

Reserved

Neutral Citation No. - 2025:AHC:135062

Court No. - 38

Case :- WRIT - A No. - 27065 of 2009

Petitioner :- Rajendra Prasad Sharma

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Siddharth Khare, Ashok Khare, Prabhakar
Awasthi, Rohit Upadhyay

Counsel for Respondent :- C.S.C., S.R. Singh, Vashishtha Tiwari

Hon'ble Donadi Ramesh, J.

1. Heard Sri Prabhakar Awasthi, learned counsel for the petitioner, Sri Vashishtha Tiwari, learned counsel for the 5th respondent and learned Standing Counsel for the State-respondents.

2. Present writ petition has been filed for following relief:

“(i) a writ, order or direction in the nature of certiorari quashing the resolution of UP Secondary Education Services Selection Board, Allahabad dated 05.02.2009 as communicated by letter of Secretary, U.P. Secondary Education Services Selection Board dated 24.02.2009 (Annexure 13 to the writ petition).

(ii) a writ, order or direction of a suitable nature commanding the respondents not to interfere in the functioning of the petitioner as Lecturer at Sadabad Inter College, Sadabad, Hathras and to pay the petitioner his regular monthly salary on the said post, regularly, every month including all arrears of salary.”

3. Petitioner was appointed as Lecturer in Hindi in fifth respondent-institution on 31.3.1975 and continued in the said institution without having any remarks. When the post of principal was vacant on expiry of one Ram Kishan on 3.7.2000 as the petitioner is the senior-most lecturer in the institution and entitled to be considered as an officiating/ad hoc principal. But for the reasons best known to the management, vide

resolution dated 13.7.2000, a decision was taken denying the opportunity to the petitioner and giving the ad hoc principal post to the next senior-most principal, and the next senior-most lecturer refused to accept the same and vide resolution dated 18.7.2000 appointed Shri Fauran Singh as the officiating principal.

4. In view of the above circumstances, surprisingly the petitioner has received one notice dated 8.9.2000 from District Inspector of Schools based on the resolution of the committee of management dated 13.7.2000 calling upon the petitioner to submit reply to the allegations made in the resolution. The petitioner has replied to the said notice on 12.9.2000. Based on the said reply, the District Inspector of Schools, Hathras has forwarded the papers to Regional Joint Director of Education, Agra and subsequently, the Regional Joint Director of Education, Agra has rejected the representation of the petitioner vide order dated 4.7.2001. As against the same, the petitioner has approached this Court by way of Writ Petition No. 26048 of 2001. The said writ petition was disposed of on 18.7.2001 and interim orders were granted suspending the operation of the order dated 4.7.2001. Consequently, the District Inspector of Schools has passed an order on 20.08.2001 granting recognition to the petitioner as an officiating principal of the college by cancelling the order dated 23.12.2000, which had earlier been passed in favour of Fauran Singh. Against the above said order, Fauran Singh had filed Writ Petition No. 34915 of 2001. In that stay order has been granted by this Court on 8.11.2001 permitting Fauran Singh to function as principal of the college.

5. By virtue of the above dispute, the management has culminated a proceeding that initially the petitioner was made under suspension on 28.6.1993 followed by a charge-sheet on 10.07.1993 and a resolution was passed proposing punishment inflicting penalty upon the petitioner. Hence, he is not entitled for the appointment as an officiating principal

6. The committee of management has once again, passed a resolution on

19.11.2001 proposing dismissal of the petitioner on the basis of charges framed on 10.07.1993 and the same was forwarded to the UP Secondary Education Services Selection Board, Allahabad (hereinafter referred to as the Board) for approval, and the Board has passed final orders approving the termination vide order dated 5.2.2009. Aggrieved by the same, the petitioner has filed the present writ petition.

