

(2012) 06 AHC CK 0060

Allahabad High Court (Lucknow Bench)

Case No: Special Appeal No. 63 of 2012

Committee of
Management, Jan
Samaj Uchchatar
Madhyamik
Vidyapeeth

APPELLANT

Vs

Suresh Kumar and
Others

RESPONDENT

Date of Decision: June 12, 2012

Citation: (2012) 6 ADJ 657

Hon'ble Judges: Virendra Kumar Dixit, J; Uma Nath Singh, J

Bench: Division Bench

Advocate: Chandra Bhushan Pandey and Jai Narain Pandey, for the Appellant; Manish Kumar, for the Respondent

Final Decision: Dismissed

Judgement

Hon'ble V.K. Dixit, J.

This Special Appeal is arising out of the Judgement & Order dated 11.1.2012 passed by learned Single Judge by which the Review Application (Defective) No. 247 of 2011 (Committee of Management, Jan Sansthan Uchchatar Madhyamik Vidyapeeth Inter College, through its Manager and another v. Survesh Kumar and others) has been dismissed and Judgment & order dated 4.7.2011 passed by learned Single Judge whereby the Writ Petition No. 649 (S/S) of 2009 (Suresh Kumar v. State of UP. and others) has been allowed and the impugned order dated 9.7.2008 dismissing the petitioner from service passed by Principal, Sansthan Uchchatar Madhyamik Vidyapeeth Inter College, Digambar pur, Mubarakganj, Faizabad (Appellant No. 2) and order of District Inspector of Schools, Faizabad dated 5.12.2008, granting the subsequent approval to the impugned order dated 9.7.2008 under the provisions of Regulation 31, Chapter-III of the U.P. Intermediate Education Act, 1921 have been quashed. Heard Sri Chandra Bhusahn Pandey, learned Counsel for appellants, learned Chief Standing

Counsel and Sri Manish Kumar for contesting respondent No. 1 and perused the impugned judgment and orders dated 4.7.2011 and 11.1.2012 passed by the learned single Judge giving rise to the present appeal, the grounds taken in the memo of appeal and the documents filed alongwith it.

2. Submission of the learned counsel for the appellants is that the learned Single Judge allowed the writ petition and rejected the review application without considering the facts and law in its entirety and thus the order of learned Single Judge is not sustainable in the eyes of law. It is further submitted that under the U.P. Intermediate Education Act, there is absolutely no requirement for conducting full-fledged departmental inquiry in a case where the delinquent employee has absconded and is not participating in the enquiry deliberately despite reasonable and genuine efforts on part of the employer to make him participate. Further on account of non-cooperation on the part of the private respondent, there was no occasion for the appellants to have conducted a full-fledged inquiry in the matter. That the entire scheme of the regulations, in so far as it relates to Class-IV employees makes it abundantly clear that prior approval is not mandatory before terminating the service where subsequently, the competent authority has accorded approval to the dismissal order. In support of such contention, he has relied upon a Full Bench Judgment of this Court passed in the case of Rishikesh Lal Srivastava v. State of U.P. and others, 2009(9) ADJ 361 (FB).

3. On the other hand, learned counsel for contesting respondent, refuting the submission of learned counsel for the appellants, contended that the judgment and order dated 4.7.2011 under challenge passed by learned Single Judge has not been passed merely on the point that there was no prior approval from the District Inspector of Schools (D.I.O.S.) but also on the ground that the impugned dismissal order dated 9.7.2008 has been passed without holding any enquiry and without serving any charge-sheet in utter violation of Principles of natural justice is wholly arbitrary and illegal and also against the provisions of Sections 31, 35, 36 and 37 of Chapter III and Section 16 (GJ) of the U.P. Intermediate Education Act, 1921.

4. We have considered the arguments aforesaid and we find that in order to appreciate the rival contentions we have to consider only the following two points:

(i) whether for awarding a punishment in respect of a Class IV employee prior approval of D.I.O.S. is essential?

(ii) Whether the impugned order dated 9.7.2008 for dismissal has been passed without providing reasonable opportunity of hearing and thus in violation of the principles of natural justice?

5. Learned Single Judge while dealing both the issues has made the following observation:

on due consideration of facts and circumstances of the present case and the legal position, this Court comes to the conclusion that the impugned order has been passed in violation of principles of natural justice as well as against the provisions of Regulation of 31, 35, 36 and 37.

6. So far the first point is concerned, in the present case undisputedly the impugned order of the District Inspector of School, Faizabad, dated 5.12.2008 granting the subsequent approval to the impugned order dated 9.7.2008 passed by the Principal of the institution dismissing the petitioner/contesting respondent from the service. Learned Single Judge quashed the impugned order of District Inspector of School, Faizabad dated 5.12.2008 granting the subsequent approval to the impugned order of dismissal.

