

(1995) 03 AHC CK 0026

Allahabad High Court

Case No: Civil Miscellaneous W.P. No. 21643 of 1991, connected with C.M.W.P. No. 22039, 21897 of 1991, 21128 of 1987 and C.M.W.P. No. 21586 of 1991

Shyama Verma, etc.

APPELLANT

Vs

Basic Education
Board, U.P. Alld. and Others

RESPONDENT

Date of Decision: March 13, 1995

Acts Referred:

- Constitution of India, 1950 - Article 14
- Uttar Pradesh Basic Education Staff Rules, 1973 - Rule 3, 4
- Uttar Pradesh Intermediate Education Act, 1921 - Section 16G
- Uttar Pradesh Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978 - Section 2
- Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 - Rule 15, 16

Hon'ble Judges: R.A.Sharma, J; K.C.Bhargava, J and B.K.Singh, J

Final Decision: Disposed Of

Judgement

R. A. Sharma, J.

There being conflict between two Division Benches on the question as to whether prior approval of the District Basic Education Officer (hereinafter referred to as the Education Officer) is necessary before suspending Headmaster or assistant teacher of Junior High School, the matter has been referred to the Full Bench for decision.

2. The U. P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as the Rules) regulate the conditions of service of Headmaster and assistant teachers of Junior High Schools. Rules 15 and 16 of the rules being relevant are reproduced below :

"15. Termination of service.No Headmaster or assistant teacher of a recognised school may be discharged or removed or dismissed from service or reduced in rank

or subjected by any diminution in emoluments or served with notice of termination of service except with the prior approval in writing of the District Basic Education Officer.

16. Disciplinary proceedings. In respect of disciplinary proceedings and the punishment to be inflicted in such proceedings a Headmaster or assistant teacher as the case may be, of a recognised school shall be governed by the rule applicable to Headmaster and assistant teacher of a Basic School established or maintained by the Board."

The rules do not provide for in respect of disciplinary proceedings and the punishment to be inflicted in such proceedings. However, by virtue of Rule 16, the rules, which are applicable to Headmaster and assistant teacher of a Basic School established or maintained by the Board, are applicable to the Headmaster and assistant teacher of Junior High School. The U. P. Basic Education Staff Rules, 1973 (hereinafter referred to as the Basic Staff Rules) are applicable to Headmaster and assistant teacher of Basic School established or maintained by the Board; hence these rules are applicable to the Headmaster and assistant teacher of Junior High School.

3. Rule 3 of the Basic Staff Rules, which provides for punishment, being relevant, is being reproduced herein below :

"3. Punishment. The appointing authority may for good and sufficient reasons, impose the following penalties upon the officers teachers and other employees of the Board :

(i) Censure;

(ii) Withholding of increments including stoppage at an efficiency bar;

(iii) Reduction to lower post of timescale, or to a lower stage in a timescale :

(iv) Recovery from pay of the whole or a part of any pecuniary loss caused to the Board by negligence or breach of orders:

(v) Removal from the service of the Board which does not qualify him from future employment;

(vi) Dismissal from the service of the Board which ordinarily disqualifies from future employment.

Rule 4 of the same rule deals with suspension during the pendency or in contemplation of an inquiry. It also provides for payment of subsistence allowance during the period of suspension. Thus rule is as under :

"4. Suspension. (I) A person against whose conduct an inquiry is contemplated or its proceeding may be placed under suspension pending the conclusion of the inquiry, in the discretion of the appointing authority.

(2) An employee of the Board who is placed under suspension shall be granted subsistence allowance during his suspension period at such rate and subject to such rules as are applicable to a servant of the Uttar Pradesh Government, from time to time, and the said rule shall apply mutatis mutandis to the employees of the Board."

