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**(2008) 12 AHC CK 0178**  
**In the Allahabad High Court**  
**Case No : Spec.A.No.481 of 1999 (SB)**

Tilak Ram

APPELLANT

Vs

Committee of Management, Kaushlendra Vikram Inter  
College, Payagpur & Ors.

RESPONDENT

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**Date of Decision :** 18-12-2008

**Acts Referred:**

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G  
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 37

**Citation :** (2008) 12 AHC CK 0178

**Hon'ble Judges :** H.L.Gokhale, CJ and S.N.Shukla, J

**Final Decision :** Allowed

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## Judgement

H. L. Gokhale, C.J.—Heard Mr. P. K. Singh, in support of this appeal. Mr. U.S. Sahai, appears for respondents 1 and 2 and Mrs. Sangeeta Chandra, learned Additional Chief Standing Counsel for the State of U.P. appears for respondent No. 1.

2. The appeal seeks to challenge the order of the learned single Judge dated 3181999, whereby the learned Judge dismissed the writ petition filed by the appellant herein.

3. The short facts leading to this appeal are this wise. The appellant was working as a ClassIV employee in an Intermediate College run by the first respondentCommittee of Management in district Bahraich. Respondent No. 2 is the Principal of that College. The College is recognised under the U.P. Intermediate Education Act.

4. The appellant had joined his services in that College on 6101973. He came to be suspended on 2391986 and was served with a chargesheet on the next day, i.e., on 2491986. The chargesheet contained 8 charges in all, which, when translated from original Hindi into English, are as follows:

1. that the appellant remained absent,

2. that he had given false medical certificate for his absence between 2531986 and 361986,
3. that he had filed a Suit against the Manager and the Principal of the said College.
4. that he had taken a false ground in the Suit that he had been beaten by the son of the Principal of the College.
5. that the Manager of the School did not have any hand in the incident and he was intentionally joined in that Suit,
6. that the appellant remained absent between 2131986 and 291986, but gave the applications only for 2531986 to 461986,
7. that the appellant himself accepted the conspiracy done earlier against the Principal of the School.
8. that filing of Suit on false averments and withdrawing the same by making false statements before the Court concerned.
5. Thereafter an enquiry was conducted against the appellant into the charges and the Enquiry Officer held that Charge Nos. 3 to 7 were proved, but not the others. This led to an order of dismissal passed on 2121987.
6. The appellant filed an appeal before the Committee of Management and the Committee of Management rejected that appeal on 2331987. The appellant thereafter sent a representation to the District Inspector of Schools concerned, as per the provisions of Regulation 31 Chapter III framed under the U.P. Intermediate Education Act, 1921. The District Inspector of Schools went through that representation and dismissed the representation, which is also treated as some sort of a Second Appeal.
7. Being aggrieved by all these orders, a writ petition was filed before the learned Single Judge, which has subsequently come to be dismissed.
8. Mr. P. K. Singh, learned counsel for the appellant, submitted that the enquiry was not conducted in accordance with the principles of natural justice. The appellant was not given proper opportunity and the charges could not be said to be properly established. That apart, he submitted that under Regulation 37 of the above Act, 1921, the appellant had to be given a notice and the copy of the enquiry report, which had not been given to him. He, therefore, submits that the enquiry and the order thereon were vitiated.
9. He draws the support from the order of the District Inspector of Schools dated 2991987 passed on the representation of the appellant made after the decision on the appeal to the Committee of Management (which is also treated as Second Appeal). This order specifically refers Regulation 37 framed under the U.P. Intermediate Education Act, 1921 and accepts that as per this Regulation, before imposing the punishment, the enquiry report ought to have been furnished to the

appellant. In fact, the District Inspector of Schools observed that the action by the Principal in that behalf was not satisfactory. Regulation 37 of the Act, 1921, when translated from original Hindi into English, reads as follows:

"37. After receiving the enquiry report as well as recommendation of the Enquiry Officer, the Committee of Management shall hold a meeting to consider the report and recommendation after notice to the employee and, if he wishes so, he shall be provided opportunity to appear before the Committee to submit his case and reply the question asked by any member of the Committee. Thereafter the Committee shall forward the complete report along with the relevant documents to the Divisional Inspector/Inspectress for his/ her approval.

Provided no report shall be forwarded for approval of Inspector/Inspectress in the case of ClassIV employees, as for them, all proceedings shall be done by the Appointing Authority."

10. Mr. Singh, draws support there from. He also points out that the learned Single Judge has dismissed the writ petition by rejecting his another submission, that prior approval of the District Inspector of Schools had not been obtained. This approval is to be obtained before imposition of major punishment and it is different from the order passed on the Second Appeal, which the appellant had filed. As far as this aspect is concerned, the appellant had relied upon a decision of a learned single Judge in the case of *Daya Shanker Tiwari v. Principal, R.D.B.M. Uchchatar Madhyamik Vidyalaya, Neogaon, Mirzapur and others*, reported in (1998) 2 UPLBEC 1101 : (1998 All LJ 461) wherein the learned single Judge had held that such an approval was necessary. The learned Judge had looked into the commentary of U.P. Intermediate Education Act, 1921, written by Mr. R. N. Mishra and had taken a different view. Mr. Singh submits that in any case, his submission based on Regulation 37, that he had not been given a copy of the enquiry report, has not been dealt with by the learned single Judge at all. In the absence of that report, he could not have appropriate opportunity to give his explanation before imposition of the punishment.

