

(1995) 11 AHC CK 0107

Allahabad High Court

Case No: C.M.W.P. No. 22503 of 1995

Committee of
Management,
Balbhadra Narain Inter
College, Majhauri Raj

APPELLANT

Vs

Dy. Director of
Education and Others

RESPONDENT

Date of Decision: Nov. 9, 1995

Acts Referred:

- Penal Code, 1860 (IPC) - Section 406
- Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 - Section 3, 4, 5, 6(1), 6(2)

Citation: (1996) 2 AWC 831

Hon'ble Judges: R.H. Zaidi, J

Bench: Single Bench

Advocate: Shashi Nandan and O.P. Sriuastava, for the Appellant;

Final Decision: Allowed

Judgement

R.H. Zaidi, J.

Instant petition has been filed by the Committee of Management of Balbhadra Narain Inter College. Majhauri Raj Deoria, challenging the validity of the order dated 14.7.95 passed by the Dy. Director of Education, VII Region, Gorakhpur under Sub-section (3) of Section 6 of U.P. High School and Intermediate College (Payment of Salaries of Teachers and other Employees) Act, 1971 (U.P. Act No. 24 of 1971) hereinafter referred to as the Act, whereby the management of the College has been superseded and the Account Officer of the District Inspector of Schools, Deoria has been appointed as Authorised Controller for a period of one year, from the date, the Authorised Controller takes over the charge.

2. It was on 7.8.95 that time was granted to the Respondents to file counter affidavit and the operation of the impugned order was also stayed. Since the counsel for the parties have exchanged their counter and rejoinder affidavits and as desired by them, I have heard the matter finally.

3. The brief facts of the case, as set out in the writ petition, are that it was in the month of June, 1993 that the election of the office bearers and members of the Committee of Management was held and Sri Awadesh Pd. Mall was elected as Manager of the College, besides other office bearers. His signatures were attested by the Distt. Inspector of Schools and the Committee of Management since then has been looking after the affairs of the College in accordance with law, Respondent No. 4, who happens to be the Principal of the College, started misconducting himself and misbehaving with the members of Staff. Several complaint of mis-appropriation of money were also received against the Respondent No. 4. He also removed all the relevant papers from the office of the College and did not return the same inspite of the direction given to him in this regard. On 24.2.93, he locked the main gate of the College and did not permit the students and members of staff to enter the premises of the College. In this connection, a complaint was lodged by the Manager to Sub-Divisional Magistrate concerned, thereupon, he got opened the said lock. Inspite of the intervention made by the district authorities, Respondent No. 4 continued to misbehave and act in irresponsible manner. Complaint regarding his misbehaviour and misconduct was also made to the District Inspector of Schools on 26.2.93. An First Information Report was also lodged against him with the Addl. Superintendent of Police, Deoria, whereupon a criminal crime case No. 141/93 u/s 406, I.P.C. was registered on 12.7.93. Since the Respondent No. 4 was continuously indulging in the act of misbehavior and misconduct and has been disobeying the orders passed by the: Manager and was guilty of serious charges, therefore, Committee of Management vide Resolution dated 30.6.93 resolved to suspend him and after following the procedure prescribed under law, the Committee of Management vide its Resolution dated 27.8.93 proposed to terminate the services of Respondent No. 4. Resolution was submitted to the Secretary, U.P. Madhyamik Shiksha Sewa Ayog Evam Shiksha Parishad, Allahabad by registered post on 1.9.1993. The aforesaid papers were received in the office of the Commission, but no action whatsoever was taken on the same inspite of the several applications and representation made by the Petitioner, consequently, Petitioner was obliged to file a Writ Petition No. 315 of 1995 for a writ, order or direction in the nature of mandamus directing the Commission to take decision in accordance with law on the papers submitted by the Petitioner.

4. On the request made by the learned standing counsel, time was granted to him to file counter affidavit, but till date the same has not been filed. Respondent No. 2, on the other hand, vide order dated 23.12.94 directed Respondent No. 4 to withhold the salary for the month of December, 1994 of the entire teaching and non-teaching staff of the College at the instance of Respondent No. 4. The validity of the said order passed by Respondent No. 2 on 23.12.94 was challenged in Writ Petition No. 2405 of 1995. This court on