7. The disciplinary proceedings against a Class IV employee of the institution is in the nature of domestic enquiry. In paras 50, 58 and 65 of the Full Bench judgment of this Court passed in the case of Rishikesh Lal Srivastava (supra), the observations made in paras 50, 58 and 64 of the judgment, which on reproduction would read as:

50-In our opinion, the aforesaid principle squarely applies in the present context and for the reasons given hereinabove and hereinafter, we would interpret Regulation 31 read with Regulation 100 to mean that the sanction of prior approval in respect of the termination of a Class-IV employee would stand excluded.

58-There is yet another principle, which deserves to be taken notice of. If the sanction is required prior to giving effect to a punishment in respect of a Class-IV employee, then the District Inspector of Schools would hear an appeal against his own approval. This, to our mind, would bring about an anomaly, which may extend to an absurdity. The same authority cannot be presumed to have been conferred with a power to hear an appeal against its own approval. This would be 44 rendering nugatory the hierarchy provided for in Regulation 31 itself, where an appeal is provided to the Committee of Management against the order of disciplinary authority and a further appeal to the Inspector of Schools. The purpose, therefore, is clear enough and it does not suffer from any ambiguity which may require us to render an interpretation, which otherwise would bring about an incongruous result. As observed above, the Rules of Interpretation as enunciated by the Apex Court do not permit us to give an interpretation, which would obviously result in a clear anomaly as pointed out hereinabove. This we adopt, as the law permits us to apply the intention seeking" Rule of Interpretation to illustrate the anomaly that may result in the event we accept the proposition that a prior sanction is required.

64-Having laid threadbare the first principles on which we have interpreted the provisions, we have no hesitation in coming to the conclusion that there is no requirement under the Regulations for a prior sanction or approval of the Inspector of Schools in respect of order of termination of Class-IV employees.

8. In the aforesaid full Bench judgment of this Court in the case of Rishikesh Lal Srivastava (supra) it has been held that for awarding a punishment as elaborated under Regulation 31 Chapter III of the U.P. Intermediate Education Act, 1921 to a Class IV employee of the institution recognized under the aforesaid Act, no prior approval or sanction from the Inspector of School is required.

9. The decision in the case of Rishikesh Lal Srivastava (supra) can also be usefully followed and applied to the case in hand.

10. In view of the above, we are respectfully unable to agree with the view of learned Single Judge that prior approval of D.I.O.S. was necessary before passing the impugned dismissal order dated 9.7.2008 we are of the considered view that the scheme of the Regulations 31 to 45 of Chapter III of the U.P. Intermediate Education Act, 1921 does not provide that prior approval or sanction of D.I.O.S. is essentially required for awarding punishment of removal or terminating of a Class IV employee of the institution recognized under the aforesaid Act.

11. We shall now deal with the question as to whether the impugned order dated 9.7.2008 for dismissal has been passed without providing reasonable opportunity of hearing and thus in violation of the principles of natural justice?

12. Learned counsel for appellants has submitted that on account of deliberate non-cooperation on the part of the Respondent No. 1, there was no occasion for the appellants to have conducted a full fledged enquiry in the matter. In fact, he was an absconder and under Regulation 36 (2) of the Act, there was absolutely no requirement of affording any opportunity of hearing to such an employee before passing the impugned dismissal order dated 9.8.2008. It has further been pleaded that under the U.P. Intermediate Education Act, 1921, there is absolutely no requirement for conducting full fledged departmental enquiry in a case where the delinquent employee has absconded and is not participating in the enquiry deliberately despite reasonable & genuine attempts on part of the employer to make him participate.

13. On the other hand, learned counsel for the contesting Respondent No. 1 submitted that prior to dismissal, the Respondent No. 1 had neither been suspended nor any charge-sheet was served and also no information about departmental enquiry was ever given to him and also the impugned dismissal order has been passed without giving him any opportunity to be heard in violation of principle of natural justice.

14. We have given our thoughtful consideration to the arguments advanced by the learned counsel appearing on either side with reference to the pleadings, records, annexures and the case laws.

15. Undisputedly the contesting Respondent No. 1 has not participated in the departmental enquiry proceedings. In view of the facts and circumstances of the case and rival contention of learned counsel for the parties, we do not find any substance in the

arguments of the learned counsel for appellants that the contesting Respondent No. 1 has absconded and on account of his deliberate co-operation full fledged enquiry in the matter was not required.

16. We are of the considered view that the impugned dismissal order from service has been passed without affording reasonable opportunity of hearing and without following the procedure and against the relevant regulations 31 to 45 of Chapter III framed under Scheme 16-G of the U.P. Intermediate Education Act, 1921, and thus in violation of statutory provisions as well as in gross violation of Principle of natural justice. In this regard, the view expressed by learned Single Judge does not call for any interference.

17. In the result, we do not find any illegality or infirmity in the order. The appeal being devoid of merit, is, therefore, dismissed. No order is passed as to costs.