11. This is apart from the submission of Mr. Singh, that the enquiry was mala fide, the appellant was being unnecessarily proceeded and because the Principal and the Management Committee somehow or the other wanted to remove him, all these allegations were levelled.

12. Mr. U. S. Sahai, learned counsel for the Committee of Management and the Principal, submitted that the learned single Judge had gone into the question as to how the enquiry had been conducted. He referred to the fact that the appellant was called for the enquiry on different dates, but he did not turn up for cross examination and, therefore, the learned single Judge has given a finding that the Enquiry Officer has found the charges to be proved. He submits that there is no reason to interfere into the enquiry and the order passed by the authority concerned, as the learned single Judge was right in passing the order, that he had passed.

13. Mrs. Sangeeta Chandra, learned Additional Chief Standing Counsel for the State of U.P. submitted that although the learned single Judge has taken a different view from the decision rendered in the case of Daya Shanker Tiwari, (1998 All LJ 461) (supra), the matter had now been referred to the larger Bench and it is pending before the said Bench in view of a reference made by a learned single Judge in the case of Rishikesh Lal Srivastava v. State of U.P. & others, reported in (2007) 2 UPLBEC 1398 (paragraphs 11 and 13).

14. We have noted the submissions of all the counsel. We quite see the force in the submission of Mrs. Sangeeta Chandra, that the question of requirement of prior approval of the District Inspector of Schools is pending before the larger Bench. The question, however, remains as to whether the order passed by the Committee of Management could be upheld, when in the representation/second appeal filed by the appellant, the District Inspector of Schools in terms held that the enquiry report had not been furnished to the appellant, as required by Regulation 37. Mr. Singh, points out that this point had specifically been taken in grounds "A" and "D" and in paragraphs 19 and 25 of the writ petition. Mr. Singh pointed out that no counter affidavit was filed either by the Committee of Management or by the State Government to this specific submission.

15. Mrs. Chandra, submitted that the requirement of giving a copy of the enquiry report and the notice was provided by the judgment in Union of India v. Mohd. Ramzan Khan, reported in 1991 (1) SCC 588 : (AIR 1991 SC 471) and it has been clarified in the case of M.D.E.C.I.L. v. B. Karunakar, reported in 1993 (4) SCC 727 : (AIR 1994 SC 1074) that the law laid down in Union of India v. Mohd. Ramzan Khan (supra) was to be prospective. We have noted this submission of Mrs. Chandra, but in the facts of the present case, in Regulation 37, there is a specific statutory provision requiring the enquiry report to be supplied after the enquiry is completed as also a notice.

16. This being the position and in view of this specific statutory provision, one does not have to fall back on the judgement of Union of India v. Mohd. Ramzan Khan: (AIR 1994 SC 1074).

17. In this view of the matter, the enquiry and the decision arrived thereon by respondents Nos. 1 and 2 are contrary to the specific provision, which engrafted thereon the appropriate principles of natural justice giving an opportunity to the appellant to defend. Inasmuch as that opportunity was not given, the order of dismissal passed against the appellant would stand vitiated. The same is, therefore, required to be interfered with. Consequently, the order of dismissal as also the judgment and order passed by the learned Single Judge upholding the dismissal will stand interfered and set aside.

18. Inasmuch as the impugned order is being set aside, the appellant would be entitled to reinstatement and appropriate monetary relief. The fact however, remains that the appellant had reached, the age of superannuation. Although he was at the age of 40 years at the time of filing the writ petition, now he is above

60 years of age. The appellant had completed more than 10 years of regular service on the date on which he was terminated. There was a question as to whether there was any break in service during his service of more than 10 years. The appellant had worked earlier from 6101973 to 1091976 and thereafter from 781977 to 2391986.

19. The appellant had submitted copy of his Pass Book to show that when he joined back his services on 781977, his salary was continued and increased and there was no break in service. Neither the Committee of Management nor the District Inspector of School filed any counter affidavit on that aspect, though there was specific order passed on 2392008 for that purpose to provide the necessary information.

20. In view of this position, there is no reason for us to disbelieve the fact that the appellant had put in continuous service of more than ten years by the date of his dismissal.

21. In the circumstances, although we are allowing this appeal and setting aside the judgment and order passed by the learned Single Judge as well as the order of dismissal, there cannot be actual reinstatement inasmuch the appellant had retired in the meanwhile. The appellant had put in more than ten years of service by the time he was dismissed. He will, therefore, be treated as notionally reinstated in service in the month prior to the date of his attaining the age of superannuation, and on the basis of his last drawn salary to be arrived at, he will be eligible to receive the retiral benefits including pension for his services rendered from 6th October, 1973 with continuity of service. We make it clear that we are not granting any back wages to the appellant for the intervening period and that the appellant will be entitled only to the retiral benefits including pension.

22. The appeal is allowed as above.