

(2006) 11 AHC CK 0125

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14295 of 1991

Uchchattar Madhyamik Vidyalaya, Jalaun and Anr.

APPELLANT

Vs

U.P. Secondary Education Services Commission, Allahabad &
Ors.

RESPONDENT

Date of Decision : 02-11-2006

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Chapter 2 Regulation 37
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 21

Citation : (2006) 11 AHC CK 0125

Hon'ble Judges : Prakash Krishna, J

Final Decision : Allowed

Judgement

Prakash Krishna, J.—This writ petition is on behalf of committee of management, who is running educational institution, namely, Uchhattar Madhyamik Vidyalaya, which is governed by the provisions of U.P. Intermediate Education Act, 1921 and U.P. Secondary Education Service Commission and Regional Selection Boards of 1982, hereinafter referred to as the Commission. By means of present writ petition, the relief for quashing the order of Commission dated 12/18th April, 1991, filed as Annexure 6 to the writ petition has been prayed for.

2. Respondent No. 3 Sri Jugal Kishore Verma was appointed as Assistant Teacher in the aforesaid institution and was granted LT grade pay scale. He, according to the petitioners fabricated entries in his service record as also the orders of the District Inspector of Schools and claimed to be a permanent Principal of the High School as in the mean time, the institution was upgraded from Junior High School to High School. Disciplinary proceedings were initiated against respondent No. 3 by framing eight charges on the ground of fabrication of record and misappropriation of funds. A copy of the chargesheet has been filed as Annexure 3 to the writ petition. The charges are to the effect that respondent No. 3 is guilty of embezzlement of money, as well as fabrication of service records and other documents. A copy of the chargesheet was served by registered post

on 16th August, 1988, asking him to submit a reply in writing within three weeks as also produce the evidence in support thereof and inform, if he wants to cross-examine any person he may indicate it. A notice by publication in a newspaper Dainik Karm Yug Prakash, dated September 11, 1988 was also published informing respondent No. 3 that through the registered letter dated 16th August, 1988, a reply was called for within a period of three weeks which is still awaited. Through this notice published in the news paper it was also made known that reply may be given by 18th December, 1988 positively and on 21st December, 1988, respondent No. 3 may present himself before the Committee of Management as its meeting is scheduled on that date at 10.00 a.m. in the school premises. Respondent No. 3 neither appeared nor was there any reply to the charges leveled against him and the Committee of Management in its meeting held on 21st of August, 1988 resolved to terminate the services of respondent No. 3. All the relevant documents were submitted to the U.P. Secondary Education Services Commission, (hereinafter called as Commission) for its approval under Section 21 of the U.P. Secondary Education Service Commission and the Regional Selection Board Act, 1982 through the agency of the District Inspector of Schools. The Commission fixed 2nd April, 1991 for hearing of the petitioner and 3rd April, 1991 for the personal hearing of respondent No. 3. The Commission although found that respondent No. 3 is guilty of charge Nos. 1, 2, 5 and 8, but disapproved the resolution of the Committee of Management, dismissing the services of respondent No. 3 by the impugned order, on the ground that Regulation 37 has been violated by the petitioner.

3. Respondent No. 3 has filed a counteraffidavit on the ground that he was appointed as Assistant Teacher in the L.T. grade on 15th July, 1973 in the school, when it was Junior High School and was made permanent on 15th July, 1976 on the post of Assistant Teacher. His appointment was approved by the District Inspector of Schools, Jalaun at Orai, on 19th November, 1981. He has denied the charges leveled against him and has stated that he discharged his duties peacefully and with utmost devotion. No subsistence allowance has been given to him during the suspension period, although the District Inspector of Schools has approved his suspension. The termination of services having not been approved, he is entitled to join the services and for that purpose he presented himself on February 7, 1989 before petitioner No. 1 but petitioner No. 1, did not permit him to join. It has been further stated in para 14 of the counteraffidavit that chargesheet was not served on him on 16th August, 1988, but it was actually received by him on 18th October, 1988 and he submitted the reply on 5th November, 1988 and in the mean time, the Committee of Management resolved to termination of the services of respondent No. 3 on 21st September, 1988 which is illegal and liable to be quashed. The pith and substance of the counteraffidavit is that no opportunity of hearing was given to him by the petitioner, Committee of Management as the showcause notice was served on 18th October, 1988 after resolution of the Committee of Management, dismissing the services.

