Commission or the candidate joined pursuant to the said recommendation. The learned counsel submitted that in view of the aforesaid decision, Sri Prakash Dwivedi was entitled to continue in service and was further entitled to be paid his salary for the period 20.5.1986 till 24.11.1987 and liable to be treated in service for the said period.

8. In my view, the submission of the learned counsel is devoid of any merit, Sri Prakash Dwivedi is not entitled to the relief claimed. A clear finding has been given by the District Inspector of Schools that after the re-opening of the institution, i.e., after the summer vacation, Sri Prakash Dwivedi did not join the institution, and did not work and, therefore, his appointment as an adhoc teacher came to an end on 20.5.1986 under the terms and conditions of the appointment letter which was in accordance with law. The Committee of Management in its counter affidavit has also submitted that Sri Prakash Dwivedi never worked after 21.5.1986. It is relevant to point out, that at this stage there was no dispute between Sri Prakash Dwivedi and Committee of Management. Therefore, there is no reason to dispute the affidavit of the Committee of Management. Consequently, the findings given by the District Inspector of Schools in his order dated 29.6.1987, being based on findings of fact, requires no interference by this Court. It is clear, that Sri Prakash Dwivedi did not work between the period from 20.5.1986 till 24.11.1987 and, therefore, was not entitled for any salary for this period. In view of the aforesaid, Sri Prakash Dwivedi is not entitled to any relief.

9. In so far as the order of the District Inspector of Schools is concerned disapproving the suspension order, in my opinion, writ petition No. 14323 of 2001 has become infructuous, as eventually, the Committee of Management resolved to terminate the services of Sri Prakash Dwivedi. It is, however, submitted that the District Inspector of Schools was not justified in disapproving the order of suspension. The issuance of the suspension order was justified by the Committee of Management. The entry in the service book recording 24.11.1987 as the date of joining was recorded and thereafter signed by Sri Prakash Dwivedi on 30.12.1988 and, therefore, he knew about the existence of this entry as early as on 30.12.1988. For thirteen years he did not protest and suddenly out of the blue he filed a complaint u/s 156(3) Cr.P.C. against the Principal and a clerk. In my view, the action of Sri Prakash Dwivedi justified the issuance of the suspension order at that stage.

10. Similarly, writ petition No. 42900 of 2002 challenging the order of the District Inspector of Schools whereby the order u/s 5 of the Payment of Salaries Act, 1971 was passed has also become infructuous inasmuch as the District Inspector of Schools subsequently by its order dated 14.11.2002 recalled its order dated 13.9.2002.

11. In so far as writ petition No. 54056 of 2002 is concerned, the impugned order dated 10.12.2002 issued by the Joint Director of Education appointing an authorised controller is wholly illegal and without any justification. The impugned order was issued on the sole ground that the salary bill of Sri Prakash Dwivedi was not being prepared and that the Committee of Management was not following the order of the District Inspector of Schools. In my opinion, the Joint Director of Education could not issue such an order u/s 6(3) of the Payment of Salaries Act 1971. Appointing an authorised controller is a serious business and such an order should not be passed merely because the salary bill of Sri Prakash Dwivedi was not being prepared. The Authority had to ensure that there was a wilful default on the part of the management. In the present case, there was none. The Joint Director of Education had lost sight of the fact that the directions of the District Inspector of Schools was stayed by the High Court and therefore, there was no question of compliance of the said order by the Committee of Management. Further no show cause notice or opportunity of hearing was provided to the management. In view of the aforesaid, the order of the Joint Director of Education 10.12.2002 cannot be sustained and is quashed. The consequential order dated 10.12.2002 passed by the District Inspector of School is also quashed.

12. Coming to the last petition, being writ petition No. 11273 of 2004, the Committee of Management has challenged the order dated 11.2.2004 by which the Board had disapproved the resolution of the Committee of Management for terminating the services of Sri Prakash Dwivedi and instead had imposed a minor penalty of stoppage of two increments. The learned counsel for the management submitted that the Board u/s 21 of the U.P. Secondary Education Services and Selection Board Act 1982 has the power either to approve or disapprove the recommendation of the Committee of Management and, had no power to reduce or enhance the quantum of punishment proposed by the Committee of Management. The learned counsel submitted that if the Board did not agree with the recommendation of the Committee of Management, in that event, the Board had no option but to remit the matter back to the management for reconsideration, but in no case, the management had the power to reduce or enhance the quantum of punishment.

13. In support of his submission, the learned counsel has relied upon a decision of this Court in Managing Committee of Gochar Krishi Inter College and Another Vs. U.P. Secondary Education Services Selection Board, Allahabad and Others, in which it was held that the Board while exercising the power u/s 21 of the Act could either approve or disapprove the recommendation of the Committee of Management and that the Board had no power to reduce or enhance the quantum of punishment.

14. On the other hand the learned counsel for Sri Prakash Dwivedi submitted that the powers of the Board was wide u/s 21 of the Act read with Rule 8 of the U.P. Secondary Education Service Commission (Procedure for Approval of

Punishment) Regulations 1985 and that the Board had power not only to approve or disapprove the proposed punishment but could issue any other direction when would include reduction or enhancement of the quantum of punishment. In support of his submission, the learned counsel placed reliance in Committee of Management, Bishambhar Saran Vaidic Inter College v. U.P. Secondary Education and Raja Ram Shukla Vs. U. P. Secondary Education Services Commission, Allahabad and others,

15. Before dealing with the rival submissions made by the parties, it would be appropriate, to consider the provisions of Section 21 of U.P. Secondary Education Service Selection Board Act 1982 which reads as under:

"21. Restriction on dismissal etc. of teachers.- The Management shall not, except with the prior approval of the Board dismiss any teacher or remove him from service or serve on him any notice of removal from service, or reduce him in rank or reduce his emoluments or withhold his increment for any period whether temporarily or permanently and any such thing done without such prior approval shall be void."