Although Rule 15 of the Rules does not deal with suspension pending or contemplation of inquiry : but a Division Bench of this Court in *Subhash Chandra Pandey v. District Basic Education Officer*, (1991) 1 UPLB8C 226 has held that such an order of suspension results in diminution in emoluments of the teacher, because he gets only the subsistence allowance and not the full salary and, therefore, prior approval in writing of the Education Officer is necessary before suspending him. This judgment is based on the assumption that whenever there is a reduction in salary for any reason whatsoever Rule 15 will be attracted. Such an assumption is unwarranted. Rule 15 covers the cases of discharge, removal or dismissal from service, reduction in rank, diminution in emoluments and termination of service. All those orders excepting the order of termination of service are passed by way of punishment. The order of termination may not be by way of punishment; but it has serious consequences for the employee. It puts an end to his service. It has accordingly been placed in the company of the orders, which are passed by way of punishment. Therefore, every reduction in salary does not amount to diminution in emoluments requiring prior approval. It is only when diminution in emoluments is by way of punishment that the prior approval of Education Officer is required. Suspension pending or in contemplation of inquiry is not punishment. It neither puts an end to the service of the suspended employee nor does it subject him to diminution in emoluments. It merely suspends his claim to the salary and the employee so suspended is paid the subsistence allowance in accordance with the rules. In this connection reference may be made to the *State of Madhya Pradesh v. State of Maharashtra*, AIR 1977 SC 1466, wherein it has been laid down as under : "The order of suspension does not put an end to his service. Suspension merely suspends the claim of salary. During suspension there is suspension allowance.....the real effect of the order of suspension is that though he continues to be a member of the service he is not permitted to work and is paid only the subsistence allowance which is less than his salary."

If the employee is exonerated in the disciplinary inquiry, he will be entitled to his full salary. Therefore, when an employee is suspended pending or in contemplation of inquiry Rule 15 is not attracted and no prior approval in writing by the Education Officer is required before suspending him. The decision of Division Bench of this Court in *Subhash Chandra Pandey v. District Basic Education Officer*, 1991 (1) UPLBEC 226 (supra) does not lay down correct law and is accordingly overruled. The decision of Division Bench in *Committee of Management v. District Basic Education Officers*, 1991 ACJ 303 represents the correct legal position and is, therefore, approved.

4. Sri I. R. Singh, learned counsel for the petitioner has, however, in this connection made two submissions, namely, (i) when in view of the provisions contained in subsection (7) of Section 16G of the Intermediate Education Act suspension of Headmaster or a teacher of Intermediate College cannot remain in force for more than sixty days if not approved in writing by the Inspector, there is no justification for not making similar provisions in the case of Headmaster and assistant teacher or Junior High School, and (ii) in view of the provisions contained in Section 3 of U. P. Junior High Schools (Payment of Salaries to Teachers and other Employees) Act, 1978 a teacher is entitled to his salary without any deduction and, therefore, if any deduction is made or salary is reduced for any reason whatsoever prior approval of the Education Officer is necessary. Both these contentions are devoid of merit. Intermediate Education Act applies to Intermediate Colleges and High Schools and is not applicable to Junior High Schools. The teachers of the Intermediate College High School and Junior High School do not belong to the same class and are governed by two different laws and therefore, the teachers of Junior High School cannot claim as a matter of right the same treatment, which has been given to the teachers of Intermediate College.

5 As regards the second contention, it may be mentioned that U. P. Junior High Schools (Payment of Salaries of Teachers and other Employees) Act 1978 does not provide for and deals with the conditions of service of the teachers and the employees. This Act deals with different matter i.e., payment of salary of the teachers and other employees of Junior High School by the State Government. The word "salary" has been defined in Section 2 (i) of this Act as under :

"2 (i) "Salary" of a teacher or employee means the aggregate of the " emoluments, for the time being payable to him at the rate approved for the purpose of payment of maintenance grant."

Salary is thus, total emoluments payable to a teacher or an employee for the time being. After the employee is suspended the emoluments to which he is entitled is the subsistence allowance in accordance with the rules. This is his total emoluments, which is payable to him during the period of suspension. The right of the teacher to get his salary without any deduction is, thus not infringed on account of payment of subsistence allowance during the period of suspension.

6 For the reasons given above, we hold that prior approval of the Education Officer is not required before suspending Headmaster or assistant teachers of Junior High School during the pendency or in contemplation of the inquiry against him.

7 Question of law on which there was difference of opinion between two Benches, having been decided by us, list these petitions on 441995 before appropriate Bench for disposal.

Decided accordingly.