
(2008) 10 AHC CK 0132
In the Allahabad High Court

Subedar Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-10-2008

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 21

Citation : (2009) 1 UPLBEC 186

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dilip Gupta, J.—The Acting Principal of the Shahganj Public Inter College, Shahganj, Jaunpur (hereinafter referred to as the ""College") has filed this petition for payment of salary w.e.f. 1st August, 2005 along with arrears and for a direction upon the respondents to permit the petitioner to function as the Acting Principal of the College as he was functioning prior to the passing of the suspension order.

2. The said College is governed by the provisions of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the ""Act").

3. The records of the writ petition indicate that the petitioner was suspended on 1st June, 2005 and the relevant papers were sent to the District Inspector of Schools for granting approval to the suspension order. The District Inspector of Schools, however, by the order dated 12th August, 2005 disapproved the proposal of the Committee of Management to suspend the petitioner. The Committee of Management then approached the Joint Director of Education who by the order dated 15th December, 2005 directed the District Inspector of Schools to pass a fresh order whereupon the District Inspector of Schools by the order dated 12th January, 2006 has again disapproved the suspension of the petitioner.

4. The Committee of Management filed Writ Petition No. 4746 of 2006 to challenge the order dated 12th January, 2006.

5. This petition was allowed by the judgment and order dated 1st February, 2006 and the order dated 12th January, 2006 was set aside.

6. Learned Counsel for the petitioner has urged that in view of the provisions of Section 16-G(7) of the Act, the order of suspension cannot remain in force for a period of more than 60 days unless it is approved in writing by the District Inspector of Schools and, therefore, the suspension order dated 1st June, 2005 automatically ceases to operate as there is no approval of the District Inspector of Schools.

7. Learned Counsel appearing for the respondent-Committee of Management submitted that the enquiry against the petitioner has been completed and the papers have been sent to the U.P. Secondary Education Service Selection Board (hereinafter referred to as the ""Board") for granting prior approval to the termination as required u/s 21 of the U.P. Secondary Education Service Selection Board Act, 1982 (hereinafter referred to as the ""Secondary Education Act") and, therefore, in such circumstances the petitioner should be treated to be suspended. He has further contended that there are serious charges against the petitioner and, therefore, in view of the decision of this Court in Committee of Management, B.R. Inter College, Basti v. State of U.P. and Ors. 2008 (7) ADJ 51 no relief should be granted to the petitioner. He has further placed reliance upon the decisions of this Court in Committee of Management, Shree Tilak Vidyalaya Inter College and Another Vs. District Inspector of Schools and Others, and Mahendra Kumar Gupta v. District Inspector of Schools, Firozabad and Ors. 2003 (3) ESC 1366 which are in connection with the provisions of Section 16-G(8) of the Act. I have carefully considered the submissions advanced by the learned Counsel for the parties.

8. Section 16-G(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 16-G(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.

9. A Full Bench of this Court in Chandra Bhushan Mishra v. District Inspector of Schools and Ors. (1995) 1 UPLBEC 460 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.

10. In the present case the petitioner was suspended on 1st June, 2005. Till date

there is no order of the District Inspector of Schools approving the suspension order. Thus, in view of the provisions of Section 16-G(7) of the Act and the aforesaid Full Bench decision of this Court, the order of suspension become inoperative after a period of 60 days. The contention of learned Counsel for the respondent-Committee of Management that the petitioner should be treated to be suspended since the proposal to terminate the services of the petitioner has been sent to the Board cannot be accepted.

11. Mere sending of the papers to the Board cannot result in automatic suspension. Section 21 of the Secondary Education Act provides that the management shall not, except with the prior approval of the Board, dismiss any teacher or remove him from service. It is not in dispute that the Board has not given its prior approval to the decision taken by the Committee of Management to terminate the services of the petitioner.

12. It is true that in Committee of Management (*supra*) this Court held that the post of Principal is an important and responsible post in an institution and the conduct and behaviour of the Principal should be unblemished, but in view of the provisions of Section 16-G(7) of the Act, the suspension order cannot remain in force after a period of 60 days from the date of order unless it is approved by the District Inspector of Schools. The other two decisions on which reliance has been placed by the learned Counsel for the petitioner relate to the provisions of Section 16-G-(8) of the Act. They do not, therefore, help the petitioner.

13. In view of the aforesaid discussion, the petitioner is entitled to continue as the Acting Principal of the College w.e.f. 1st August, 2005 and is also entitled to payment of salary along with arrears. The respondents shall not interfere with the functioning of the petitioner as the Acting Principal of the College. However, in view of the Full Bench decision of this Court in Chandra Bhushan Mishra (*supra*), the District Inspector of Schools shall be at liberty to pass a fresh order regarding approval/disapproval of the suspension order.

14. The writ petition is, accordingly, allowed to the extent indicated above.