

(2006) 07 AHC CK 0182

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 34681 of 2006

Roop Chand Chauhan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: July 28, 2006

Acts Referred:

- Intermediate Education Act, 1981 - Section 21
- Uttar Pradesh Secondary Education Services Commission (Procedure for Approval of Punishment) Regulations, 1985 - Regulation 8
- Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 - Section 21

Citation: (2006) 7 ADJ 330 : (2006) 6 AWC 5668

Hon'ble Judges: Tarun Agarwala, J

Bench: Single Bench

Advocate: Ashok Khare and Sunil Kumar Srivastava, for the Appellant; Vinod Kumar Rai, R.P. Dubey, Janardan Prasad Pandey and A.B. Saran and S.C., for the Respondent

Final Decision: Allowed

Judgement

Tarun Agarwala, J.

The petitioner was selected in the year 1999 for the post of Principal by the U.P. Secondary Education Service Selection Board and, in pursuance thereof, the petitioner joined the post of Principal in the institution concerned. On 30.5.2002, a charge-sheet was issued to the petitioner and was simultaneously placed under suspension. Subsequently by an order dated 22.7.2002, the District Inspector of Schools revoked the suspension order and allowed the petitioner to discharge the duties of the post of Principal. In November 2002, the petitioner was placed again under suspension and a second charge-sheet was issued. It transpires that on the basis of an inquiry report, the Committee of Management passed a resolution dated 25.1.2003 proposing to dismiss the petitioner from the service. By another order dated 25.1.2003, the District Inspector of Schools revoked the suspension order

against which the Committee of Management filed Writ Petition No. 7356 of 2003 which was allowed by judgment dated 19.2.2003 holding that the District Inspector of Schools had no jurisdiction to pass an order and remanded the matter back for reconsideration. The Court however, restrained the petitioner from functioning as the Principal till the disposal of the matter. The District Inspector of Schools by an order dated 28.3.2003 disapproved the order of suspension, against which the Committee of Management filed Writ Petition No. 16307 of 2003. This writ petition was dismissed by a judgment dated 17.4.2003. A Special Appeal No. 339 of 2003 was filed which was disposed of directing the Selection Board to take a decision in the matter of the proposed punishment. The Court further directed that the order of suspension would remain in operation for a period of two months. Since the Board did not take action within six weeks, the District Inspector of Schools by an order dated 9.7.2003 directed the reinstatement of the petitioner. Subsequently, the District Inspector of Schools by an order dated 7.10.2003 revoked his earlier order dated 9.7.2003. The petitioner filed writ petition No. 47583 of 2003 in which an interim order dated 28.10.2003 was issued staying the operation of the order dated 7.10.2003 passed by the District Inspector of Schools. Since November 2003, the petitioner is consequently working as the Principal and is discharging his duties. It has also come on record that the petitioner would retire on 30.6.2007.

2. The Selection Board by an order dated 18.5.2006 found that the charges leveled against the petitioner stood proved but in its wisdom did not approve the recommendation of the Committee of Management for the dismissal of the petitioner and, directed on humanitarian ground, to permit the petitioner to function as the Principal but divested the financial and administrative powers. The said order of the Board was communicated to the petitioner vide letter dated 26.5.2005. Aggrieved by the order of the Board, the petitioner has filed the present writ petition.

3. Heard Sri Ashok Khare, the learned senior counsel assisted by Sri Sunil Kumar Srivastava, Advocate, for the petitioner, the learned Standing Counsel for the respondent Nos. 1, 3 and 4, Sri R. P. Dubey for respondent No. 2 and Sri A.B.Saran, senior counsel for respondent No. 5.

4. Since disputed questions of fact are not involved in the present writ petition and the only controversy which is required to be addressed is whether the Selection Board could have passed such an order of punishment, the writ petition is being disposed of at the admission stage itself without calling for a counter affidavit.

5. The learned Counsel for the petitioner submitted that the inquiry report was vague and did not consider the material facts and evidence nor was the objection of the petitioner considered by the Selection Board. The learned Counsel further submitted that the order of punishment passed by the Selection Board was in violation of Section 21 of the Act of 1981 read with Regulations 35, 36, and 37 of Chapter III of the Regulations framed under the Intermediate Education Act. The

learned Counsel submitted that the such an order of divesting the petitioner from exercising the administrative and financial powers of the post of Principal could not be passed by the Selection Board.