4. Sri Ashok Khare, learned Senior Counsel for the petitioner submitted that the Commission has found that the copy of the chargesheet was duly served on respondent No. 3. The charge Nos. 1, 2, 5 and 8 were found to be proved, the Commission committed illegality in disapproving the resolution of petitioner No. 1 dismissing respondent No. 3 from the services. Elaborating the argument he submitted that the Commission has disbelieved the version of respondent No. 3 that the chargesheet sent by registered post on 16th August, 1988 was received by respondent No. 3 on 18th October, 1988 i.e. after the resolution of the Committee of Management. In other words respondent No. 3 was duly served with the copy of the chargesheet and he has intentionally failed to submit reply within the stipulated period. It is not open to respondent No. 3 to contend that no proper opportunity of hearing was not afforded to him by the petitioners. The Commission committed illegality in disapproving the resolution of the Committee of Management, on the ground that there is non compliance of Regulation 37 of U.P. Intermediate Education Act, 1921. He laid emphasis on the fact that as a matter of fact no proper opportunity of hearing was afforded to the petitioners by the Commission, in as much as the Commission heard the Committee of Management not in presence of respondent No. 3 and similarly respondent No. 3 was heard on the next date in the absence of the petitioners, therefore, the Commission is guilty of violating the Principles of Natural Justice, which has caused prejudice to the petitioners. Had the Commission heard the parties in presence of each other, the petitioner would have explained the point raised by respondent No. 3 before it in an effective manner. Reliance has been placed on a judgment of this Court in this regard on *Awadh Narain Tripathi v. U.P. Secondary Education Service Commission & Ors.*, 1995(2) LBESR 102 (All) : (1995) 3 UPLBEC 1891. In contra, the learned Counsel for respondent No. 3, Sri Prakash Padia submitted that this Court should not interfere with the impugned order, in as much as the Commission has reserved the right of petitioner No. 1 to take appropriate steps, if so advised after following the due procedure as prescribed under Regulation 37. He submitted that respondent No. 3 could not file reply to the showcause notice as well as he could not appear before the Committee of Management in its meeting held on 21st August, 1988 and as such in the fitness of things an opportunity of hearing be afforded to him and the impugned order is perfectly equitable and justified. In view of decision in *Rajendra Pal Srivastava v. Secondary Education Service Commission*, 2003 (1) E.S.C 74, the decision in the case of *Awadh Narain* (supra) is no longer a good law, submits the respondent's Counsel.

5. I have given careful consideration to the respective submissions of the learned Counsel for the parties. It is not in dispute that out of eight charges leveled against respondent No. 3, the Commission found after affording opportunity of hearing to respondent No. 3 that charge Nos. 1, 2, 5 and 8 stands proved.

6. Charge No. 1 is to the effect that respondent No. 3 was never appointed as Principal of Higher Secondary School but he by fabricating entries in his service record has mentioned that he has been appointed as Principal w.e.f. 2012/1981.

Moreover, such appointment is also not at all permissible under any provision of law.

7. Charge No. 2 relates to the fabrication of service record. The allegation against respondent No. 3 found to be proved is that although he was not duly selected for the post of Principal as no requisition was sent to the Commission, but for stopping process of appointment of duly selected teachers intended to be sent by the Commission, he falsely informed through the letter No. 307 dated 24th February, 1984 that the High Court in a writ petition filed by him, has stayed further proceedings in this regard.

