

**(1991) 11 AHC CK 0019**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No. 10388 of 1978 and Writ Petition No. 1553 of 1979

Suresh Chand

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

---

**Date of Decision :** 27-11-1991

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1991) 2 AWC 238

**Hon'ble Judges :** R.A. Sharma, J

**Bench :** Single Bench

**Advocate :** A.K. Yog, for the Appellant;

---

## **Judgement**

R.A. Sharma, J.—Suresh Chand, Petitioner in Writ Petition No. 10388 of 1978, who was working as a peon in Krishak Inter College, Mawana, Meerut (here-in-after referred to as the college) was removed from service by the principal by order dated 12-8-1976. Against this order of termination of Service, Petitioner filed an appeal before the Committee of Management on 25-8-1976. According to the petitioner as the appeal was not decided immediately, he sent reminders to the committee of management on 24-9-1976, 12-11-1976 and 19-11-1976. Petitioner, not having received any reply from the management, made a representation before the District Inspector of Schools, Meerut here in-after referred to as the DIOS). It appears that at the instance of the DIOS the committee of management communicated to the Petitioner its decision dated 6-9-1976, dismissing the appeal of the petitioner, in November, 1977, a copy of which was also sent to the DIOS The Petitioner thereafter filed a representation/appeal against the aforesaid decision of the management before the DIOS which has been dismissed by him on 30-10-1978 on the ground that the Petitioner's representation/appeal is barred by time. It is against this order that this writ petition has been filed.

2. It has been averred in paragraphs 18 and 19 of the counter affidavit filed by

the Petitioner in the connected writ petition No. 1553 of 1979 in which the Petitioner has been impleaded as one of the respondents that when the writ petition No. 10388 of 1978 was listed for admission, this Court observed that the DIOS should decide the appeal on merit and asked the learned Standing counsel to communicate the view of the Court to the DIOS. The DIOS accordingly passed a fresh order on 10-2-1979 which has been placed on record by the Petitioner by means of a supplementary affidavit along with an application for treating it as part of the record of the Writ Petition. By this second order the DIOS has held that before terminating his services, the Petitioner was neither given any charge sheet nor was he given any show cause notice and the order of termination of service was passed in violation of the principles of natural justice. After having held as above, the appeal of the Petitioner was partly allowed by substituting the order of removal by an order of stoppage of increments for the period commencing from the date of termination of service to the date of his reinstatement. The Principal of the college has filed a Writ Petition No. 1553 of 1979 against the second order dated 10-2-1979 of the DIOS. The petitioner has also challenged that part of the said order so far as it relates to imposition of penalty of stoppage of increments for the period commencing from the date of the termination of his service to the date of reinstatement.

3. The DIOS in his first order dated 30-11-1978, has dismissed the Petitioner's appeal on the ground of limitation by holding that the appeal was dismissed by the committee of management on 6-9-1976, and the Petitioner was duly informed about this decision by the registered letter dated 6-9-1976. It was further observed that the Petitioner has failed to prove that he did not receive the aforesaid registered letter. This finding of the DIOS cannot be sustained for the simple reason that the registered letter dated 6-9-1976 WPS not sent to the Petitioner. From the perusal of the letter dated 23-12-1977 issued by the Senior Superintendent of Post Offices, Meerut, to the petitioner, a copy of which has been filed as Annexure XV to the writ petition, it is clear that the aforesaid letter dated 6-9-1976 was sent to Nautanwa, Gorakhpur and not to the Petitioner. It is thus clear that the alleged decision of the appeal sent by the committee of management on 6-9-1976 was not sent to the Petitioner and it was not received by him. This order was for the first time communicated to the Petitioner after the letter of DIOS dated 27-6-1977. In fact the copy was sent on 15-11-1977, which has been filed as Annexure XIII to the writ petition. In the absence of communication of the order passed by the committee of management, it cannot be said that the appeal/representation of the Petitioner filed before the DIOS is barred by time. The order dismissing the appeal becomes an effective order only after it is communicated to the party concerned and from the date of communication, the Petitioner's appeal before the DIOS is well within time. The order of the DIOS dated 30-10-1977 is as such, liable to be set aside.

4. As regards the second order dated 10-2-1979 of the DIOS, which has been challenged in writ petition No. 1553 of 1979 and part of which has also been challenged by the petitioner, it may be mentioned that a categorical finding has

been recorded by the DIOS to the effect that before terminating the services of the petitioner, he was neither given any charge sheet nor was he given any show cause notice and the order of removal from service was passed in violation of the principles of natural justice. This finding has not been successfully challenged. In fact in writ petition No. 1553 of 1979 there is no averment that the findings to the aforesaid effect recorded by the DIOS are not correct. This order has been challenged on different grounds. The order of removal from service of a permanent peon (petitioner) without giving him a reasonable opportunity of being heard is a nullity and cannot be sustained.

5. Even if the second order of the DIOS dated 10-2-1979 is bad, I do not consider it fit and proper in exercise of equitable jurisdiction under Article 226 of the Constitution of India to interfere with such an order. By the said order, order of termination, which was a nullity having been passed in violation of principles of natural justice has been set aside. If the writ petition is allowed and the second order is quashed, it will have the effect of restoring another illegal order passed earlier. Under these circumstances, this Court cannot interfere even if later order is found to be bad. In this connection reference may be made to the case of *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, where the Supreme Court was pleaded to observe as follows.

The result of the discussion may be stated thus:

The Primary Health Centre was not permanently located at Dharmajigudem. The representatives of the said village did not comply with the necessary conditions for such location. The Panchayat Samiti finally cancelled its earlier resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre, permanently at Lingapalem. Both the order of the Government, namely, the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed; the former, because it was made without giving notice to the Panchayat Samithi, and the latter" because the Government had no power u/s 72 of the Act to review an order made u/s 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village. In these circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order--it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case.

6. As regards the last part of the second order, whereby the penalty of dismissal as imposed by the Principal against the Petitioner has been substituted by the order of stoppage of increments is concerned, it cannot be sustained. Once the order of termination has been held to be bad and without jurisdiction, the employee is entitled to be reinstated with back wages. That apart, even the minor penalty should not have been imposed without giving reasonable opportunity of being heard to the Petitioner. It is not disputed that the DIOS

before imposing the penalty of stoppage of the increments did not give any opportunity of being heard to the Petitioner. That part of the order is as such liable to be set aside.

7. Writ petition No. 10380 is allowed. The impugned orders of termination of service dated 10-8-1976 and the orders dated 6-9-1976 and 30-10-1978 passed by the Committee of Management and the DIOS respectively, dismissing the appeals of the Petitioner are quashed. Writ Petition No. 1553 of 1979 dismissed. The last part of the second order of the DIOS dated 10-12-1979 so far as it relates to the stoppage of the increments of the Petitioner is quashed. Petitioner will be entitled to the consequential benefits, which may accrue to him in view of this judgment. There shall be no order as to costs.