

(2013) 05 AHC CK 0209**Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No. 24457 of 2013

Parasu Ram Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: May 7, 2013**Acts Referred:**

- Uttar Pradesh Intermediate Education Act, 1921 - Section 16G(5), 16G(6), 16G(7)

Hon'ble Judges: A.P.Sahi, J**Final Decision:** Allowed**Judgement**

A.P. Sahi, J.

Heard Sri Ashok Khare, learned Senior Counsel for the petitioner and Sri Shashi Nandan, learned Senior Counsel for the respondent no. 4 Committee of Management, and the learned Standing Counsel for the respondent Nos. 1, 2 and 3.

This writ petition questions the validity of the order passed by the District Inspector of Schools, Allahabad dated 31.3.2013 approving the proposal of suspension of the petitioner on the strength of the allegations as indicated in the impugned order coupled with the facts stated in the resolution dated 18.12.2011 passed by the Committee of Management for suspending the petitioner. The District Inspector of Schools has also recorded that the resolution has been passed with the approval of 12 out of 14 members of the Committee of Management and since the allegations made against the petitioner are *prima facie* serious, therefore, the suspension order is being approved.

The background of the case is that the petitioner was selected by the U.P. Secondary Education Services Selection Board and was appointed as Principal with his placement in the respondent no.4 Institution on 20th July, 2011. The petitioner thereafter resumed charge and started functioning. After about three months, the Committee of Management proceeded to level certain charges against the petitioner including charges of financial irregularities, and accordingly, resolved to

suspend him on 18th of December, 2011. The said resolution was disapproved by the District Inspector of Schools on 23rd June, 2012 against which the respondent Committee of Management filed writ petition no. 34443 of 2012. The same was allowed and the matter was remitted back vide judgment dated 1.8.2012 calling upon the District Inspector of Schools to pass a fresh order keeping in view the fact that the petitioner has raised an objection with regard to the validity of the meeting in which the resolution was passed, and further to examine the affidavits that were filed by three persons referred to in the said judgment. The petitioner was allowed to function and receive his salary as Principal and it was further provided that his continuance would be dependent on the decision to be so taken by the District Inspector of Schools.

The District Inspector of Schools does not appear to have immediately proceeded to decide the matter and in between the Committee of Management appears to have passed a fresh resolution on 3rd of February, 2013 proposing to suspend the petitioner. This resolution was communicated in the shape of an order of the Manager of Institution dated 4.2.2013 copy whereof is Annexure 12 to the writ petition. A chargesheet copy whereof is Annexure 13 was also served on the petitioner, which indicates additional charges having been levelled against the petitioner, apart from those which were subject matter of the earlier suspension order.

The District Inspector of Schools while passing the impugned order on 31st of March, 2013 has proceeded to notice this objection having been taken by the petitioner in paragraphs 10, 11 and 12 of his objections.

The District Inspector of Schools, however, while proceeding to record his findings has relied on the allegations of certain charges against the petitioner of having exempted the payment of fee of certain students. This act of unauthorised remittance has also been made the basis of the passing of the impugned order.

The District Inspector of Schools then proceeds to extract the resolution dated 18th of December, 2011 and has mentioned thereafter that 12 out of 14 members of the Committee of Management have supported the said resolution. In such circumstances, he has concluded that the petitioner is *prima facie* guilty of serious charges and as such the suspension deserves to be approved. It is to be noted that the approval is founded only on the basis of the earlier resolution dated 18.12.2011 recording a finding that 12 out of 14 members have been approved and the same and secondly having noticed the charges with regard to the exemption of fees of certain students.

Sri Khare, learned Senior Counsel for the petitioner contends that firstly, the fact or the charge of exemption of payment of fees, and its condonation in relation to some students, was neither the subject matter of the earlier chargesheet nor is it subject matter of the subsequent chargesheet served on the petitioner in March, 2013. He

therefore submits that certain material which was not even known to the petitioner or was not even part of the allegations of the Committee of Management has been made the basis of passing the impugned order. He further submits that such material which was foreign to the knowledge of the petitioner and alien to the resolution of the Committee of Management could not have been made the basis for passing the impugned order which stands vitiated on account of consideration of extraneous material.

Sri Khare next contends that there is no basis for ascertaining as to how and on what documents, is the finding of 12 members having supported the resolution, based. He submits that no material has been disclosed or even considered by the District Inspector of Schools inspite of the fact that the judgment dated 1.8.2012 clearly indicates the filing of affidavits and the statement of certain persons which could have been made the basis for such a finding. He contends that even this material which was noticed by the Court and the other material which was contained in the objection of the petitioner has been completely omitted to be considered as such the said conclusion is also based on no material.

Thirdly, Sri Khare contends that the passing of the resolution for suspending the petitioner again on 3rd of March, 2013 was also an erroneous exercise and even if it was based allegedly on new charges, the said factum having been raised, ought to have been taken care of by the District Inspector of Schools for the reason that after the passing of the resolution of second suspension, the previous suspension order and its resolution vanished. He relies on paragraph 4 of the Division Bench decision in the case of Committee of Management, Jan Sahyogi Intermediate College, Modhi, Post Kunwara, Pargana Bharthana, District Etawah Vs. District Inspector of Schools, Etawah and another reported in 1986 U.P. L.B.E.C. 144.