8. Under Charge No. 5 the allegation is that respondent No. 3 has embezzled the college fund by withholding the cash book and not returning the same in spite of demand by the Committee of Management. Besides the cash book respondent No. 3 has also got destroyed other relevant documents of the school. Charge No. 8 is to the effect that in the capacity of Principal he has withdrawn the scholarship of the students by wrongly showing the name of such students who were never the students of the institution.

9. The charges which have been found to be proved as enumerated above do clearly show the seriousness of the charges against respondent No. 3. These charges were found established by the Commission even after hearing respondent No. 3. This part of the order of the Commission has attained finality as no efforts have been made by respondent No. 3 to dislodge the above conclusion of the Commission in any manner during the course of hearing of the writ petition or otherwise by placing relevant material alongwith the counteraffidavit.

10. The other aspect of the case is that before the Commission a plea was raised by respondent No. 3 that the registered letter through which copy of the chargesheet was sent to him on 16th August, 1988 by the Committee of Management, was received by him on 18th October, 1988. The Commission disbelieved the theory as set up by respondent No. 3 and rightly so in the absence of any document in support of the said plea. The Commission asked the respondent No. 3 to produce the original envelope containing the copy of the chargesheet despatched on 16th August, 1988 but he failed. It is, therefore, established that the registered letter sent on 16th August, 1988 was served on respondent No. 3 within a reasonable period of time i.e. within 34 days, as he has failed to prove that it was actually received by him on 18th August, 1988.

11. At the very out set the learned Counsel for the respondent submitted that the judgment given in *Awadh Narain v. U.P. Secondary Education Service Commission & Ors.* (supra), relied upon by the learned Counsel for the petitioner has been over ruled by a Division Bench of this Court in the case of *Rajendra Prasad Srivastava v. Secondary Education Service Commission*, 2003 (1) Education and Service Cases 74. The said submission is partially correct. The principle laid down in the case of *Awadh Narain* (supra) with regard to the

observance of principles of natural justice has not been reversed by the Division Bench in the case of Rajendra Prasad Srivastava. In *Awadh Narain* (supra) it was held that if the matter is not heard by the authority in presence of both the parties, there is violation of principles of natural justice. This aspect was not in issue before the Division Bench in *Rajendra Prasad Srivastava* (supra). However, it is not necessary in this case to dwell upon this issue further as the writ petition is liable to succeed on other points.

12. The only objection which has been found favour with the Commission in disapproving the resolution of the Committee of Management, dismissing respondent No. 3 from the service is that there has been violation of Regulation 37 of the U.P. Intermediate Education Act, 1921.

The said Regulation is reproduced below:

37. Soon after the report of the proceedings and recommendation from the inquiring authority are received. The Committee of Management shall after notice to employee meet to consider the report of the proceeding and recommendation made and take decision on the case. The employee shall be allowed, if he so desires to appear before the Commission in person to state his case and answer any question that may be put to him by any member present at the meeting. The Committee shall then send a complete report together with all connected papers to the Inspector or Regional Inspectress, as the case may be, for approval of action proposed by it.

13. The objection raised by the Commission is that respondent No. 3 was informed by registered letter dated 9th September, 1988 that his matter shall be taken up by the Committee of Management in its meeting scheduled to be held on 21st September, 1988, while the inquiry report itself is dated 20th September, 1988. The circulation of agenda of the meeting before receipt of inquiry report shows that the Committee was prejudiced and acted arbitrarily. With this approach it concluded that there is clear violation of Regulation 37. It is difficult to approve the said approach of the Commission in the facts and circumstances as found in the case. The Commission itself has found that the charge Nos. 1, 2, 5 and 8 which are of very serious in nature and relates to the fabrication and manipulation of service record and the order of the educational authorities, embezzlement of college fund, found proved. It has also been found by the Commission that in spite of opportunity given by the Committee of Management, respondent No. 3 has not filed any reply to the charges levelled against him. On examination of the matter by Commission, respondent No. 3 could not dislodge the finding recorded by the inquiry officer as also approved by the Committee of Management in its resolution dated 21/9/1988, holding that the charges of fabrication of record and embezzlement of college fund and the students fund, stands proved. In the above back drop the approach of the Commission that circulation of agenda of meeting even prior to the receipt of the inquiry officer smells arbitrariness and prejudice now needs scrutiny. Regulation 37 provides that an opportunity of hearing should be afforded to a teacher against the report

