

(1992) 09 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2824 of 1992

S.K. Sharma

APPELLANT

Vs

Director Technical Education and Others

RESPONDENT

Date of Decision : 02-09-1992

Acts Referred:

Uttar Pradesh Pravidhik Shiksha Adhiniyam, 1962 — Section 22G, 22G2, 22Q2, 23, 23(2)

Citation : (1993) 1 AWC 78

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : Ramesh Upadhyay, for the Appellant;

Final Decision : Allowed

Judgement

M.L. Bhat, J.—The Petitioner challenges the order of approval recorded by the Respondent No. 1 on the recommendation of the committee of Management, Digamber Jain, Polytechnic, Baraut, District Meerut (hereinafter called as "the institution") and the consequential order of dismissal dated 26-12-1991 passed by the Respondent No. 2, the Committee of Management of the institution- This Case has a chequered history and for property appreciation of facts it is necessary to go into the background of the Case.

2. The Petitioner is said to have been the Principal of the institution. He is said to have applied for leave without pay by his letter dated 15-12-1987 for going aboard (Jordan) in connection with some project work, which was assigned to him by some contractors, who were Indian builders executing the work in that country. He was granted one years" leave only which had to expire on 30-12-1988. He applied for extension of leave, which was rejected However, he did not join the Institution after the expiry of his leave but he joined his duties on 28-2-1989 i.e. about two months after the expiry of leave. Resuming his work as Principal and after working for some time in the institution the Petitioner is said to have applied for leave again by his application dated 15-2-1990. He

wanted to go aboard in connection with the fulfilment of his previous commitment. The Chairman directed on 16-2-1990 to place the said application in the next meeting of the committee of management. The Petitioner was ex officer Secretary of the committee of management also. The meeting of the committee of management did not take place immediately, so the Petitioner is said to have left the institution on 28-2-1990 and went to Jordan after handing over the charge to one of the junior most teachers of the institution. The Petitioner is said to have met the Chairman of the committee of management also and requested him to allow him to go abroad but he refused to sanction the leave without approval of the committee of management. The Petitioner is said to have addressed a letter to the Chairman of the committee of management informing him about his departure for Jordan. Thereupon the Petitioner was suspended on 30-3-1990 and he was served with a notice to show cause why necessary disciplinary action be not taken against him on the charges mentioned in the notice. The show cause notice was replied by the Petitioner through his Counsel. Thereupon the committee of management in its meeting dated 22-6-1990 appears to have appointed one Ram Krishna Agarwal, Proprietor, Harsh Engineering works, Surajkund, Meerut as enquiry officer and the said enquiry officer was asked to enquire into the charges leveled against the Petitioner in the suspension order dated 30-3-1990. The Petitioner as also his Counsel Sri S.N. Upadhyaya were served. The enquiry officer submitted a report holding the charges as proved against the Petitioner on 17-8-1990. Copy of the enquiry report was sent to the Petitioner also allowing him time upto 30-9-1990 for filing his reply. The matter was taken up on 27-10-1990 by the committee of management again and the Petitioner was found guilty of the charges and he was called upon by a notice dated 2-12-1991 to show cause within 15 days of the receipt of notice why the proposed punishment of dismissal from service be not imposed upon him. The notice was served on the Petitioner through his Counsel Sri Upadhyaya. Sri Upadhyaya wrote a letter on behalf of the son of the Petitioner dated 9-3-1991 asking further one month's time to enable him to submit his reply to the show cause notice. The Committee of Management thereupon is said to have informed the Petitioner on 23-4-1991 that in view of the Director's letter dated 9-4-1991 approving the decision of the committee of management the Petitioner's services are terminated with effect from 30-3-1990. Against this order the Petitioner appears to have filed writ petition No. 17904 of 991. The said writ petition was finally decided by this Court on 24-9-1991. The Petitioner appears to have raised four arguments in that writ petition. It was contended by him that the Petitioner was not afforded reasonable opportunity of showing cause to the show cause notice as contemplated by Section 22-G(2) of the U.P. Pravidhik Shiksha Adhiniyam, 1962; and secondly, it was contended by him that no regulations as contemplated by Section 23(2)(n) of the Adhiniyam were framed with regard to the conditions of service of Principals and teachers of affiliated institutions, which has resulted in conferral of arbitrary, unrestricted and unguided power upon the committee of management and the Director of Technical Education. Thirdly, it was contended that the

Petitioner's services were terminated on malafide ground at (he behest of Sri Kailash Chand Jain Acting Chairman of the institution and fourthly, it was submitted that the approval was accorded by the Director of Technical Education to the resolution dismissing the Petitioner from service without application of mind and in an arbitrary manner. The Director had not examined whether the proposed punishment was common-surate with the gravity of the charges levelled against the Petitioner.

