
(1972) 12 AHC CK 0017

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 4159 of 1970

Khalil Ahmad

APPELLANT

Vs

The Manager, Abdul
Karim Khan Higher
Secondary School,
Amroha, Dist.
Moradabad and Others

RESPONDENT

Date of Decision: Dec. 15, 1972

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Intermediate Education Regulations, 1921 - Regulation 24, 26, 28

Citation: AIR 1973 All 287

Hon'ble Judges: R.L. Gulati, J

Bench: Single Bench

Advocate: G.C. Bhattacharya, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.L. Gulati, J.

This is a petition under Article 226 of the Constitution and discloses an extraordinary set of circumstances.

2. The petitioner, Khalil Ahmad, was appointed an Assistant Teacher in the Abdul Karim Khan Higher Secondary School, Amroha, district Moradabad. As per the letter of the Manager of the school dated 28-10-1965, he was appointed on probation for one year with effect from November 1, 1965. His services were terminated some time in 1966. The petitioner filed a writ petition in this Court challenging the order of dismissal. This petition was allowed by Dwivedi, J. on May 17, 1967 and the order terminating the services of the

petitioner was quashed. The only plea pressed on behalf of the Management of the School in that petition was that the petitioner was a temporary employee and, therefore, the management could terminate his services at will. It was held by Dwivedi, J. that Section 16-G (3) of the U. P. Intermediate Education Act was applicable to temporary teachers as well and, as such, his services could not be terminated without the approval of the District Inspector of Schools. Thereafter the petitioner's services were again terminated by an order dated 17th April, 1968. That order stated that the petitioner's services were no longer required because he was appointed without the approval of the District Inspector of Schools. This order was also challenged by means of a writ petition. Satish Chandra, J. allowed this petition on July 21, 1969 holding that the plea that the petitioner's appointment was without the requisite approval of the District Inspector of School had been raised in the first writ petition but had not been pressed and, as such, such a plea was barred by the principles of res judicata. The petitioner's services have been terminated for the third time by an order dated 28-4-1970. The present writ petition seeks to challenge that order.

3. The impugned order is In Hindi and when translated in English reads: "your services are no longer required by the institution. Therefore, your services are terminated with effect from May 31, 1970 in accordance with the order of the District inspector of Schools, Moradabad." The recital in the impugned order that the petitioner's services were being terminated in accordance with the orders of the District Inspector of Schools is not correct. It appears that the Management of the School, after the judgment of this Court in the second writ petition, passed a resolution to the effect that the petitioner's services were no longer required by the Institution. This resolution was sent to the District Inspector of Schools with the request that the permission be granted for Terminating the petitioner's services. The District Inspector of School wrote back saying that since his Initial appointment had not been approved, the question of "ranting permission for his removal did not arise.

4. In the counter-affidavit filed in this petition, the old plea has been taken that as the petitioner was a temporary hand and his appointment had not been improved by the District Inspector of Schools, therefore his services could be terminated at any time. This plea is clearly barred by the decision in the earlier two writ petitions. It is true that in accordance with the observations of Satish Chandra, J. the management did apply to the District Inspector or of Schools for permission to terminate the Petitioner's services, as required by Section 16-G (3) of the U. P. Intermediate Education Act, but no such permission has been granted by the District Inspector of Schools.

5. After hearing the case in part, I granted time to the learned counsel for the respondents to file a supplementary affidavit showing as to when the management of the school applied for the approval of the petitioner's appointment and when was the permission refused. I also directed that the copies of the letter of the management and the reply of the District Inspector of Schools, should be filed. No such supplementary affidavit has been filed. To me it appears that the management did not apply for approval at all. In

these circumstances the question arises as to what is the legal position vis-a-vis the petitioner. Now admittedly, he is in service since November 1, 1965 when he was placed on one year's probation. That period expired long before the impugned order was passed. According to Regulation 11 in Chapter III of the U. P. Intermediate Regulations, unless before the expiry of the period of probation, the services of a teacher are terminated or action is taken to dismiss, discharge or remove him, he shall be confirmed on the post and in the grade at the end of his probation. Since the petitioner was not removed from service within the period of probation, he shall be deemed to have been confirmed in accordance with the aforesaid Regulation 11. The subject of the termination of services of a confirmed teacher is dealt with in Regulation 24 onwards in Chapter III. In Regulation 25 it is provided that the services of a permanent employee may be terminated by giving him three months* notice or three months pay in lieu thereof on the ground of the abolition of the post which the employee was holding. Regulation 28 provides that the committee shall not propose to the Inspector the termination of services of a confirmed teacher unless a resolution to this effect has been passed at its meeting specially convened for the purpose and by a 2/3rd majority of the members present in the voting. A permanent employee may also be removed from service by way of punishment in accordance with Regulation 31 onwards. Obviously, the petitioner is not being removed from service in accordance with Regulations quoted above for the simple reason that the petitioner is being treated a temporary teacher by the Management. This stand of the management cannot be upheld, firstly because after the decision of the earlier two writ petitions of the petitioner this plea would be barred by principles of res judicata and secondly because of the operation of Regulation 11, the petitioner has become a permanent employee and cannot be dealt with as a temporary hand.

6. It is true that u/s 16-F (2) the appointment of a teacher has to be approved by the District Inspector of Schools but the want of such an approval cannot render the appointment illegal, particularly, when the Management has failed to seek such an approval. It is a well settled principle of law that no one can take advantage of his own default. It is not open to the management to deprive the petitioner of the benefit of Regulation 11 and other provisions of the Act, merely because it has not taken the approval of the District Inspector of Schools. The petitioner was in no way responsible for this omission.

7. For all these reasons this petition succeeds and is allowed. The impugned order dated 28-4-1970 is quashed. Petitioner is entitled to the costs, which I assess at Rs. 200/-because the petitioner is being forced to come to the Court unnecessarily for a third time.