

(1993) 10 AHC CK 0057

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 27344 of 1991

Tripurari Pandey and
Others

APPELLANT

Vs

The Vice-Chancellor,
Sampurana Nand
Sanskrit Vishwa
Vidyalaya and Others

RESPONDENT

Date of Decision: Oct. 4, 1993

Acts Referred:

- Uttar Pradesh State Universities Act, 1973 - Section 2(13)

Citation: (1994) 1 AWC 378 : (1993) 3 UPLBEC 1938

Hon'ble Judges: M.L. Bhat, J

Bench: Single Bench

Advocate: Amaresh Singh and C.B. Yadav, for the Appellant;

Final Decision: Allowed

Judgement

M.L. Bhat, J.

The Petitioners were suspended from service on identical grounds on 11-7-1991. The impugned orders are contained in Annexure Nos. 6, 7 and 8 in respect of the three Petitioners respectively. Petitioners" challenge the suspension orders through the medium of this petition. A further writ of mandamus is prayed, directing the Respondents not to interfere with their peaceful functioning and to pay them salary as admissible to them under rules. By an interim order dated 31-1-1992 this Court had directed that till 3-3-1992 suspension proceedings will continue but no final order will be passed against the Petitioners.

2. Petitioner No. 1 is said to have been appointed as Assistant Lecturer in the institution in question on 16-12-1980. Petitioner No. 2 was appointed on 16-12-1980 and Petitioner No. 3 was also appointed as teacher in C.T. grade on 16-12-1980. The institution in

question is said to be affiliated with Sampuranand Sanskrit Vishwa Vidyalaya, Varanasi (hereinafter referred to as the "University"). The statutes framed by the University are applicable to the Petitioners. Under the statute Vice-Chancellor has accorded the approval to the petitioners' appointment on 30-3-1982.

3. The suspension orders passed against the Petitioners are said to have been passed by the Manager of the institution who has no jurisdiction to pass such order. The Managing Committee also has no power to pass such order because it is not validly constituted. Section 2 (13) of the U.P. Universities Act of 1973, provides that the managing committee or other body charged with the managing affairs of the college must be recognised as such by the University. The Petitioners have placed on record letter dated 28 -- 8-1991 (Annexure-9) purported to have been issued by Deputy Secretary (Affiliation), by which it appears that the Committee of Management is not validly recognised by the University.

4.- It is, further contended that charge-sheet was served on the Petitioner No. 1 on 7-9-1991 and upon the Petitioner No. 2 and 3 on 10-9-1991. The charge-sheet was required to be filed within 4 weeks from the date of suspension. Since that was not done, therefore, the suspension is rendered illegal. Reliance is placed on statute No. 17;07 of the Statute of University which reads as under :

The Management shall have the power to suspend a teacher during the pendency or in contemplation of an inquiry into charge against him, on the grounds mentioned in sub-clauses (a) to (e) of clause (1) of Statute 17.04. In an emergency, (in the case of a teacher other than Principal) this power may be exercised by the Principal in anticipation of the approval of the Management. The Principal shall immediately report such case to the Management. The order of suspension if passed in contemplation of an Inquiry, shall cease at the end of four weeks of its operation, unless the teacher has in the meantime been communicated the charge or charges on which the inquiry was contemplated.

5. Petitioners salary is said to have been stopped from May 1991 without any justification.

6. Counter Affidavit has been filed on behalf of Respondent No. 4. It is stated that the Petitioners No. 1 and 2 did not possess minimum qualifications to be appointed as Assistant Lecturers in the college. However, they have secured approval from the University by some manoeuvring. It is also submitted that management is also validly constituted. There is no dispute. University has recognised the Managing Committee and treated one Hari Prasad as Manager of the duly constituted Managing Committee. The letter contained in Annexure-9 to the writ petition is said to be false and frivolous document. The charge-sheet containing serious charges were sent to the Petitioners on 29-7-1991 by a special messenger Sri Mangoo Ram a class IV employee in the college who was accompanied by one Sri Gopal Dubey, a clerk in the college but the Petitioners are said to have refused to accept it and Mangoo Ram is said to have made report to this effect. True copies of this report pertaining to Petitioners No. 1 & 3 are placed on record as Annexure C.A.-4 and 5. However, Mangoo Ram's report in respect to Petitioner No. 2

is said to be not traceable at present but the deponent submits that he had read the report of Mangoo Ram in respect of the Petitioner No. 2's service which is identical to the report submitted by him in respect of the Petitioners No. 1 & 3. For abundant caution charge-sheets were sent to the Petitioners by registered post on 7-8-1991. Same were returned by the post-man as the Petitioners were avoiding service of the registered letters.

7. In the rejoinder affidavit filed by the Petitioners they have refused all the allegations contended against them in the counter affidavit. They have denied the assertion of the Respondent that the charge-sheet was sent to them through a special messenger or he was accompanied by Gopal Dubey-clerk. This assertion is made by the Petitioner on personal knowledge whereas, assertion by the Respondents about the service of charge-sheet through special messenger is made on the basis of record. The service of charge-sheet is said to be beyond four weeks, therefore the Petitioners suspension cannot continue.