16. Under the Rule making power of the State Government contemplated u/s 35 of the Act of 1982, the Uttar Pradesh Secondary Education Services, Commission (Procedure for Approval of Punishment) Regulations 1985 were framed to carry out the purpose of Section 21 of the Act. Regulation 8 states as under:

"8. Disposal by Commission.- The Commission shall after due consideration approve or disapprove the punishment proposed or may issue any other directions as may be deemed fit in the case."

17. This Court in Raja Ram Shukla's case (supra) held that the Board had the power not only to approve or disapprove the punishment but could modify or alter the proposed punishment. The Court while considering the provisions of Section 21 of Act read with Regulation 8 held:

"A reading of the above provisions contained in the Regulation, referred to above, would make it clear that the Commission has to apply its mind to all the facts and circumstances after wading through the various documents required to be submitted before it under Regulation 5. After due consideration of the matter, the Commission may approve or disapprove the punishment proposed by the Committee of Management or it may issue " any other direction deemed fit in the case. " Thus, Regulation 8 gives three alternatives to the Commission, firstly, it may accept as such the recommendation of the Committee of Management, secondly, it may rejected the recommendation of the Committee of Management and thirdly, it may issue any other direction as may be considered fit in the facts and circumstances, meaning thereby, the recommendation made by the Committee of Management may be modified or altered. The power to affirm or to reverse a particular recommendation implies that the authority has also the power to modify."

18. The Supreme Court in the case of Committee of Management (supra) while considering Section 21 of the Act held:

"According to us, in view of the provisions of the said Section 21, the Commission while deciding whether or not to grant approval for the removal of a teacher, has necessarily to go into the merits of the case and apply its mind independently to the question whether the evidence on record justified the removal. It must be remembered that the Commission appointed under the Act is a high-powered body and as a body entrusted with the important function of supervising the actions taken by the Management against the teachers, it has to discharge its responsibility circumspectively. It cannot exercise its function effectively unless it scrutinises the material and applies its mind carefully to the facts on record. Hence if the Commission goes through the entire record and the merit of the action taken, its action cannot be faulted."

19. From a combined reading of Section 21 of the Act read with Regulation 8 of the Regulations of 1985, it is clear, without doubt, that the Board has the power to approve or disapprove the proposed punishment or may issue any other directions which impliedly includes the power to modify or alter, i.e., either reduce or enhance the proposed punishment. If the contention of the management that the Board has no jurisdiction to deviate from the recommendation of the management, in that event the Board would be left helpless. A reading of the various provisions of the Act and the Regulations indicate that the Board is a high powered body and has been constituted for regulating the recruitment and appointment of teachers and in matters relating to punishment in respect of teachers. The Board was entrusted to supervise the action taken by the management against the teachers.

20. In view of the aforesaid, the Board had the power not only to approve or disapprove the proposed punishment but also had the power to reduce or enhance the punishment. The judgment cited by Managing Committee, namely, the Managing Committee of Gochar (supra) did not take into consideration the Regulations of 1985 and also did not consider the judgment of the Supreme Court.

21. Learned counsel for the management submitted that assuming that the Board had the power to reduce the proposed punishment, nevertheless, the Board must give reasons for reducing the punishment and show and justify that the punishment proposed did not commensurate with the misconduct. In this regard the learned counsel placed reliance in Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, in which the Supreme Court held that the Court must give reasons for holding that the punishment did not commensurate with the charges and that the mere statement that the punishment was disproportionate to the misconduct was not, by itself, sufficient. The submission of the learned counsel is devoid of any merit. From a perusal of the impugned order of the Board, it is clear, that the Board had gone into the merits of the case in detail and had applied its mind independently and

scrutinised the material on the record and considered in depth all the charges levelled against Sri Prakash Dwivedi. The Board after considering the evidence on record concluded that only two charges stood proved against Sri Prakash Dwivedi and other charges was not proved by the Management and therefore, opined that a punishment of stoppage of two increments would be sufficient.

22. This Court has also perused the charges levelled against Sri Prakash Dwivedi. The charges which have been proved against Sri Prakash Dwivedi is with regard to the initiation of criminal proceedings against the Principal and with regard to payment of additional pay for taking additional classes. In my view, the charges are not that serious which would justify inflicting a major penalty of termination of the service. In my view, the Board was justified in reducing the proposed punishment of the termination of the service with that of stoppage of two increments. In view of the aforesaid, the action of the Committee of Management in proposing the punishment of the termination of the services of Sri Prakash Dwivedi was not justified. Consequently, the Committee of Management is not entitled to the relief claimed.

23. Since Sri Prakash Dwivedi is working since 1987, continuously on the basis of an interim order, his services are deemed to be regularised u/s 33-A (1-C) of the Act of 1982. In this regard, I direct the authority concerned to pass appropriate orders regularising the services of Sri Prakash Dwivedi within two months from the date of receipt of a certified copy of this judgment. Since I have upheld the order of the Board, I further direct that Sri Prakash Dwivedi would be entitled to full salary from the date of the order of the Board i.e., w.e.f. 4.2.2004.

24. In view of the aforesaid, writ petition No. 13853 of 1987 is dismissed, writ petition No. 14323 of 2001 and writ petition No. 42900 of 2002 are dismissed as infructuous, writ petition No. 54056 of 2002 is allowed and writ petition No. 11273 of 2004 is dismissed.

25. In the circumstances of the case, parties will bear their own cost.