3. The High Court by its judgment dated 24-9-1991 held that reasonable opportunity was afforded to the Petitioner as contemplated by Section 22-Q(2). It also held that in the absence of any regulation, which could be framed u/s 23 (2)(n) of the Adhiniyam the disciplinary power could be exercised by the Respondents No. 1 and 2 and non-framing of the regulation would not affect their right to conduct the disciplinary proceedings against the employee of the institution. It was further held that Section 23 of the Act only regulates the procedure for carrying out the purpose of the Act and it does not affect the jurisdiction of the authorities to act under the said Adhiniyam The High Court also repelled the contention of the Petitioner with regard to his termination order being malafide having been passed at the instance of Sri Kailash Chindra Jain The High Court, however, was of the opinion that the approval granted by the Respondent No. 1 to the dismissal of the Petitioner was not valid as the same was without application of mind and the approval of dismissal could not be with retrospective effect. The dismissal against the Petitioner would operate from the date of approval and not from any date prior to that. The High Court after quashing the order dated 9-4-1991 passed by the Respondent No. 1 directed the Director of Technical Education to pass a fresh order in accordance with law and in the light of the observations made in the judgment within six weeks The order which was to be passed by the Director with regard to the imposition punishment on the Petitioner was suggested to be of reformatory nature ie. minor punishment so as to enable the delinquent to improve upon himself and devote his time and intellect in the service of the institution. The High Court made the following observations with regard to the imposition of punishment:

On the facts and in the circumstances of the Case, a punishment (other than one of dismissal from or termination of service) whether by way of reduction to the lowest grade in the scale of pay admissible to the post of Principal and/or by way of stopping of increments, as the Director may think fit and appropriate, if awarded, would not only save the Petitioner's career from being ruined, but would also afford him an opportunity to use his time intellect and energy besides experience he has acquired abroad for promoting the interest of the institution of which he was appointed as Principal .

4. The Committee of management seems to have filed SLP against the order of the High Court dated 24-9-1991 before the Supreme Court. The Supreme Court while disposing of the SLP finally on 19-12 1991 directed that the Director of Technical Education, U.P. will be at liberty to take a decision on the question of

penalty without being influenced by the observations of the High Court. Therefore, the observations of the High Court in its judgment with regard to the imposition of minor punishment on the Petitioner became redundant and the Director of Technical Education was given unfettered powers to take a decision on the question of imposition of penalty on the Petitioner. So the Director of Technical Education had to consider the recommendation of the committee of management and proceed in the matter from the stage. It may be mentioned that the resolution of the committee of management dated 27-10-1990 or the show cause notice dated 21-2-1991 were not challenged in the writ petition.

5. In the present writ petition the Petitioner challenges the order of approval dated 25-12-1991 and the consequential order of dismissal dated 26-12-1991 because after the directions of the Supreme Court the Respondent No. 1 has passed a fresh order granting approval to the proposal of dismissal. The Petitioner challenges the said two orders on the ground that no show cause notice was issued by the Respondent No. 1 to the Petitioner as required u/s 22-G(2) of the Adhiniyam and on the ground that the order of dismissal is too harsh and is not commensurate with the charges levelled against the Petitioner and on the ground that because the approval has been accorded without assigning any reason therefore.

6. So the controversy in this writ petition is limited. The main controversy is with regard to the enquiry and validity of the enquiry report as also the validity of the resolution of the committee of management are settled in the previous writ petition, which was decided on 24-9-1991. The main points which this Court has to consider are whether the Impugned order dated 25-12-1991 is passed after application of mind and whether the dismissal order dated 26-12-1991 can be grounded on that order and whether any show cause notice was required to be given to the Petitioner before passing the impugned orders and whether the punishment was harsh.

