

(1995) 03 AHC CK 0028

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 8648 of 1982 AND C.M.W.P. No. 9115 of 1982

Bhanu Pratap Singh, etc.

APPELLANT

Vs

Dy. Director of Education IV
Region, Alld. and Others

RESPONDENT

Date of Decision: March 6, 1995

Acts Referred:

- Uttar Pradesh Intermediate Education Act, 1921 - Section 16G(3)(b)(c)
- Uttar Pradesh Intermediate Education Regulations, 1921 - Chapter 111 Regulation 32(n)

Hon'ble Judges: D.S. Sinha, J

Final Decision: Allowed

Judgement

D. S. Sinha, J.

Heard Sri Dhruva Narayana, Sri V. K. Upadhyaya and Sri H. R. Misra Standing Counsel of the State of Uttar Pradesh, appearing for the parties, at length and in detail.

2. Undisputed material facts giving rise to the controversy involved in these two petitions are these Bhanu Pratap Singh was directly recruited as Headmaster of Maharshi Balmiki Junior High School, Allahabad on 1st September, 1967. The institution was upgraded as High School and Sri Singh was selected and appointed as Headmaster of the High School in the year 1967. On 20th April, 1974 Sri Singh was placed under suspension pending disciplinary inquiry on 33 charges against him. On submission of the report of the Inquiry Officer, holding Sri Singh guilty of charges, the Committee of Management of the institution passed a resolution dated 11th July, 1974 proposing punishment of dismissal of Sri Singh and sent the proposal to the District Inspector of Schools, Allahabad for his approval, required under subsection (3) of Section 16G of the U. P. Intermediate Education Act, 1921, hereinafter called the Act.

3. in exercise of his powers under clause (b) of subsection (3) of Section 16G of the Act, the District Inspector of Schools considered the proposal of the Committee of Management regarding dismissal of Sri Singh and came to the conclusion that out of 33 charges levelled against him, six were proved fully and fifteen were proved partially ; and that on the totality of facts and circumstances of the case neither the charges which were fully proves nor those which were partially proved were so serious, either individually or collectively, as to warrant the penalty of dismissal. On these conclusions, the District Inspector of Schools disapproved the proposal of punishment of dismissal. However, the District Inspector of Schools awarded to Sri Singh the punishment of reduction in rank by means of his order and judgment dated 1M May, 1981, and directed that Sri Singh would be treated as Assistant Teacher in L. T. grade with effect from the date of suspension.

4. Sri Singh as well as the Committee of Management of the Institution felt aggrieved by the order of the District Inspector of Schools. Both of them, therefore, preferred an appeal before the Regional Deputy Director of Education IV Region, Allahabad, under clause (c) of subsection (3) of Section 16G of the Act. The appeal of the Committee of Management of the institution was preferred on 22nd of May, 1981 and the appeal of Sri Singh was preferred on 28th May, 1981.

5. While agreeing with the order and judgment of the District Inspector of Schools generally, the Deputy Director of Education specifically found, as a matter of fact, that the disciplinary inquiry against Sri Singh was absolutely in conformity with the provisions of Section 16G of the Act and of the Regulations made thereunder ; and that charges of inefficiency in administration, unsatisfactory work and conduct, lack of interest in co curricular activities, doubtful integrity, insubordination towards the Committee of Management and of not discharging his responsibility properly were proved, but he opined that the charges of grossinsubordination, grossmisconduct, dishonesty, corruption or moral turpitude were not proved. He further opined that on account of administrative inefficiency, unsatisfactory work and conduct and doubtful integrity Sri Singh was liable to be punished by reduction in rank under subregulation (3) of Regulation 32 of Chapter III of the Regulations made under Section 16G of the Act, hereinafter called the Regulations. He, therefore, dismissed the appeals of Sri Singh and the Committee of Management by his common order and judgment dated 6th July, 1982 and confirmed the punishment of reduction of Sri Singh from the rank of Headmaster to the rank of Assistant Teacher in L. T. grade.

6. These two writ petitions, under consideration, are directed against the above two orders an J judgments dated 1st May, 1981 and 6th July, 1982 passed by the District Inspector of Schools and the Regional Deputy Director of Education, IV Region, Allahabad, respectively.

7. Sri Singh as well as the Committee of Management assail the award of punishment of reduction in rank on the ground that such a punishment is not

permissible in law inasmuch as Sri Singh was a direct recruit to the post of Headmaster and he never held the post of Assistant Teacher in L. T. grade.

8. The above contention of Sri Singh and the Committee of Management is accepted being well founded. In its decision rendered in the case of Hussain Sosansaheb Kaladgi v. State of Maharashtra, reported in AIR 1987 SC 1627, the Hon"ble Supreme Court of India has held that "a direct recruit to a post, it cannot be gainsaid, cannot be reverted to a lower post. It is only a promotee who can be reverted from the promotion post to the lower post from which he was promoted." In its decision rendered in the case of State of U. P. v. Smt. Jaya Guddisi, reported in AIR 1994 SC 2254, the Hon"ble Supreme Court of India took the same view, namely, that a direct appointee to the post cannot be reverted to any post lower in rank than the post to which he was appointed.

9. It is not in dispute that Sri Singh was a direct recruit to the post of Headmaster and he never held the post of Assistant Teacher in L. T. grade to which he has been directed to be reduced. In view of the settled legal position that a direct recruit cannot be reverted to a lower post, the award of punishment of reducing him to the rank of Assistant Teacher in L. T. grade cannot be sustained and must perish.

10. The learned counsel of parties have made a feeble attempt to question the quantum of punishment also. The determination of quantum of punishment to be awarded to the delinquent employee in disciplinary proceedings falls within the province of discretion of the competent disciplinary authority where entry of High Court, exercising jurisdiction under Article 226 of the Constitution of India, is barred. It is legally impermissible to the High Court to substitute its discretion for that of competent disciplinary authority in the matter of quantum of punishment. Delineating the boundary of discretion of the High Court under Article 226, the Hon"ble Supreme Court of India has pointed that "....the imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review." (See State Bank of India v. Samarendra Kishore Endow, JT 1994 (1) SC 217).

11. In the result, the petitions are allowed. The orders dated 1st May, 1981 passed by the District Inspector of Schools, Allahabad and dated 6th July, 1982 passed by the Regional Deputy Director of Education, IV Region, Allahabad to the extent they purport to impose the punishment of reduction in rank are quashed. There is no order as to costs.