6. Sri R.P.Dubey, the learned Counsel for the Selection Board submitted that the Board has ample power to pass such an order and in support of his submissions has relied upon a decision of the Court in [Committee of Management of Madan Mohan Malviya Inter College and Another Vs. U.P. Secondary Education Service Commission and Others](#), Sri A.B.Saran, the learned senior counsel, appearing for the Committee of Management submitted, that the Selection Board had ample power to pass any order under Regulation 8 of the Uttar Pradesh Secondary Education Services Commission (Procedure for Approval of Punishment) Regulations, 1985 and that the order had been passed on humanitarian ground taking into consideration that the petitioner would retire on 30.6,2007. Consequently, there was no infirmity in the order passed by the Selection Board.

7. Before proceeding any further, it would be appropriate to refer to a few provisions.

8. Section 21 of the Uttar Pradesh Secondary Education (Services Selection Board) Act, 1982 provides as under:

21. Restriction on dismissal etc. of teachers.- The Management shall not, except with the prior approval of the [Board] dismiss any teacher or remove him from service or serve on him any notice of removal from service, or reduce him in rank or reduce his emoluments or withhold his increment for any period (whether temporarily or permanently) and any such prior approval shall be void.

9. Regulations 31 and 33 of the Chapter III of the Regulations framed under the Intermediate Education Act states as under:

31. Punishment to employees for which prior sanction from Inspector or Regional Inspectress would be essential may be any one of the following:

- (1) Discharge,
- (2) Removal or Termination,
- (3) Demotion in grade, A
- (4) Reduction in employments.

Principal or Headmaster would be competent to give above punishment to Fourth class employees. In case of punishment awarded by competent officer, the Fourth class employee may appeal to Management Committee. This appeal must be preferred within one month of the date of intimation of the punishment and Management Committee on receipt of appeal will decide the matter within six weeks. On consideration of all necessary record and after giving an opportunity of

hearing to the employee, if he wants to appear before the Management Committee, it will give its decision.

Fourth class employee would also have a right to represent against the decision of the Management Committee on his appeal to the District Inspector of Schools/Regional Inspectress of Girls Schools within one month of the date of intimation of the decision;

Provided that if Management Committee does not give its decision on above appeal within stipulated period of six weeks, the concerned employee after the expiry of above six weeks may represent directly to District Inspector of School/Regional Inspectress of Girls School.

District Inspector of School/Regional Inspectress of Girls Schools would give its decision within three months from the date of receipt of the representation and his decision would be final.

Regulations 86 to 98 of this Chapter would apply to presentation, consideration and decision of the representation with necessary changes.

33. (1) An employee may also be punished by stoppage of increment in a time-scale for any period with temporary or permanent effect.

(2) An appeal against such an order shall lie to the Inspector/Regional Inspectress within thirty days of the communication of this order to the employee and his/her decision shall be final.

10. From a perusal of the aforesaid provisions, it is clear that the Committee of Management has the power to dismiss, remove, reduce the emoluments, withhold increments or stop the increments or reduce the rank of a teacher or of the principal, as the case may be. Apart from the aforesaid, the Committee of Management cannot pass any other order of punishment. The punishment indicated in Section 21 of the Act is exhaustive in nature. But the order of punishment is required to be approved or disapproved by the Selection Board. The Selection Board is required to apply its mind to the facts and circumstances of the case and the material brought on record in order to determine as to whether the Committee of Management had acted in consonance with the principles of natural justice and whether the punishment awarded commensurate with the gravity of the charges. Section 21 of the Act was designed to control the arbitrary exercise of powers vested in the Committee of Management. Consequently, the Selection Board was required to look into the matter including the quantum of punishment.

11. The power of the Selection Board is given under Regulation 8 of the Regulation of 1985 which states as under:

8. Disposal by Commission.- The Commission shall after due consideration approve or disapprove the punishment proposed or may issue any other directions as may

be deemed fit in the case.

12. From the aforesaid, it is clear that the Selection Board has the power to approve or disapprove the punishment proposed by the Committee of Management, and could also issue any other directions.

13. In *Committee of Management of M.L.M.L. Inter College, Faizabad v. District Inspector of Schools, Faizabad* and Anr. 1980 LIC 595, a Division Bench of this Court held as under:

When power is given to the D.I.O.S. to approve or disapprove of an order of punishment or suspension, that authority is bound to sit in judgment over the decision of the Management. Jurisdiction of these authorities is not akin to the jurisdiction of a Civil Court. Although the proposal sent to the D.I.O.S. by the Management is for approval and the word "appeal" is not mentioned in the statutory provisions, it is obvious that the D.I.O.S., as the authority required to take a decision on the proposal, can review the findings and also the validity of the proceedings.