7. Learned counsel for the petitioner has submitted that the fifth respondent has not followed the Regulations 35, 36 and 37 of Regulations III of the Regulations framed under the Intermediate Education Act. As per the abovesaid provision, no point of time inquiry committee was appointed and no notice was served on the petitioner regarding inquiry or any inquiry has been conducted. Finally, no inquiry report was submitted to the petitioner, except proposing for dismissal vide resolution dated 22.06.2003. Hence, the very alleged inquiry is contrary to the Regulations 35, 36 and 37, which read as below:

"35. शिकायत अथवा गम्भीर प्रकृति के आरोपों की प्रतिकूल आख्या प्राप्त होने पर समिति, अध्यापकों एवं अन्य कर्मचारियों के विषय में प्रधानाध्यापक अथवा आचार्य अथवा प्रबन्धक को जाँच अधिकारी नियुक्त करेगी (अथवा प्रबन्धक स्वयं जाँच करेगा यदि समिति द्वारा नियमों के अन्तर्गत उसे यह अधिकार प्रतिनिहित हो गये हैं) और प्रधान अध्यापक अथवा आचार्य के विषय में एक छोटी उपसमिति होगी जिसे आख्या यथाशीघ्र प्रस्तुत करने के निर्देश होंगे।

चतुर्थ श्रेणी के कर्मचारियों के सम्बन्ध में प्रधानाचार्य / प्रधानाध्यापक द्वारा किसी वरिष्ठ अध्यापक को जाँच अधिकारी नियुक्त किया जायेगा।

36. (1) The grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the employee charged and which shall be so clear and precise as to give sufficient indication to the charged employee of the facts and circumstances against him. He shall be required within three weeks of the receipt of the charge-sheet to put in a written statement of his defence and to state whether he desired to be heard in person. If he or the inquiring authority so desires an oral inquiry shall be held in respect of such of the allegations as are not admitted. At that inquiry such oral evidence will be heard as that inquiring authority considers necessary. The person charged shall be entitled to cross-examine the witnesses, to give evidence in person, and to have such witnesses called as he may wish: provided that the inquiring authority conducting the inquiry may for sufficient reasons to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof. The inquiring authority conducting the inquiry may also separately from these proceedings, make his own recommendation regarding the punishment to be imposed on the employee.

(2) Clauses (1) shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him.

(3) All or any of the provisions of clause (1) may for sufficient reasons to be recorded in writing be waived where there is difficulty in observing exactly the requirements thereof and those requirements can in the opinion of the inquiring authority be waived without injustice to the person charged.

**[37. जाँच-अधिकारी से कार्यवाही की आख्या तथा संस्तुति प्राप्त होने के बाद शीघ्र ही कर्मचारी को नोटिस देने के बाद प्रबन्ध समिति की बैठक कार्यवाही की आख्या तथा संस्तुति पर विचार करने के लिए होगी और उस मामले पर निर्णय लेगी। कर्मचारी को, यदि वह चाहता है समिति के समक्ष स्वयं उपस्थित होने की आज्ञा दी जायेगी जिससे वह अपना अभियोग प्रस्तुत कर सके और बैठक में उपस्थित किसी सदस्य द्वारा पूछे गये किसी प्रश्न का उत्तर दे सके। तब समिति पूर्ण आख्या, समस्त सम्बन्धित कागज-पत्र सहित निरीक्षक अथवा मण्डलीय निरीक्षिका को उसके द्वारा प्रस्तावित कार्यवाही को स्वीकृत हेतु प्रेषित करेगी।*

किन्तु चतुर्थ श्रेणी के कर्मचारियों के सम्बन्ध में निरीक्षक-निरीक्षिका को स्वीकृति हेतु कोई आख्या नहीं भेजी जायेगी। इनके सम्बन्ध में उपरोक्त सारी कार्यवाही नियुक्ति प्राधिकारी द्वारा की जायेगी।”

8. As the Regulation 35 clearly indicates that upon receipt of complaint or serious allegations, the committee has to appoint a Principal, Headmaster or Manager to investigate the matter. As per Regulation 36, a definite charge should be communicated to the employee charged by indicating clear ground to reply and if the authority has to conduct oral inquiry in respect of the charges against alleged which are not admitted. Regulation 37 clearly contemplates that if any resolution is passed by the committee of management without following the procedure prescribed or violation of principles of natural justice and matter of termination of service, the Board should not approve such termination.

