

**(1991) 08 AHC CK 0090**

**Allahabad High Court**

**Case No:** Civil Misc. Writ Petition No. 15898 of 1984

Madan Gopal

APPELLANT

Vs

The Committee of Management,  
Jawahar Inter College and  
Others

RESPONDENT

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**Date of Decision:** Aug. 21, 1991

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (1992) 1 AWC 152

**Hon'ble Judges:** A.N. Varma, J

**Bench:** Single Bench

**Advocate:** Jai Shanker Audichya, for the Appellant;

**Final Decision:** Allowed

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### **Judgement**

A.N. Varma, J.

Despite service of notice on Respondents Nos. 1 and 2, respectively, the Committee of Management and the principal of Jawahar Intermediate College, Iglas, Aligarh, no one has appeared on their behalf. No counter affidavit has been filed by the learned Standing Counsel either.

2. The Petitioner was appointed as a clerk in the aforesaid College by the Selection Committee in the pay scale of Rs. 60-4-80-100. It is asserted that the Petitioner was confirmed in due course and deduction was being made from his salary towards provident fund in accordance with the rules. By order dated September, 20, 1975, the principal of the College placed the Petitioner under suspension on the ground that there were allegations of misappropriation of college funds and consequently the Committee of Management by its resolution dated August 20, 1975 decided to place him under suspension. Subsequently it appears that the Management decided to terminate the Petitioner's services and, for that purpose, passed a resolution

proposing the termination of the Petitioner's services. Necessary approval was sought by the Management and by an order dated August 29, 1981 the District Inspector of Schools accorded the approval. There upon the Petitioner submitted an appeal. Annexure 5 to the petition is a copy of the memorandum of appeal. In the memorandum of appeal, the Petitioner submitted that the allegation that the Petitioner had misappropriated the college funds was false and baseless and that, at any rate, no enquiry whatever was held into the charge of embezzlement framed against the Petitioner. Even a copy of the resolution passed by the Committee of Management was not supplied to the Petitioner. The District Inspector of Schools, therefore, wrongly accorded approval to the management to terminate the Petitioner's services. By his order dated August 16, 1984 the Regional Deputy Director of Education, Agra, dismissed the Petitioner's appeal.

3. Aggrieved by the aforesaid orders, the Petitioner has approached this Court under Article 226 of the constitution. The first contention of the learned Counsel is that neither the order of the District Inspector of Schools according the approval nor that passed by the Deputy Director of Education dismissing the appeal filed by the Petitioner discloses any application of mind. Both the orders, it is contended, are non-speaking and neither the District Inspector of Schools nor the Deputy Director of Education considered the grievance of the Petitioner that no enquiry whatever was held before terminating the Petitioner's services. The further grievance of the Petitioner was that he was afforded no opportunity whatsoever at any stage prior to the passing of the resolution of the Committee of Management or that passed by the District Inspector of Schools approving the same. These complaints were not considered even by the appellate court.

4. Having heard learned Counsel for the Petitioner I am of the opinion that in this case at least the appellate court should have dealt with the various grounds of attack incorporated in the memorandum of appeal. The order passed by the Deputy Director is cryptic and contains no reasons beyond stating that he had heard the Petitioner and perused the record. Nothing further is mentioned in the order. All that he states is that after hearing the Petitioner and perusing the record he has reached the conclusion that the order passed by the District Inspector of Schools should be affirmed. As the order passed by the District Inspector of Schools itself was a non-speaking order, the Deputy Director of Education should have dealt with the grounds raised by the Petitioner in detail so as to indicate that he had applied his mind to the grievance urged by the Petitioner in support of his appeal. No doubt an order of affirmance need not be a detailed order and the reasons given by the original authority the order of which is affirmed in appeal, may be assumed to be the reasons on which the appellate authority affirmed the order of the original authority. Where, however, as here, the original order itself does not disclose any reasons it becomes necessary for the appellate authority to pass a speaking order sufficient to indicate that there was proper application of mind. The burden was even greater in the present case in that according to the uncontroverted allegations

of the Petitioner even a copy of the resolution passed by the Committee of Management was not supplied to him.

5. In this view, it becomes necessary to send the case back to the Regional Deputy Director of Education, Agra, to decide the Petitioner's appeal afresh in accordance with law, after hearing the Petitioner as well as the management keeping in view the observations made here-in-above.

6. In the result, the petition succeeds and is allowed. The impugned order passed by the Deputy Director of Education dated 16-8-84 (Annexure 6 to the petition) is quashed. The Deputy Director of Education shall dispose of the Petitioner's appeal afresh according to law expeditiously, in any case, within 2 months of the date on which a certified copy of this order is submitted before him. There will, however, be no order as to costs.

7. A copy of this order may be given to the learned Counsel for the parties on payment of the usual charges within a week.