14. In *Committee of Management Bishambhar Sharan Vaidic Inter College, Jaspur, Nainital* and Anr. v. *U.P. Secondary Education Service Commission* and Ors. 1995 SCCSupp.(3) 244, the Supreme Court held-

According to us, in view of the provisions of the said Section 21, the Commission while deciding whether or not to grant approval for the removal of a teacher, has necessarily to go into the merits of the case and apply its mind independently to the question whether the evidence on record justified the removal. It must be remembered that the Commission appointed under the Act is a high-powered body and as a body entrusted with the important function of supervising the actions taken by the Management against the teachers, it has to discharge its responsibility circumspectively. It cannot exercise its function effectively unless it scrutinises the material and applies its mind carefully to the facts on record. Hence, if the Commission goes through the entire record and the merit of the action taken, its action cannot be faulted.

15. In *Pradumna Kumar Jain v. U.P. Secondary Education Service Commission, Allahabad* and Ors. 1997(3) AWC 1573, this Court held:

that the power to approve or disapprove includes the power to modify, which power is implicit in it and is an established principle by now. It is an established principle that when an order is open to a superior authority to decide on the merits of it for the purpose of either affirming or reversing the same, the same is also akin to approving or disapproving, inasmuch as though two different terms have been used, they mean the identical situation. To approve or to disapprove has the same meaning for all practical purposes to affirm or reverse. In respect of the appellate jurisdiction, it is the consistent view of the High Courts and the Apex Court that the

power to affirm or reverse includes the power to modify. Unless such power or jurisdiction is barred by express provision, the same is always explicit in its. But in the present case, the including of the phrase "or may issue any other directions deemed fit in the case" indicates the very existence of the power to modify. Such expression cannot be interpreted to narrow down the meaning so as to make the provision ineffective.

It further held-

Then again unless an act is expressly prohibited by law, the Court is not supposed to presume as a matter of general principle that certain act is prohibited beyond what has been expressly conferred to the extent it is acceptable on the principle as enunciated in the foregoing para, namely, to the extent that the power to approve or disapprove a particular order includes the power to modify such order as well particularly when the structure of the Statute conceives of a liberal interpretation furthering the object and purpose for which the same is incorporated. The purpose and object of incorporation of the approval and disapproval has been ensured to safeguard the interest of the delinquent from the arbitrary and highhanded actions on the part of the Committee of Management.

16. In [Raja Ram Shukla Vs. U. P. Secondary Education Services Commission, Allahabad and others](#), the Court held-

Thus, Regulation 8 gives three alternatives to the Commission; firstly, it may accept as such the recommendation of the Committee of Management, secondly, it may reject the recommendation of the Committee of Management and thirdly, it may issue any other direction as may be considered fit in the facts and circumstances, meaning thereby, the recommendation made by the Committee of Management may be modified or altered. The power to affirm or to reverse a particular recommendation implies that the authority has also the power to modify.

17. In [Committee of Management of Madan Mohan Malviya Inter College and Another Vs. U.P. Secondary Education Service Commission and Others](#), the Court held that the Board can pass an order imposing a lesser punishment than proposed by the Committee of Management.

18. In view of the aforesaid decisions, it is clear that the Board has a power to approve or disapprove the punishment proposed by the Committee of Management including the power to modify the proposed action to be taken by the Committee of Management. The Board has the power to modify the order of proposed punishment.

19. The question still remains to be answered, namely, whether the Selection Board could issue a direction divesting the petitioner from exercising the financial and administrative powers ?

20. What does the words "any other directions" connote under Regulation 8 of the Regulations of 1985. Does it mean that the Board can pass such orders of punishment which are not contemplated u/s 21 of the Act or can the Board only pass such orders of punishment which are contemplated under the Act. Take another aspect of the matter. Can the Committee of Management pass an order of punishment divesting the Principal from exercising its financial and administrative powers ? Is such a punishment contemplated u/s 21 of the Act ? If the Committee of Management could not pass such an order, could the Selection Board pass such an order ?

21. The Act expressly confers various types of punishment that can be awarded to a teacher including the Principal. The punishment indicated in Section 21 of the Act is exhaustive in nature and therefore, the Committee of Management can propose such orders of punishment that is contemplated u/s 21 of the Act. The Selection Board, consequently, can approve or disapprove the proposed punishment, but if the Selection Board proposes to modify the punishment, it can do so, but the modified punishment must be one as contemplated in Section 21 of the Act. The Selection Board could not pass an order of punishment which is not contemplated u/s 21 of the Act.

22. In the opinion of the Court, the direction given by the Selection Board divesting the petitioner from exercising its financial or administrative powers is without jurisdiction. The Selection Board can only pass such an order of punishment which is contemplated u/s 21 of 1982 Act. The punishment of divesting the Principal of his financial and administrative powers is not one of the punishment contemplated u/s 21 of the Act. Consequently, the Board had no jurisdiction to pass such an order.