9. Further, learned counsel for the petitioner has also submitted that the orders passed by the Board is contrary to the observations made by this Court in **Managing Committee of Gochar Krishi Inter College, Rampur Maniharan, Saharanpur and another Vs. U.P. Secondary Education Service Selection Board, Allahabad and others, 2002 (2) UPLBEC 1225**. As in the instant case, the second respondent has re-conducted the inquiry and pass approval orders, which is contrary to the observations made by this Court in the above referred judgment. Relevant paragraphs of the above-referred judgment are as under:

“11. Section 21 of the Act provides restriction on dismissal of a teacher except with the prior approval of the Board. The power to approve also includes disapproval but the question in the present case is about the extent of powers of the Selection Board while approving or disapproving the proposal.

Although, the regulations cannot curtail the powers under the Act, under which they are made, these can only enumerate the scope of powers. Regulation 7 authorises the commission to call for any documents, considered relevant in the case from Management or the Inspector. This power is in aid of making an enquiry into the matter. Regulation 8, however, enumerates the scope of power of approval provides that the Commission, after due consideration, shall approve disapprove the punishment proposed or may issue any other directions deemed fit in the case. It is to be noticed that Section 16-G (3) (b) of U.P. Intermediate Education, 1921 provides that the Inspector may approve or disapprove or reduce or enhance the punishment or approve or disapprove of the notice for termination of service proposed by the management provided that in the cases of punishment before passing orders. Inspector shall give an opportunity to the Principal, Headmaster or the teacher to show-cause within a fortnight of the receipt of notice why the proposed punishment should not be inflicted. After the enactment of UP Secondary Education Service and Selection Board Act, 1982, the powers of Inspector under Section 16(g)(3)(b) of the U.P. Intermediate Education, 1921, in the case of Institutions, which are not minority institutions, have been vested in Selection Board, with significant absence of the power to reduce or enhance the punishment. The authority, specifically given to the Inspector, is conspicuously missing in Section 21 of Act, 1982 read with Regulations of 1985 and consequently the power to give opportunity to the Principal, the Headmaster or the teacher show-cause why the proposed punishment should not be inflicted, is also not provided in Section 21 of the Act, 1982 or the regulations made thereunder. The Selection Board, therefore, has not been given the powers to either reduced or enhance the punishment.

12. A question thereafter arises to the extent and scope of the powers of th Board. In all the cases where the appointing authority is vested with discretionary powers, the power of enquiry, evidence, production of documents, the examination of charges and the defence taken by the delinquent is in the hands of the disciplinary authority. It is the disciplinary authority which has to form an opinion whether the charges were established after going through the record and evidence adduced by the department and the delinquent employee. The sufficiency or insufficiency of evidence, demeanor of witnesses and conduct of the delinquent employee is to be Judged by the disciplinary authority. The scrutiny by approving authority is to find out; (1) whether the enquiry was conducted by the competent authority; (2) whether the delinquent was informed of the charge; (3) whether he was afforded opportunity to defend himself and that there was no prejudice caused on account of denial of such opportunity; (4) whether the evidence led by department proves the charges, and (5) whether the proposed punishment is commensurate to the charge. The power of approval cannot be extended to include afresh enquiry in the matter. Even if the approving authority comes to the conclusion that the enquiry was not fair or impartial or the principles of natural justice were violated or that the punishment is not commensurate to the charges, it can only send back the matter to the disciplinary authority. The power to inflict punishment or reduce or enhance the punishment has not been given under Section 21 of the Act, and the necessary conclusion is that the Commission does not have authority to re-examine the charges and to come to a different conclusion than arrived at by the Committee of Management.”