8. I have heard the learned counsel for the parties, at some length. Learned counsel for the Petitioner submits that the suspension order could not be issued by the Manager of the institution. This assertion is denied by the other side. It is submitted that the suspension order was passed by the Committee of Management which had the authority to pass the same. However, it was conveyed by the Manager to the Petitioners, therefore, there is no defect in the order of suspension. I have perused the minute book of the Managing Committee which was produced by Mr. Upadhyaya at the time of hearing of the writ petition. It transpires that the suspension order was actually passed by the Managing Committee, however, it was conveyed by the Manager to the Petitioners. The impugned orders of suspension do not reveal that orders were passed by the Managing Committee and Manager had only carried out the directions of the Managing Committee. From the reading of the impugned orders it appears that the Manager is the author of the impugned orders, but on deeper consideration of the matter it is revealed that the Managing Committee has passed the order- of suspension. Manager has only noted the contents of the resolution without saying that Managing Committee had passed the resolution. This may be defect in the form of the impugned orders but there is no defect in substance because suspension orders are traceable to the resolution of the Managing Committee which is duly recorded,

9. The second point argued by the learned counsel for the Petitioner about the service of charge-sheet within 4 weeks to the Petitioners has force.

10. If the charge-sheet was served by the said messenger who was accompanied by the clerk of the college, affidavit of special messenger and the person accompanying him should have been filed by the Respondents to substantiate the plea that the charge sheet was sent to the Petitioners by special messenger and they refused to accept it. The person accompanying the special messenger (Mr. Dubey) is said to have been a witness to the refusal of the Petitioners, therefore, it was imperative for the Respondents to

submit affidavits of the special messenger as also the witness to prove the plea of service of charge -- sheet on the Petitioners on 29-7-1991 as alleged by them. That has not been done. Report of the special messenger about the Petitioner No. 2 is not traceable. In these circumstances it is very difficult to accept the version of the Respondents that charge-sheet was served on the Petitioners within 4 weeks as required under statutes 17.0.7. The Respondents have pleaded that they have sent the charge-sheet to the Petitioner by registered post on 7-8-1991. The registered letters have not been delivered to the Petitioners and undelivered registered letters were shown by Mr. Upadhyaya at the time of hearing of the matter. These letters are said to have been addressed to the Petitioners on their home address. In the impugned order of suspension they were directed to remain present during the period of suspension. Therefore, there was no necessity for the Respondents to send the registered letters on the petitioners' home address. The registered letters should have been sent to the Petitioners on their official address was the address of the institution As to whether Petitioners had refused or avoided to accept the registered letter is not revealed from the report of the post-man. He has reported that Petitioners are not available. The report seems to be plausible in as much as during day time when the post man must have gone with the delivery of the registered letters Petitioners must not have been at their residences as they were required to be present in the institution. Therefore, non-delivery of the registered letters cannot be said to be because of non acceptance, avoidance and refusal of the Petitioners to accept the registered letters. The result is that the Petitioners were not served with the charge-sheet within 4 weeks from the date of suspension as required under the statute 17.07 of the University, therefore, the suspension on this ground is rendered bad.

11 It is not appropriate to go into the question of validity of the constitution of the Managing Committee. The letter on which reliance is placed by the Petitioners (Annexure-9) is not admitted by the other side. It is said to be false and frivolous. From other material on record, the University has never disputed the authority of Managing Committee, therefore, the question as to whether there was any dispute in the Managing Committee is left open.

12. The another aspect which is important in this, matter is that suspension was ordered on 11-7-1991. Inquiry has not been concluded till today. Learned counsel for the Respondents submits that Petitioners had given in writing that they will not attend the inquiry proceedings. That writing-would not affect the enquiry proceedings which could be continued even if the Petitioners did not choose to attend the enquiry proceedings as alleged by the Respondents. They could not afterwards be heard to say that enquiry was conducted at their back so their refusal, if any, to attend the inquiry proceedings was at their own risk and responsibility This Court did not stop the enquiry proceedings. It had on the other hand permitted the enquiry proceedings to continue but final order was not to be passed. Impliedly oo 31 -- 1 -- 1992 Court had directed that enquiry proceedings should be concluded but final order would not be passed, despite that enquiry has not been concluded.

13. Prolong suspension of the Petitioners is not warranted. The suspension may not amount to punishment but suspension for a unduly long period causes a great distress to an employee. Despite the directions of the Court to continue the enquiry proceedings, enquiry proceedings were not continued. Therefore, it is not warranted to prolong suspension of the Petitioners. If the enquiry has not been concluded that can be concluded against the Petitioners even after their reinstatement.

14. As a result of the aforesaid discussions, it transpires that suspension order was not served on the Petitioners within 4 weeks from the date of their suspension which was against the statute 17.07 and suspension has to cease at the end of 4 weeks of its operation. This is a statutory mandate. The long and indefinite suspension of the Petitioners is also not warranted. Moreso when the enquiry also has not been continued against them, though there was an order of the Court to continue the enquiry. Of course, final order could not be passed. For these reasons the impugned suspension of the Petitioners cannot be upheld and is to be quashed as being against law and equity.

15. Accordingly, this writ petition is allowed. The impugned order of suspension is quashed and the order of suspension is held to be inoperative from the expiry of 4 weeks from 8-8-1991. The impugned suspension order has ceased to be operative by operation of law for non-compliance with the statutory mandate of statute 17.07. It is directed that the Petitioners shall be treated on duty from 8-8-1991 and paid salary and full emoluments as they have remained present during the period of suspension in the institution. However, the enquiry, if any, initiated against them may be continued and completed in accordance with the provisions of law, if the Respondents are so advised. Should the enquiry proceedings continue, Respondents shall adhere to the principles of natural justice in the said enquiry by associating the Petitioners in the said enquiry and by giving them a right of defending themselves effectively and by providing them right of hearing under law. The Petitioners shall get the costs of this writ petition also.