of the inquiry officer. The Committee of Management requires to comply with Regulation 37 mandatorily, so far as it relates to affording of opportunity of hearing to the employee is concerned, to enable him to meet the report of the proceedings and recommendation made by the inquiring authority and to take decision on the case. In my opinion, the provisions contained in Regulation 37 is designed to carry out the requirement of Section 16G (1) (2) in so far as the Regulation prescribes the condition and procedure under which punishment may be imposed. To this extent the petitioners have fulfilled the requirements of Regulation 37 as notice of the meeting of the Committee of Management, time and place of meeting was given to the respondent No. 3. It has not been found by the Commission that the Committee of Management has failed to provide a reasonable opportunity of hearing to respondent No. 3 in the meeting held on 21st September, 1988. No prejudice if any caused to respondent No. 3 by circulating the agenda of the meeting even before the receipt of the inquiry report has been found by the Commission. Nor any such plea has been raised by respondent No. 3 before the Commission. It is not the case of the respondent No. 3 that the circulation of agenda of the meeting in any manner has caused any prejudice to him. The manner and time of circulation of agenda of a meeting of the committee of management, if not otherwise provided, is procedural. The Regulation 37 although opens with the words 'soon after the report of the proceedings and recommendation from the inquiring authority are received' does not necessarily provide that issuance of agenda of meeting even before the receipt of the report of the proceedings and recommendation from the inquiring officer received will vitiate the meeting of the Committee of Management. The objection if any in this regard can be raised by the members of the Committee of Management. An employee who has not cared to appear in spite of service of notice on him about the date, place and time of the meeting of the Committee of Management, cannot turn round and say afterwards that the meeting was illegal as its agenda was circulated even before the receipt of the recommendation and papers from the inquiring authority. At the most this can be an irregularity which is not so grave so as to amount an illegality.

14. Looking to the facts of the present case, calling upon the Committee of Management to reconsider the matter of termination of respondent No. 3 after complying with Regulation 37 is nothing but an empty formality. Charges of serious nature have been found to be proved against respondent No. 3. It is not the case on such charges a lesser punishment other than the dismissal can be awarded. The suspension of respondent No. 3 was approved by the District Inspector of Schools on 30th September, 1988, vide para 9 of the counteraffidavit of respondent No. 3. Respondent No. 3 is, therefore, is not working for the last about 18 years. The charges proved against him have made him unbecoming of a teacher.

15. Before saying omega to the case, it is apt to take note of a recent pronouncement of Apex Court, that too in the context of Principal of an institution; *Om Prakash Manu v. Director of Education (Basic)*, 2006 AIR SCW

4548, wherein the following has been observed:

?The appellant was appointed as Head Master of the Institution. The conduct of the appellant, therefore, must be role model. Considering the conduct of the appellant as revealed in the chargesheet, in our view, the appellant has committed a grave misconduct which would warrant his termination from service.?

16. Appellant therein, was charged of dereliction of duty, misappropriation etc.

17. In view of above discussion, the impugned order dated 11th April, 1991, passed by the President one Member SubCommittee, which was approved by the U.P. Secondary Education Services Commission in its meeting dated 1241991/1841991, disapproving the resolution of the Committee of Management dated 2191988, as communicated by letter No. 35/D and/9193, dated 2341991 by Secretary of the Commission, Annexure6 to the writ petition are quashed by issuing a writ of certiorari. The Commission shall reconsider the matter of quantum of punishment only afresh, in the light of the observations made above.

18. The writ petition is allowed. No order as to costs.