23. There is another aspect of the matter. Regulations 9, 10, 11 and 12 of Chapter-I of the Regulations framed under the Intermediate Education Act defines the powers, duties and functions of a Principal. The said Regulations are quoted herein under:

9. Powers, duties and functions of the Principal or Headmaster.- The Headmaster or the Principal shall perform in addition to all the duties of a Headmaster or Principal all such duties as appertain to his post, and shall be responsible to the Committee of Management through the Manager of the institution for the due discharge of such duties, for which he shall have the necessary powers.

10. The Headmaster or the Principal shall be solely responsible and shall have necessary powers for the internal management and discipline of his institution including;

(i) Admissions and withdrawals of students and their punishment including expulsion or recommendation for rustication; selection of text books, books and magazines for the library, reading-room and prizes; arrangements of time table and allocation of duties of members of the staff relating to the schools time table;

holding of examination and test; students' promotion and detention; maintenance of all forms and schools registers and progress reports of students and sending the same to their guardians; preparation of requisition for furniture; equipment and apparatus needed for the school and for their repair and replacement; organization of games and other curricular activities; making provisions for health and medical treatment of students, utilizing the services of the staff for educational purposes and activities inside or outside the schools premises; appointment, promotion, control and punishment including removal and dismissal of the inferior servants; control of the hostel through its Superintendent.

(ii) Maintenance of service books and character rolls of teachers, clerks, librarians and inferior staff; making entries in their character rolls and communicating adverse entries to the person concerned; control and supervision of the clerks and librarians; their suspension, and making recommendations for their confirmation, promotion and crossing of efficiency bar; granting of casual leave to the staff of the institution; recommending disciplinary action against teachers; clerks and librarians to the Committee of Management, recommending to the Committee their applications for permission to appear in academic examinations; permitting teachers to undertake private tuitions.

(iii) Control and administration of all Boys' Funds; it shall be the duty of the Principal to see to it that each such fund is spent only for that item for which it is allowed; and if there is saving on any item, the stoppage of fee realisation for that fund; granting freeship and half-freeship within the number sanctioned by the Management; drawing and disbursing of stipend and scholarship money.

11. In financial and other matters for which he is not solely responsible the Headmaster or Principal shall follow the directions of the Committee of Management as issued to him through the Manager.

12. The Headmaster or Principal shall be the channel of correspondence between the staff of the institution and Management.

24. The petitioner, being the head of the institution is entitled to perform, the duties and functions attached to the office of the Principal by virtue of Regulations 9, 10, 11 and 12 of Chapter I of the Regulations framed under the Intermediate Education Act. Regulation 9 provides that the Principal would perform all the duties as appertained to his post and would be responsible to the Committee of Management for the due discharge of such duties. Various powers to be exercised by the Principal is enumerated in Regulation 10 whereas Regulation 12 provides that the head of the institution would be a channel of correspondence between the staff of the institution and the Management. Consequently, if the petitioner is allowed to work as a Principal, he must be allowed to discharge all the functions and duties attached to the office and cannot be divested of its financial and its administrative powers. Such an order would not only be without jurisdiction, but in my opinion, would also

be opposed to public policy, especially when the salary is paid to the petitioner from the State exchequer without taking work from him.

25. There is also another aspect of the matter. Divestation of financial and administrative powers is normally used as a temporary measure. Such a direction could be issued where a person has been suspended and was not entitled to perform his duties or exercise the powers attached to the office. Such a direction could also be issued so long as he holds the office until legally dismissed or discharged, but once the order of suspension is lifted, then he has a right to perform the duties and functions attached to that office. Simultaneously, once an order of proposed termination or dismissal is removed and the petitioner is allowed to function on the post of Principal he should consequently be allowed to discharge his duties attached to that post and could not be divested of the financial and administrative powers. Similar view has been expressed by this Hon"ble Court in Committee of Management of Vasu Dev Mishra Higher Secondary School, Kanpur Nagar and Anr. v. Deputy Director of Educations, Kanpur Region, Kanpur and Ors. . I am in complete agreement with the aforesaid judgment.

26. In view of the aforesaid, this Court is of the opinion that the order of the Selection Board is without jurisdiction and cannot be sustained. The impugned order dated 26.5.2006 is quashed. The writ petition is allowed and the matter is remitted back to the U.P. Secondary Education Services Selection Board, the respondent No. 2, to take a fresh decision in accordance with law after giving an opportunity of hearing to all the parties within two months from the date of the production of a certified copy of this order.