(2010) 10 AHC CK 0280

Allahabad High Court

Case No: Special Appeal No. 1615 of 2006

Ram Briksha Singh		APPELLANT
	Vs	
Basic Shiksha Adhikari and Another		RESPONDENT

Date of Decision: Oct. 26, 2010

Acts Referred:

- Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 - Rule 15

Hon'ble Judges: Sunil Ambwani, J; Kashi Nath Pandey, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. We have heard Shri A.K. Shukla, learned Counsel for the appellant. Shri Anil Yadav appears for the Committee of Management, Bapu Laghu Madhyamik Vidyalaya, Maharajganj. Shri B.P. Singh appears for the District Basic Education Officer, Maharajganj.

2. The petitioner was Head Master of recognised but unaided Junior High School. He was served by the Committee of Management, a charge sheet and was placed under suspension in a meeting dated 28.11.1990. It is alleged by the Committee of Management that the petitioner did not participate in the enquiry and thus after considering the enquiry report the Committee of Management by its resolution dated 10.11.1991 resolved to terminate the petitioner''s services after seeking approval of the Basic Shiksha Adhikari. The Manager of the Committee of Management was authorised to take further proceedings and to obtain approval. He, however, by order dated 11.11.1991, a date after the resolution was passed by the Committee of Management passed an order of termination of the petitioner''s services. The approval was granted by the Basic Shiksha Adhikari much later by order dated 4/5.2.1993. It is alleged that thereafter no order of termination was passed and that the Committee of Management resolved to appoint new Head

Master. The new Head Master was appointed on 30.6.1993. He had taken charge and is working since thereafter.

3. The petitioner filed Writ Petition No. 37661 of 1996 with following prayers:

(i) to issue a writ, order or direction in the nature of certiorari quashing the order dated 4/5.2.1993 and the Resolution dated 10.11.1991 (Anneuxre 13 and 14).

(ii) to issue a writ, order or direction in the nature of mandamus directing the opposite party No. 1 to make an inquiry and recall the order dated 4/5.2.1993.

(iii) to issue any suitable writ, order or direction which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

4. Learned Single Judge in his judgment dated 14.11.2006 challenged in this special appeal found and held that the petitioner had disassociated himself from the enquiry proceedings. He has not denied specifically in the rejoinder affidavit that he was informed of the enquiry proceedings. He, however, did not participate in the enquiry. He was present in the meeting dated 28.11.1990, when he was placed under suspension and it was resolved to serve the charge sheet upon him. He had also signed the proceedings. Since no attempt was made in the rejoinder affidavit to accommodate the allegations in para 14 of the counter affidavit, learned Single Judge did not find that the submission that proper opportunity was not given cannot be accepted.

5. On the second contention regarding the validity of the termination order on the ground that prior approval was not taken by the District Basic Education officer, learned Single Judge found that the resolution dated 10.11.1991, of the Committee of Management was not to terminate the petitioner''s services but to take approval of the District Basic Education Officer for terminating his services, and thus the termination of the petitioner was come into effect only after the grant of approval of the authorities on 4/5.2.1993, and not prior to that date.

6. Shri A.K. Shukla submits that the order of termination was served upon the petitioner by the Manager on 11.11.1991 before it was approved by the District Basic Education Officer and that no fresh order of termination was served upon him. He relies upon Ram Nayan Shukla v. The District Basic Education Officer Gorakhpur and Anr. 1981 UPLBEC 127 (para 20) in support of his submission.

7. Rule 15 of the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Condition of Services of Teachers) Rules, 1978 is quoted as below:

15. Termination of services- No headmaster or assistant teacher of a recognised school may be discharged or removed or dismissed from service or reduced in rank or subjects to any Institution in emoluments or served with notice of termination of services except with the prior approval in writing of the District Basic Education Officer.

Provided that in the case of the Headmaster or an Assistant Teacher of a minority institution the approval of the District Basic Education Officer shall not be necessary.

8. Rule 15 prohibits discharge, removal or dismissal from service or reduction in rank or emoluments except with the prior approval in writing of the District Basic Education Officer. Where the notice of termination of service is served by the appointing authority, namely the Committee of Management without prior approval of the District Basic Education Officer, the order of termination does not come into effect. The words "Service with notice of termination of services except with the prior approval in writing of the District Basic Education Officer", would clearly mean that no notice can be served except with the prior approval in writing. Where, however, approval has been given, but no notice has been served thereafter, it has to be taken that the termination will come into effect from the date of the approval and not before it. The Committee of Management resolved on 10.11.1991 to terminate the services of the petitioner after approval of the District Basic Education Officer and the Manager was authorised to take necessary steps. The Manager while applying for approval chose to terminate the services of the petitioner on the next day on 11.11.1991. For the reasons best know to the petitioner he did not challenge the order and waited upto the year 1996, to file the writ petition. In the meantime, the order was approved on 4/5.2.1993 by the District Basic Education Officer. The petitioner did not make any prayer in the writ petition for setting aside the termination order. Instead he chose to challenge the order of approval dated 4/5.2.1993 and the resolution dated 10.11.1991. The resolution of the Committee of Management did not terminate his services. His services were terminated by order of the Manger dated 11.11.1991. Even if the order was illegal, since it was not challenged and that Basic Education Officer had approved it on 4/5.2.1993, it cannot be said that the petitioner''s services have not been terminated validly and that he is entitled to reinstatement and back wages.

9. It is too late in the day, after 19 years to say that the petitioner''s services were wrongly terminated. He was not in employment nor was getting salary after 11.11.1991. He took five years to challenge the orders by which the Committee of Management had resolved on 10.11.1991 to terminate his services, after approval of the District Basic Education Officer and the order of the District Basic Education Officer approved the termination of his services. The reasons for which the petitioner did not challenge the order dated 11.11.1991 of the Manager, which was even otherwise not valid, until the approval was given, have not come on record. In the meantime, a new Headmaster was appointed and is working.

10. For the aforesaid reasons, we do not find that the judgment of learned Single Judge dated 14.11.2006 suffers from any error of fact or law, to interfere in the appeal.

11. The special appeal is dismissed.