
(1998) 08 AHC CK 0094

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2909 of 1998

Zinat Rehman

APPELLANT

Vs

District Inspector of Schools, Azamgarh

RESPONDENT

Date of Decision : 28-08-1998

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G

Citation : (1998) 08 AHC CK 0094

Hon'ble Judges : O.P.Garg, J

Final Decision : Allowed

Judgement

1. By the impugned order dated 1611998, Annexure 8 to the writ petition, Smt. Zinat Rahman, Principal of Madarsa Niswan Inter College, Azamgarh was placed under suspension for a period of 40 days in pursuance of the decision of the Committee of Management, which was convened for the purpose on 1011998. Dr. Fakhre Alamrespondent No. 4 is the Manager of the Committee of Management of the collegerespondent No. 3. This order of suspension has been challenged in the present writ petition under Article 226 of the Constitution primarily on the ground that the committee of management or for that matter, Dr. Fakhre Alam, respondent Nos. 3 and 4, have no right or authority to suspend the petitioner on account of on going protracted dispute between the rival committees of management. Abdul Rahim Ansari, asserting himself to be the manager, has been joining issues on the point with Dr. Fakhre Alam. It is alleged that the petitioner has been made a scape goat of the infighting between the office bearers of the rival committees of management and on false and frivolous grounds, she has not only been placed under suspension, but has been subjected to inordinate and in human behaviour, including manhandling and hurling of abuses at her. The history of litigation between the rival committees of management with details of the case have been given in the petition. In nutshell, the prayer of the petitioner is that since Dr. Fakhre Alam had no authority or jurisdiction to suspend her, the impugned order dated 1681998, Annexure 8, be quashed and the respondents be commanded not to interfere with her

functioning as Principal of the institution.

2. Counter and rejoinder affidavits have been exchanged. In the counteraffidavit filed by Dr. Fakhre Alam, who passed the impugned order, it has been mentioned that the committee of management of which he is the manager, is in fact the lawful committee of management as has been duly recognised by the Deputy Director of Education (for short "DDE") and that the said committee is discharging all its statutory and managerial functions of the institution it is alleged that the petitioner is taking sides with the alleged illegal rival committee of management of which Abdul Rahim Ansari claims himself to be manager and she having fallen in the fold of Sri Ansari, has committed serious financial irregularities and various acts of omission and commission which resulted in mismanagement of the institution. The Principal was served with a cause notice but she has chosen not to furnish any explanation or reply and consequently in order to ensure the smooth and proper functioning of the institution, the committee of management, after taking into consideration the report of the manager and due deliberations, in its meeting held on 10/11/1998, resolved to suspend the petitioner.

3. Heard Sri M.M. Sahai, learned Counsel for the petitioner, Sri Ashok Khare, learned Counsel for the Dr. Fakhre Alam and the committee of Management, of which he is Manager, as well as learned Standing Counsel appearing for the District Inspector of Schools.

4. Undisputedly, the petitioner was appointed as a Lecturer in Madarsa Niswan Inter College, Azamgarh in the year 1977. On 30/6/1994, Km. Badrun Nisan, permanent Principal of the college retired and in her vacancy, the present petitioner who was the seniormost Lecturer/teacher in the college, came to be appointed as Principal under the orders of District Inspector of Schools (for short "DIOS"), who was at the relevant time, acting as authorised controller. It is also an admitted fact that there have been serious disputes and protracted litigations going on between rival committees of management. On the one hand, Abdul Rahim Ansari was asserting himself to be in the effective control of the affairs of the institution as manager, while on the other, Dr. Fakhre Alam has been staking his claim to the managership. In these circumstances, one can imagine the miserable plight of the lady principal of the college who had to function in a hostile atmosphere having been created on account of two warring groups. Somehow, it appears, Dr. Fakhre Alam took to his head that the petitioner is acting against his interest and was exhibiting loyalty to the Ansari group with which she was aligned. Whatever may have been the ground for passing the order of suspension, the fact remains that on the date on which the committee took decision and the impugned order was issued, the committee of management of which Dr. Fakhre Alam is manager, stood duly recognised under the orders of DDE. It cannot, therefore, be said that the order of suspension has been passed by a committee, or for that matter the manager, who did not have the authority to do so. I, therefore, proceed on the premises that the committee

of management of which Dr. Fakhre Alam is the manager had the power and competence to pass the impugned order.