7. Section 22-G of the Adhiniyam reads as under:

22-G (1) No Principal or teacher may be discharged or removed or dismissed from service or reduced in rank or subject to any diminution in emoluments, or served with notice of termination of service except with the prior approval in writing of the Director, whose decision shall be communicated within such period as may be provided by regulations.

(2) The Director may approve or disapprove or reduce or enhance the punishment or approve or disapprove of the notice for termination of service proposed by the Management:

Provided that In the Case of a punishment, before passing orders, the Director shall give an opportunity to the Principal or the teacher to show cause within a fortnight of the receipt of the notice why the proposed punishment should not be approved.

(3) Nothing in this Section shall apply to an order of suspension during the pendency in contemplation of an enquiry.

8. The Director's approval must be in writing. Implicit for the approval is that the Director must apply his mind and record reasons for granting approval to the resolution of the committee of management. On perusal of the impugned order it appears that the Director has applied his mind and recorded reasons for granting approval to the resolution, therefore, there is no violation of Section 22-G of the Adhiniyam committed by the Director of Technical Education in granting approval to the punishment proposed by the committee of management.

9. The next question which is raised by the Petitioner is that there is no show cause notice served on the Petitioner as required u/s 22-G(2) of the Adhiniyam before imposing the penalty.

10. I have considered this argument also. In Writ Petition No. 17904 of 1991 the High Court has held that all proceedings taken against the Petitioner upto the stage of granting approval are valid. The show cause notice was also given to the Petitioner about the proposed punishment of dismissal from service. Therefore Respondent No. 1 was asked to take a fresh decision about the penalty. The second show cause notice was not required to be given to the Petitioner by the Respondent No. 1 because that formality has already been complied with while passing the previous order of dismissal, which was held to be mechanical by the High Court. Therefore, it is not correct to suggest that no show cause notice was issued to the Petitioner before the issuance of the order of dismissal. The Petitioner is entitled to only one show cause notice, which was served on him. On this count the impugned order cannot be assailed by the Petitioner.

11. The third and last submission made by Mr. Upadhyaya needs some consideration by this Court i.e. whether the punishment inflicted on the Petitioner is commensurate with the gravity of the charges levelled against him.

12. The Petitioner was the Principal of the college. He was Incharge of the administration of the college and had to regulate the functioning of the college. He is said to have absented from duty without leave. It was his duty to get the leave sanctioned and thereafter leave for a foreign country for his private business. The judgment dated 24-9-1991 in writ petition No. 17904 of 1991 is elaborate on the conduct of the Petitioner. That judgment terms the Petitioner's conduct as unbecoming of the Principal of the institution. The Petitioner is facing all the agony because of his own conduct.

13. The term "misconduct" is not defined in the Adhiniyam and cannot be given a precise meaning. Its connotation different. From the context and from the performance of a delinquent and its affect on the discipline and the nature of the duty it may involve moral turpitude in some Cases. It may be a wrong behaviour, unlawful behaviour or forbidden act or transgression of established and definite rule of action or code of conduct but not mere error of judgment. The ambit of misconduct has to be construed with reference to the subject matter and the

context in which the term is to be applied. In making these observations I am fortified by an authority of the Supreme Court State of Punjab and Others Vs. Ram Singh Ex. Constable, . A Gunman was dismissed from service on the ground that in the evening of September 6, 1979 he was found drunk and roaming at the bus stand wearing the service revolver. In the context of duties imposed on the Gunman his roaming at the bus stand in drunken state was held to be grave misconduct. The Supreme Court had taken the view, having regard to the nature of duties imposed on the Gunman. In Dr. S.S. Ahluwalia v. G.B. Pant University 1990 (2) AWC 1544 , the Division Bench of this Court held that "misconduct" means misconduct arising from ill motive. Acts of negligence, errors of judgment or Innocent mistake do not constitute such misconduct. This Court seems to have relied on the meaning of misconduct given in Strouds Judicial Dictionary, as adopted by the Supreme Court in the Case of Union of India (UOI) and Others Vs. J. Ahmed, .

14. The learned Counsel for the Petitioner wanted to argue that the Petitioner's conduct would not be a misconduct. It may, at best, amount to an error of judgment or an innocent mistake. However, this argument eludes my appreciation. The Petitioner had gone on private work to earn money after abandoning his own work, which was assigned to him as Principal. This cannot be said to be an error of judgment or innocent mistake. He was told that unless leave was sanctioned by the committee of management he should not leave. He disregarded that advice and left for Jordan to enrich himself at the cost of his duties and at the cost of the functioning of the college. Therefore, the conduct exhibited by the Petitioner is to be judged from this point of view.