Replying to the said submissions, Sri Shashi Nandan contends that the charges which have been levelled in relation to the second suspension order, are fresh charges, and are not the same charges as involved in the previous suspension matter contained in the earlier resolution. He further submits that the second suspension resolution was not subject matter of consideration before the District Inspector of Schools. Even otherwise, the direction of the High Court dated 1.8.2012 was to be complied with and it is pursuant to the said directions that the District Inspector of Schools had to consider the case in accordance with the said directions and the second suspension resolution will have no impact on the same. He therefore submits that the charges are serious enough indicating financial irregularities as well and therefore, the satisfaction recorded by the District Inspector of Schools is based on the material on record and cannot be said to be perverse so as to warrant any interference under Article 226 of the Constitution of India. He further contends that the second suspension brings about certain additional charges subsequent to the resolution dated 1.8.2012 and in those circumstances, it cannot be said that the second suspension proceedings are either

malafide or have been framed with a view to give colour to the action taken by the Committee of Management. The District Inspector of Schools therefore according to him rightly confined himself to the previous resolution, and has recorded a finding with regard to the validity of the meeting as well. He submits that the conclusion being not been based on the material with regard to the second suspension matter, does not vitiate the order at all.

Learned Standing Counsel has also adopted the same arguments as Sri Shashi Nandan, and he submits that the facts which have been brought on record can be assessed and the matter can be disposed of finally at this stage itself.

Learned counsel for the respondents including the counsel for the respondent no. 4, therefore do not propose to file any counter affidavit at this stage. Accordingly, the matter is being disposed of finally with the consent of the parties under the rules of the court.

Having heard learned counsel for the parties, the provisions of the U.P. Intermediate Education Act, 1921 contained in Section 16G (5) to 16G (7) spell out the procedure according to which the approval or otherwise of a suspension order can be proceeded with by the District Inspector of Schools. In the instant case, there was a judicial intervention and the judgment dated 1.8.2012 had clarified the position in accordance with which the District Inspector of Schools had to proceed and decide the matter.

The District Inspector of Schools appears to have taken notice of the allegations in relation to the exemption of fees having been granted to some students and has made the same a basis for passing the impugned order. In the opinion of the Court, these allegations, if do not form part of the chargesheet, the same should not have been treated to be a relevant material for the purpose of approving or disapproving the suspension order. This material was not even made known to the petitioner at any stage.

Secondly, the resolution dated 18th December, 2011 has been taken into consideration for the purpose of approving the suspension order. The said resolution indicates allegations of the petitioner having realized a sum of Rs. 1,50,000/ as fees and funds relating to Parent Teachers Association. The District Inspector of Schools has simply extracted the resolution without even *prima facie* indicating as to how the said charge levelled against the petitioner appears to be a charge requiring an enquiry to be held, and which may result in a major penalty against the petitioner. Simply having extracted the resolution will not amount to indicating any reason for approving the said resolution on the basis of such a charge.

Thirdly, the District Inspector of Schools has indicated that 12 out of 14 members had approved the resolution said to have been passed against the petitioner. The District Inspector of Schools has nowhere discussed any evidence that was indicated

either in the judgment or in the objections raised by the petitioner or the Committee of Management in relation thereto. It is a one line conclusion with no material to support the said conclusion. Thus on all these scores, the order of approving the suspension resolution cannot be sustained.

Apart from this, the judgment of the division bench in the case of Committee of Management, Jan Sahyogi Intermediate College (supra) also cannot be ignored. Paragraph 4 of the said decision, clearly indicates, that the earlier suspension order would vanish if a subsequent suspension order has been passed. Sri Shashi Nandan has urged that the subsequent suspension order is founded on fresh charges and therefore the same cannot be the basis to apply the ratio of the said division bench judgment. He further submits that, in the case which was there before the division bench, there was no previous judicial intervention as presently involved. In the instant case according to him, it was a decision of this court which had directed the District inspector of Schools to take a decision. He therefore submits that the ratio of the division bench judgment being distinguishable on facts the same would not apply to the present controversy.

The aforesaid issue as to whether the previous suspension order survives or not would have to be gauged upon the status of the resolution passed subsequently suspending the petitioner again. If the previous suspension was surviving then the subsequent suspension would be a redundant exercise. An employee cannot be put under suspension if he is already suspended. However, if the previous suspension was non existent, then the District Inspector of Schools would have to take notice of the second suspension as well in view of the ratio of the division bench. The District Inspector of Schools was equally bound to consider the previous suspension matter in the light of the judgment dated 1.8.2012 and his powers as explained in the full bench judgment of Chandra Bhushan Mishra Vs. District Inspector of Schools reported in 1995(1) ESC 552.

In this context, it would have been more appropriate for the District Inspector of Schools to have considered the impact of the second resolution passed by the Committee of Management for having suspended the petitioner even if it was on the basis of fresh charges. The petitioner should have been given the opportunity to contest the said position as well as he had already raised this objection. The District Inspector of Schools was therefore well aware of these proceedings having been undertaken and it cannot be accepted that the District Inspector of Schools was not aware of the proceedings of the second suspension resolution.

In the aforesaid circumstances, for all the aforesaid reasons, the order impugned dated 31.3.2013 cannot be sustained. It is hereby set aside. The matter is remitted back to the District Inspector of Schools to pass a fresh order in the light of the observations made hereinabove after giving an opportunity of hearing to all the parties concerned preferably within a period of two months from today. The status of the functioning of the petitioner shall continue to be the same as directed under

the decision of this Court dated 1st of August, 2012 till fresh orders are passed.

The writ petition is allowed.