5. Learned Counsel for the petitioner urged that in the absence of the approval accorded by the DIGS, as contemplated under Section 16G of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as "the Act"), the petitioner cannot be allowed to remain under suspension and she cannot be prevented from performing her duties of the said post. This submission of the learned Counsel is not without merit. On the other hand, Section 16G of the Act deals with the conditions of service of head of institutions, teachers and other employees of the Intermediate Colleges. Its subsections (5) (6), (7) and (8), which provide for suspension of head of institution or a teacher of such institution are as under:

"16G (5) No Head of Institution or teacher shall be suspended by the Management, unless in the opinion of the management

(a) the charges against him are serious enough to merit his dismissal, removal or reduction in rank; or

(b) his continuance in office is likely to hamper or prejudice the conduct of disciplinary proceedings against him; or

(c) any criminal case for an offence involving moral turpitude against him is under investigation, inquiry or trial.

(6) Where any Head of Institution or teacher is suspended by the Committee of Management it shall be reported to the Inspector within thirty days from the date of the commencement of the Uttar Pradesh Secondary Education Laws (Amendment) Act, 1976, in case the order of suspension was passed before such commencement and within seven days from the date of the order suspension, in any other case and the report shall contain such particulars as may be prescribed and accompanied by all relevant documents.

(7) No such order of suspension shall, unless approved in writing by the Inspector, remain in force for more than sixty days from the date of commencement of Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975, or as the case may be, from the date of such order and the order of the inspector shall be final and shall not to be questioned in any court.

(8) If, at any time, the Inspector is satisfied that disciplinary proceedings, against the Head of Institution, or teacher are being delayed for no fault of the Head of Institution or the teacher, the Inspector may, after affording opportunity to the Management or make representation revoke an order of suspension passed under this Section."

According to subsection (7), no order of suspension shall "remain in force for more than sixty days" unless approved in writing by the Inspector. "In force" means in operation. The only effect of order, which is not in force, is that it is

ineffective and inoperative. But such an order is not obliterated and continues to exist though ineffective. Similarly, when the order, which was in force, has ceased to be operative due to a supervening event, will come into force again and will become effective after the infirmity caused by supervening event is removed. In view of the provisions of subsection (7), an order of suspension of Head or a teacher of an institution shall remain in force for a period of sixty days from the date of such order even if it is not approved in writing by the Inspector, but in the absence of the approval by the Inspector such an order will cease to operate on expiry of sixty days from the date of the order, although it will continue to exist though inoperative. But if the order of suspension is approved even after the expiry of sixty days, it will come into force again and will become effective immediately on such approval. Any other interpretation will lead to serious consequences. Inaction on the part of the Inspector either deliberate or otherwise may frustrate the object of the provision itself.

6. Sri Ashok Khare, learned Counsel for the respondents urged that the suspension of an employee is the integral part of the power of the employer. The committee of management, according to him, has been vested with the power to suspend the head of the institution, a teacher or a nonteaching member of the staff, however, subject to the supervisory power of the DIGS conferred under Section 16G of the Act.

The submission on behalf of the respondents appears to be that even though the DIGS has not approved the order of suspension as passed by the Committees of Management, the petitioner shall continue to remain under suspension for a period of 60 days and even after the expiry of period of 60 days, the order of suspension shall not cease to exist but may be revived as and when the BIOS accords his approval. It was suggested that the proper course would be to direct the DIOS to pass the appropriate orders on the proposal submitted by the Committee of Management and if the DIOS ultimately does not accord approval, the committee of management shall have no option but to reinstate the petitioner on her post. In support of his contention, Sri Khare placed reliance on the decision in (1995) 1 U.P.L.B.E.C. 460 Chandra Bhushan Misra v. DIOSDeoria and others, (Full Bench), in which it was observed that the order of suspension of the Principal or teacher, which is not approved by the DIOS within 60 days from the date of such order, shall remain in operation but becomes effective only when approval is accorded by the DIOS. It does not lapse after six months in absence of its approval. A reference was also made to a Division Bench decision of this Court 1988 UPLBEC 226 Committee of Management Sri Mahanthu Radha Krishna Inter College, Sakarpura, Distt. Eallia v. DIOS Ballia and another, which is an authority on the point that an order passed by the DIOS under the provisions of Section 16G, if does not contain any reason for approving or disapproving the resolution of: the committee of management, stands vitiated. There is yet another Division Bench decision of this Court (1993) 3 UPLBEC 1826 Bali Ram Singh and another v. Committee of Management Amarbir Inter College, Dhanapur Varanasi and others. In that case, it was held that the order of

