

(1979) 01 AHC CK 0037
In the Allahabad High Court
Case No : Second Appeal No. 1931 of 1977

Victoria High School Association, Agra	APPELLANT
Vs	
Krishna Kant Sharma	RESPONDENT

Date of Decision : 29-01-1979

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(3)

Uttar Pradesh Intermediate Education Regulations, 1921 — Chapter 111, 11, 24, 25

Citation : (1979) 01 AHC CK 0037

Hon'ble Judges : Deoki Nandan, J

Final Decision : Dismissed

Judgement

Deoki Nandan, J.

The appellant is a registered society which runs the Victoria Intermediate College at Agra. The respondent was appointed a Demonstrator in Chemistry in the said institution for the first time on 27.7.1967., for the academic session ending on 30th June, 1968. This appointment was approved by the District Inspector of Schools and was renewed from year to year. The last renewal of the appointment was made in the year 1972 and the appointment was to come to an end on 30.6.1973. On 29.4.1973 the Managing Committee of the institution passed a resolution to the effect that: "The appointment of Shri Krishna Kant Sharma will automatically come to an end on 30.6.1973": that "the post be advertised"; and that "Shri Sharma can also apply if he so likes".

The District Inspector of Schools did not approve of this action of the Managing Committee of the Institution and, by a letter dated 17.3.1975 (paper No. 57 Ka) addressed to the Manager of the institution, he observed that the action was contrary to his (Inspector's) letter dated 20.8.1969 and required the Manager to submit a report and to explain as to why action be not taken for noncompliance with departmental instructions. The letter dated 20.8.1968 referred to therein is a circular letter addressed to the Managers of all the Higher Secondary Schools at Agra and conveyed the instructions issued by the Directorate of Education on

receiving information that some Managers were terminating the services of Demonstrators who possess a B, Sc. Degree on the ground that they were untrained. It asked the managers not to terminate the services of such demonstrators under any circumstances and if the services of any such demonstrator had been terminated, to reappoint and continue him in service. This letter was issued in pursuance of a circular dated 24.7.1969 from the Additional Director of Education, U. P. to all the Regional Deputy Director, and Inspectors of Schools, etc. a copy of which is paper No. 53 Ka on the record. It further appears from the letter dated 30.1.1970 issued by the District Inspector of Schools, Agra to the Principal and Manager of the institution, that the appointment of the plaintiffrespondent was approved as a temporary one, but his services were to be continued without any break, and without any limitation of time.

The suit giving rise to the present Second Appeal was filed by the plaintiffrespondent claiming a declaration that the aforesaid order dated 3.5.1973, which purported to terminate his services, is illegal, ultra vires and not binding on him and that he continued in the service of the defendantappellant institution; and further claiming a decree for the recovery of Rs. 1500/ as also pendentj-lite and future emoluments, at the rate of Rs. 250/ per month. One of the grounds, among others, on which the validity of the action of the defendantappellant was challenged by the plaintiffrespondent, was want of approval of the District Inspector of Schools for the purported termination of his services as a teacher.

The trial court held that the plaintiff's service was temporary, but it was extended from year to year and that the termination of his services by the order dated 3.5.1973 was illegal and not binding on the plaintiff; and it decreed the suit granting a declaration to that effect, and for recovery of Rs. 1500/ and all emoluments due on the date, viz. from 3.1.1974, upto the date of its judgment, which was 1.6.1977, at the rate of Rs. 250/ per month. The lower appellate court affirmed the decree. It held that the plaintiffrespondent was properly appointed and after one year's service he must be deemed to be confirmed "U/S 11 of Chapter III of Intermediate Education Act". The reference is obviously to regulation 11 of Chapter III of the Regulation relating to Conditions of Service, made by the State of U.P. in exercise of the powers conferred on it by SubSection (1) of Section 8 of the Intermediate Education (Amendment) Act, 1958, with reference to Section 16G of the Intermediate Education Act 1921, introduced there into by that Amendment Act.