27.7.95 was pleased to stay the operation of the impugned order dated 23.12.94. Respondent No. 2 with a view to harass the Petitioner, served another notice upon it on 9.2.95 calling upon to submit reply. The Petitioner immediately submitted reply of the said notice. Respondent No. 2 instead of taking any action against Respondent No. 4, issued illegal direction to the Petitioner on 24.4.95. The validity of the said order was challenged by the Petitioner in this court through Writ Petition No. 5270 of 1995. This court, however, declined to interfere in the said order holding that the same does not amount to an interference in the discipline of the College. Respondent No. 2 acting wholly arbitrarily, thereafter, vide his order dated 23.2.95, placed the account of the College under single operation without following the procedure under law. The order of single operation passed by Respondent No. 2 is apparently biased and arbitrary and the same was passed without affording an opportunity of hearing to the Petitioner. The validity of the said order was challenged in Civil Misc. Writ Petition No. 6279 of 1995. However, the operation of the impugned order was not stayed and Respondents were granted time to file counter-affidavit. Respondent No. 2 has been acting at the behest of Respondent No. 4 illegally. The Dy. Director of Education instead of taking suitable action against Respondent No. 4, issued show cause notice dated 27.4.95, calling upon the Petitioner to submit the reply of the charges levelled by him. The Petitioner gave a detailed parawise reply explaining the charges levelled against it. Thereafter, Distt. Inspector of Schools submitted his report to the Respondent No. 1, who without applying his mind to the facts of the case, simply relying upon the said report was pleased to pass the impugned order dated 14.7.95 in contravention with the provisions of Sub-section (3) of Section 6 of the Act, wholly arbitrary.

5. In the counter-affidavit filed on behalf of the Respondent No. 4, the facts stated in the Writ Petition have been controverted and it has been asserted that the impugned order was passed by Respondent No. 1 in accordance with law.

6. I have heard learned counsel for the parties and carefully perused the record of the case.

7. Sub-sections (1), (2) and (3) of Section 6 of the Act provide as under:

6. (1) Where the Inspector on the basis of an inspection of an institution or its records or otherwise is satisfied that its management has committed default in complying with any direction given u/s 4 or with any provision of Section 3 or Section 5, he may recommend to the Regional Deputy Director, Education that action be taken against the institution under Sub-section (2).

(2) On receipt of a recommendation under Sub-section (1), the Regional Deputy Director Education may call upon the management to comply with the said direction or provision or to show cause within a week why the management should not be suspended.

(3) Where the management fails to comply as aforesaid or to show cause or the Regional Deputy Director, Education considers the cause shown to be insufficient, he may by order supersede the management for such period not exceeding one year as may be specified in the order and authorise any person (hereinafter referred to as the Authorised Controller) to take over the management of the institution for the said period:

Provided that the Regional Deputy Director Education may where he considers it necessary or expedient so to do:

(i) extend the said period from time to time, so however, that the period so extended does not exceed five years in the aggregate; or

(ii) revoke the order at any time:

Provided further that nothing in Clause (ii) of the preceding proviso shall bar the passing of a fresh order under this section.

8. It is evident from the aforesaid statutory provision that the Dy. Director of Education on receipt of the recommendation of the Inspector of Schools is required to call upon the management to comply with the directions or provisions or to show cause within a week why the management should not be suspended and where the management fails to comply as aforesaid or to show cause or the Regional Dy. Director of Education considers the cause shown to be insufficient, he may by order supersede the management for a period of one year and authorise any person to take over the management of the institution.

9. In the present case, instead of adopting the procedure prescribed under the law, Respondent No. 1 has firstly issued a show cause notice dated 26.4.95 to the Manager of the Institution calling upon him as to why the management of the institution be not superseded. Petitioner submitted a detailed reply within the time prescribed by Respondent No. 1 and requested for dropping the proceeding and discharging notice. It was requested that the Principal of the institution be directed to return the record of the institution, which was taken away by him illegally. Thereafter, Respondent No. 1 solicited a report dated 28.6.95 from Distt. Inspector of Schools and he has simply quoted in verbatim the findings recorded by the Distt. Inspector of Schools and recommendation made to him. Not only the findings, but the recommendations of the Distt. Inspector of Schools have also been copied by the Respondent No. 1 and the order has been passed by him without applying his mind to the facts of the case at all, wholly arbitrary.

10. Learned counsel for the Petitioner has rightly submitted that the Dy. Director of Education did not apply his mind independently to the facts of the case. He has nowhere recorded the finding on charges levelled against the Petitioner nor held that the cause shown by the Petitioner was insufficient; but has passed the impugned order superseding the management of the institution, contrary to the provisions and Rules framed therein. The: Deputy Director of Education was required to scrutinize the material on record and

he was required to find out as to whether the Management has committed any default in complying with the directions made u/s 4. No such finding was recorded by the Deputy Director of Education and the management was superseded Illegally, merely on the basis of the recommendation made by the District Inspector of Schools. The impugned order dated 14.7.1995 passed by Respondent No. 1 is, therefore, legally not sustainable. The Writ Petition deserves to be allowed.

11. The writ petition succeeds and is allowed. The impugned order dated 14.7.1995 is hereby quashed.