10. Based on the above grounds, learned counsel for the petitioner has emphasized his arguments that in paragraph 29 and 30 of the writ

petition, specific averments made that respondent no.5 have not followed the procedure contemplated under Regulations 35, 36 and 37, but there is no specific denial by respondent no.5 in his counter affidavit and also he has not placed any material to show that he has fulfilled the procedure contemplated under the Regulations. He has also submitted that in fact the respondent no.5 before passing the resolution, no inquiry has been conducted and the same was specifically averted in paragraph 29 and the said contention was admitted in paragraph 8 of the counter affidavit filed by respondent no.5.

11. Further, learned counsel for the petitioner has submitted that in fact, the re-inquiry has been conducted before passing such approval order, which is contrary to Section 21 of the Act, 1982. To substantiate his contention, he has submitted that the alleged charge-sheet dated 10.07.1993 was of six charges, but surprisingly the impugned approval order is of 12 charges. That itself shows that respondent no.2 has re-conducted the inquiry, which is contrary to Section 21 of the Act, 1982.

12. Replying to the above contention, learned Standing Counsel appearing for the respondents has submitted that as directed by this Court, the entire record were called from the management and several opportunities were given to both the management as well as the petitioner before passing the impugned order. After appreciating the entire evidence on record, the second respondent have passed the orders approving the dismissal by considering serious allegation based on the entire record.

13. Learned counsel for respondent no.5 has specifically stated that when the petitioner is not cooperated with the inquiry, he was given several opportunities for hearing and show cause notice was also given vide notification in daily newspaper, but he failed to cooperate. Based on the record, the charges were found true and accordingly, the inquiry committee has submitted its report, hence, they have conducted the

inquiry as per the Regulations 35, 36 and 37 before passing the resolution proposing for dismissal of services of the petitioner.

14. Considering the above submissions and perusal of the record, during pendency of the writ petition, the petitioner has died and subsequently, the wife of the petitioner has been substituted but she also died and the only child has been substituted as legal heir.

15. In the said circumstances, considering the entire facts as the petitioner was appointed in the fifth respondent-institution as Lecturer in 1975 and continued in the said institution more than a decade and only the issue called upon with regard to the appointment of officiating principal, the respondent no.5-management has suddenly raised an issue of charge-sheet dated 10.07.1993, that too after a lapse of 8 years. That itself clearly discloses that the intention of the management. Taking the specific averments made by the petitioner in paragraphs 24, 25, 26, 29 and 30, where he has specifically contended that the respondents have not followed the procedure contemplated under the Regulations 35, 36 and 37, though vague reply has been given by respondent no.5 in his counter affidavit stating that when the petitioner is not cooperating with them, for conducting inquiry, they have issued notices in daily newspaper. That itself clearly establishes that the inquiry was conducted behind the back of the petitioner.

16. As the issue raised by learned counsel for the petitioner that the orders passed by respondent no.2 approving the dismissal order by re-conducting inquiry as against Section 21 of Act, 1982. In fact, on perusal of observations made by this Court in the above-referred judgment, it clearly establishes that the Act does not provide the Commission to re-examine the charges, but in the instant case, the charge-sheet filed along with the writ petition discloses that initially the committee has framed 6 charges but on perusal of the impugned order discloses that the second respondent has given findings on 12 charges. That itself clearly discloses

that the second respondent has conducted re-inquiry, which is not admissible as per Section 21 of Act, 1982 as held by this Court in **Managing Committee of Gochar Krishi Inter College, Rampur Maniharan, Saharanpur (supra)**.

17. As far as the facts are concerned, as the petitioner has continued in service from 1975 till the impugned order and subsequently, he also died, in said circumstances, instead of remanding the matter to respondent nos. 2 & 5 to revisit the allegations as the petitioner has already died, the impugned resolution of UP Secondary Education Services Selection Board, Allahabad dated 05.02.2009 is set aside with a direction to the respondents to release all consequential benefits to the petitioner.

18. Accordingly, the writ petition is allowed.

Order Date :- 11.08.2025

Noman

(Donadi Ramesh,J.)