The Victoria Intermediate College, Agra is indisputably a recognised institution and is governed by the provisions of the Intermediate Education Act, 1921. Section 16G (1) of the Act lays down that: "Every person employed in a recognised institution shall be governed by such conditions of service as may be prescribed by Regulations and any agreement between the management and such employee in so far as it is inconsistent with the provisions of the Act or with

the Regulations shall be void" and subsection 3 (a) provides that no teacher "may be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments or served with notice of termination of service except with the prior approval in writing of the Inspector." It is undisputed that the prior approval of the Inspector for the termination of the services of the plaintiffrespondent had not been obtained in the present case. But, Mr. Gopi Nath Kunzru, learned counsel for the defendantappellant argued that the prior approval of the Inspector was not required in the present case because no notice of termination of service had been served on the plaintiff respondent. He contended that the service of the plaintiffrespondent came to an end, or stood automatically terminated, on the expiry of the period of time for which his appointment had been made, viz. on 3061973. In support of this contention, Mr. Kunzru relied upon Regulation 24, Chapter 111, of the aforesaid Regulations, which runs as follows:

"(24) The services of an employee appointed as a temporary measure for a definite period or in a levy vacancy or in a vacancy occurring for a part of the session shall unless extended according to law, terminate on the expiry of the period for which he was appointed or when vacancy comes to an end, whichever is earlier, and no prior notice shall be needed for such termination."

"Explanation:Unless the context otherwise requires, the word "employee" in this and the following regulations of this chapter shall mean a teacher, a principal or Head Master."

He urged that the plaintiffrespondent's appointment was for a definite period of time no prior notice was required to be served for terminating his appointment, which ipsofacto came to an end on the expiry of the period for which the appointment had been made and that being so, the law did not require any approval of the Inspector for such termination of service.

The contention raised by Mr. Kunzru is impeccable as a proposition of law, but on the facts it would be difficult to say that the appointment of the plaintiffrespondent in the present case was "for a definite period of time" within the meaning of that expression as used in Regulation 24. No doubt the appointment when initially made in July, 1967, was adhoc, as the plaintiff was untrained at that time, but, as would appear from the circular issued by the Education Department, in 1969, the appointment, although irregular, was approved and was to be continued indefinitely. Although the Regulation did not contemplate the making of a temporary appointment of this kind, nevertheless the appointment was valid as it was approved under Section 1.6E of the Act by the Inspector. The appointment was not for a definite term, although it was made for one academic session at a time, in view of the fact that it was clearly understood that the appointment was to be continued indefinitely by being renewed from session to session. Being a temporary appointment, but not for a definite period or term, it could be terminated only by one month's notice, or one month's pay in lieu of notice, in accordance with Regulation 25: and service

of such a notice would have required the prior approval of the Inspector in writing. In the result, although I do not agree with the finding of the lower appellate court that the plaintiffrespondent must be deemed to have been confirmed under Regulation 11, it has to be held that the temporary services of the plaintiffrespondent could not have been terminated except by one month's notice, or one month's pay in lieu thereof, and such a notice could not have been served without the prior approval of the Inspector. The action of the defendantappellant in treating the plaintiff's service as having automatically terminated with effect from 3061973 is, therefore, against law, and was rightly declared to be illegal.

Mr. Kunzru, however, contended that the declaration amounts to enforcement of a contract of personal service and could not, therefore, be granted. He relied on the cases of *S. Dutta v. University of Delhi* (A.I.R. 1958 S.C. 1050) and *Vaishya Degree College v. Laxmi Narain* (A.I.R. 1976 S.C. 888), in support of the said proposition. When confronted with the full bench decision of this Court in *Alt Ahmad v. District Inspector of Schools* (A.I.R. 1977 All. 539), Mr. Kunzru relied on the case of *U. P. State Ware Housing Corporation v. Chandra Kiran Tyagi* (A.I.R. 1970 S.C. 1924). It was held by the full bench of this Court in *Ali Ahmad's* case that the Committee of Management of an Intermediate College is not a statutory body, nevertheless, "a writ petition filed against it is maintainable if such petition is for enforcement of performance of any legal obligations or duties imposed on such committee by a statute." Now, the question whether the defendant Committee of Management is a statutory body or not, may not be germane to the grant of relief in a civil suit. Nevertheless, it cannot be disputed that a Civil Court is bound to enforce the law. The provisions of Regulation 25, requiring the termination of the services of a temporary teacher by giving him one month's notice or one month's pay in lieu thereof, and those of section 16G (3) of the Intermediate Education Act, requiring the prior approval of the Inspector for giving such notice, are statutory provisions. The regulations were framed by the State Government in exercise of the powers conferred on it by Section 8 (I) of the Intermediate Education (Amendment) Act, 1958. The power exercised by the State Government for making the regulations was legislative in character, and it cannot be disputed that the said regulations have statutory force. The case of the *U. P. State Ware Housing Corporation* (supra) is clearly distinguishable inasmuch as the regulations in question in that case were framed by the Central Ware Housing Board in exercise of its power of regulating the conditions of service of its employees, which was not legislative in character. In granting the declaration which it did in the present case the Civil Court did not enforce any contract of personal service, but was only enforcing the conditions of service prescribed by Statute for teachers of recognised institutions.

In the result, the appeal fails and is dismissed with costs.