15. Mr. Upadhyaya has referred to the Case of Rama Kant Misra Vs. The State of Uttar Pradesh and Others, to show that the order of punishment must be commensurate with the gravity of the charge. An employee was dismissed for using indecent language disclosing threatening postures towards other co-employee and he was charged of misconduct under the Standing Orders of the Company for disorderly behaviour or conduct likely to cause a breach of peace threatening an employee within the premises and conduct prejudicial to good order and discipline. The Petitioner's services in that Case were terminated after enquiry which was upheld by the Labour Court. The Petitioner's writ petition also failed in the High Court. In SLP the Supreme Court after considering as to what thought to have been the proper punishment in the Case set aside the order of termination of service and directed that two increments falling due from the date of termination of service be withheld with future effect. The order of termination of service was held to be harsh and excessive. Taking the extenuating circumstances into consideration the Supreme Court observed:

When it is said that the language discloses a threatening posture it is subjective conclusion of the person who hears the language because voice modulation of each person in the society differs and indiscreet improper, abusive language may show lack of culture but merely the use of such language on one occasion

unconnected with any subsequent positive action and not preceded by any blameworthy conduct cannot permit an extreme penalty of dismissal from service.

16. The Supreme Court was of the opinion that punishment of dismissal of a service was too harsh punishment and substituted it by a mild punishment.

17. In the present Case we are dealing with the Principal of a college, who has not been true to his duties and has failed to discharge the obligations imposed on him by virtue of the office he was holding. He has committed gross negligence by remaining absent without leave. It is true that the motivating circumstance for him for remaining absent was to get himself enriched. He should have cared more for the administration of the college and for the proper running up of the college than for his ownself. But the falling standards of society are responsible to a larger extent for the employees to commit dereliction of duty. There has been erosion on values which have previously been cherished by all in general and those connected with the profession of teaching. In particular, it is necessary to penalise the Petitioner for his acts of omission and commission as Principal of the institution. What should be the penalty which the Petitioner deserves for having remained absent from duty for more than two years is a moot question that engages the attention of this Court. In the judgment dated 24-9-1991 in writ petition No. 17904 of 1991 this High Court has observed that the Petitioner was still in the prime of his career, the punishment of dismissal awarded to him was too harsh.

18. The Petitioner is capable of devoting his time to serve the college, if he wills it. He seems to have intellect and his services can be properly utilised by the college, if he is not assigned the job of the Head of the Institution. Removing him as Head of the Institution would not necessarily mean that he is unfit to serve in the college as a Lecturer. He has miserably failed to discharge the onerous duties of Principal to run the administration of the college but that necessarily would not mean that he is incapacitated to perform his functions as Lecturer in the college.

19. Taking all the facts and circumstances of the Case into consideration the Petitioner's dismissal from service appears to be harsh and excessive. He can be given another major punishment, which, in my opinion, would be commensurate with the charge levelled against him and would meet the ends of justice. He can be reduced in rank and reverted from the post of Principal to the post of Lecturer which post he originally had held. The punishment of dismissal of the Petitioner from service imposed on the Petitioner needs to be set aside and substituted by the punishment of his reversion to the post of Lecturer in the institution in question. The punishment of reverting him back to the post of lecturer is also a major punishment.

20. For the reasons stated in this judgment I allow the writ petition to the extent that the order of punishment of dismissal from service imposed on the Petitioner is set aside and in its place the punishment of reversion from the post of

Principal of the institution to the post of Lecturer is imposed on him. The punishment of revision will take effect from 26-12-1991.

21. The period for which the Petitioner has remained absent from duty from 1-3-1990 till today shall be treated as period of leave of whatever kind due to him. If the said period i.e. 1-3-1990 till today or any portion of the said period is treated leave without pay, that shall not have the effect of causing break in the Petitioner's service. If the Petitioner is willing to servo on the post of Lecturer he shall resume his duties within 15 days from today. The period of 15 days from today, which is allowed as joining time to the Petitioner, shall be treated as period on duty.

22. There will be no order as to costs.