suspension is required to be approval by the DIOS within a period of 60 days from the date of the order and that the said period of 60 days would remain suspended when the order of suspension is challenged before the High Court and is stayed. It was further observed that after the decision of the writ petition by the High Court, period again starts running. Thus, while calculating 60 days, referred to in clause (7) of Section 16G the period during which the operation of suspension order remained stayed, shall have to be excluded. If this period is excluded, it cannot be said that the approval was not granted within 60 days. I have thoroughly scrutinised the above decisions and find that though on principle, of law, as stated therein, there can be no quarrel, but the fact remains that the various observations made therein cannot be transplanted to the facts of the present case. Every case has to be judged in its own setting and its peculiar facts. However, it would not be out of place to mention that in Committee of Management, Jan Sahyogi Intermediate College, Modhi (Distt. Etawah) v. DIOS, (1987) 1 UPLBEC 144 (D.B.) it was held that suspension order cannot remain in force, beyond 60 days from the day it is passed if it is not approved by the Inspector.

7. Now, let us examine as to what has happened in the present case. It is amazing to note that in spite of the fact that the petitioner was suspended while she was performing duties as Principal of the College, the matter was not reported to the DIOS as was required under Section 16G. It was incumbent upon the Committee of Management to have reported the matter to the DIOS within seven days of the passing of the order. There is nothing on record to indicate that the order of suspension was ever reported to the DIOS as was required under Section 16G. It was incumbent upon the committee of management to have reported the matter to the DIOS within 7 days of the passing of the order. There is nothing on record to indicate that the order of suspension was ever reported to the DIOS. No attempt, whatsoever, has been made by the Committee of Management to seek the approval of the DIOS and, therefore, the law, which has been discussed above that DIOS should accord approval within 50 days of the order and if he has failed to pass any order, the order of suspension would cease to be operative after the expiry of 60 days or that it may revive after the stay order is vacated by the Court or the order shall continue till such time it is not approve or disapproved by the DIOS, is not attracted in the present crse as all the aforesaid facts and circumstances are foreign to the facts of the present case. The Committee of Management has acted in flagrant violation of the provisions of subsection (6) of Section 16G as it was failed to report the matter to the DIOS. The Committee of Management perhaps had in its mind that the requisite approval of the DIGS would not be forthcoming and it was for this apparent reason that the order of suspension was hadged with the time limit of only 40 days, meaning thereby that the petitioner was to remain under suspension for 40 days only. No fresh order of suspension after the expiry of 40 days has been passed and it is starting to note that the petitioner has not been allowed to join her duties thereafter even though the DIGS has been insisting

and writing to the Committee of Management that functioning of the petitioner as Principal should neither be interfered with, nor interrupted nor impeded in any manner. The committee of management has adopted an attitude of obstinacy and obduracy with an avowed object of keeping the principal of the college at bay. This reprehensible act of the committee of management cannot but be condemned. The committee is out to violate the provisions of law and is not prepared to see to reason even though the statutory authority i.e., the DIGS is reminding it not to commit any illegalities. 8. The petitioner was suspended on 16/11/1998. She continued to remain under suspension till 4/2/1998 on which date, a stay order was passed in the present petition for the period upto 31/3/1998. Therefore, for the initial period of 18 days, till the stay order, was passed, the petitioner remained suspended. After the lapse of the stay order, the petitioner again continued to be under suspension in the months of June, July as well as current month of August, 1998. The period during which, the petitioner remained under suspension, has exceeded 100 days. Even if the suspension order is treated to be otherwise valid, it will cease to be operative on the expiry of the period of 40 days, which was period mentioned in the impugned order itself and in any case, she would acquire the right of reinstatement to the post of Principal after the expiry of period of 60 days during which neither any approval of the competent authority was sought nor granted. In this view of the matter, the impugned order of suspension has exhausted its life and as of today, there is no suspension order against the petitioner. The Committee of management, or for that matter, respondent have no alternative option but to permit the petitioner to function as Principal of the College.

9. In conclusion, for the reasons stated above, the writ petition succeeds. It is allowed. The impugned order dated 16/11/1998, Annexure 8 to the writ petition, is hereby quashed and it is directed that the petitioner shall immediately be permitted to join her duties as Principal of the college concerned. The respondents shall not interfere or place any impediment, in any manner, in the functioning of the petitioner as principal of the college. It is, however, made clear that the committee of management shall be free to initiate or get the pending disciplinary enquiry completed, into the various allegations against the petitioner, according to law.