

(2015) 07 AHC CK 0067

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 32542 of 2015

Tribhuvan Prasad Pathak

APPELLANT

Vs

State of Uttar Pradesh and
Others

RESPONDENT

Date of Decision: July 13, 2015

Acts Referred:

- Uttar Pradesh Intermediate Education Act, 1921 - Section 16(G)(1), 16(G)(7), 16G, 16-G, 16-G(7)

Citation: (2015) 7 ADJ 159 : (2016) 1 ALJ 121

Hon'ble Judges: Suneet Kumar, J

Bench: Single Bench

Advocate: Rahul Jain, for the Appellant; Birendra Singh, Advocates for the Respondent

Final Decision: Allowed

Judgement

Suneet Kumar, J

Heard learned counsel for the petitioner, learned Standing Counsel for the State-respondent, Sri Birendra Singh, learned counsel for the respondent No. 3 and Sri Nikil Kumar, learned counsel for the respondent No. 4. The petition is being decided finally on the request of the parties without calling for counter-affidavit as per the Rules of the Court.

2. The petition is directed against the order dated 6 April 2015 passed by the second respondent District Inspector of Schools, Chitrakoot approving the suspension of the petitioner and the resolution dated 22 March 2015 passed by the Committee of Management, Krishak Inter College, Bhaunri, District Chitrakoot placing the petitioner under suspension.

3. The petitioner is a Principal of the respondent institution Krishak Inter College, Bhaunri, District Chitrakoot, the provisions of the Intermediate Education Act and the Regulation framed thereunder is applicable on the institution.

4. The Vice President of the college made a complaint on 2 February 2015 before the District Inspector of Schools to take action against the petitioner, consequently, the District Inspector of Schools appointed a three member enquiry committee on 6 February 2015. On the report of the Committee, the District Inspector of Schools directed the Manager of the college to take action against the petitioner. The Manager vide letter dated 23 February 2015 informed the petitioner that the management vide resolution dated 22 February 2015 has suspended the petitioner pending enquiry.

5. It is contended on behalf of the petitioner that the report which was the basis for the suspension order was not provided. In the mean time, the petitioner was issued a charge-sheet on 2 March 2015 containing 20 charges which was not served upon the petitioner, therefore, vide letter dated 17 March 2015 the copy of the charge-sheet was pasted on the premises of the petitioner directing the petitioner to submit a reply within three days by 20 March 2015. During the pendency of the enquiry, District Inspector of Schools vide letter dated 23 March 2015 informed the petitioner that the Manager has sent the papers pertaining to his suspension for approval. The petitioner appeared before the District Inspector of Schools, who upon considering the written submission of the petitioner, the enquiry report submitted by the Disciplinary Committee opined that the order of suspension was validly passed and was justified.

6. Submission of learned counsel for the petitioner is that the District Inspector of Schools has not assigned any reason as to how the suspension order passed against the petitioner was justified, the order merely states that the written submission of the petitioner was not found satisfactory and upon perusal of the enquiry report submitted by the Disciplinary Committee it would transpire that the suspension was lawful and valid. It is, therefore, contended that the approval was granted without even advertng to the gravity of the allegations, without prima facie referring to the material that would justify the suspension order. The impugned order being devoid of reasons is therefore not in terms of Sub-section (7) of Section 16-G of the Intermediate Education Act.

7. In the meantime, it is stated that the petitioner has been terminated by the Committee of Management vide resolution dated 12 April 2015, the papers have been transmitted to the Selection Board for approval, therefore, it is submitted on behalf of the respondents that once the resolution for termination has been passed, the Court should restrain from interfering with the suspension order pending decision of the Board.

8. A Division Bench of this Court in Committee of Management Sri Mahanthu Radha Krishna fitter College, Sakarpura Distt. Vallia v. District Inspector of Schools and another, 1988 UPLBEC 226 (1), has held as under:

"As discussed earlier, a District Inspector of Schools while exercising power under Sub-section (7) of Section 16-G acts in a supervisory capacity, and his decision may have adversely by his order invariably comes to Court, he must record brief reasons for according or refusing to accord approval to an order of suspension passed by a Committee of Management although a detailed judgment is not required. In the present case the District Inspector of Schools has disapproved the resolution of the Committee of Management without giving any reason whatsoever. In absence of any reason, this Court is unable to find fault with the resolution of the Committee of Management suspending respondent No. 2. Therefore, the order of the District Inspector of Schools must be held to be illegal and arbitrary."

9. Another Division Bench in *Tejnarain Singh v. State of U.P. and others*, 2008 (4) ESC 2301 (DB), held as under:

"We are of the considered opinion that the District Inspector of Schools while exercising the power under Section 16-G(7) has only to examine on prima facie basis as to whether the charges have any substance and as to whether there is material available in support of the charges. He is not required to enter into any disputed issue as to whether charge would be finally made out or not. The issue in that regard has to be examined in departmental enquiry to be held against the Principal."

10. In *Committee of Management Janta Inter College, Mau Aima, Allahabad and another v. D.I.O.S. Allahabad and another*, 2000 (4) ESC 2921, it was held that the statutory provisions of Section 16-G(7) of the Act required that the order of approval had to be passed in writing which made it implicit that the Inspector had to apply its mind and record reasons for the approval or disapproval of the suspension order. The District Inspector of Schools was under a legal duty to pass a reasoned order under Clause (7) of Section 16-G of the Act.

11. Considering the aforementioned judgments, this Court again in *C/M Moti Lal Nehru Smarak Inter College and another v. District Inspector of Schools, Azamgarh*, Writ-A No. 39441 of 2012, on the facts of that case held that the District Inspector of Schools while proceeding to accord approval or disapproval, has to examine the papers so transmitted, would have no right to address on the merit of the charges, but has only to see on prima facie basis as to whether the charges have any substance.

12. In the facts and circumstances of the case in hand, the District Inspector of Schools has not undertaken any exercise as required under Sub-section 7 of Section 16-G of U.P. Intermediate Education Act, there is total non application of mind on the materials placed before approving the suspension order.

13. The plea of the learned counsel appearing for the respondents that the Court should refrain from interfering with the impugned order at this stage as the management has already terminated the petitioner, the matter is pending consideration before the Selection Board for approval cannot be accepted for the

reason that the petitioner is entitled to continue in office until decision is taken by the Selection Board. The suspension order not being in terms of Sub-section 7 of Section 16G, would have to be set aside, the petitioner would continue in the office. Further, Section 16(G)(1) of the Act provides that no order of suspension shall remain in operation after expiry of 60 days, except when approved in writing by the District Inspector of Schools. The scope of Section 16(G)(1) has been subject-matter of consideration by the Full Bench in *Chandra Bhushan Mishra v. District Inspector of Schools and others*, 1995 (1) UPLBEC 460. The Court held that if the order of suspension has not been approved within 60 days or refused approval in writing, it would mean that such order of suspension ceases to exist in eyes of law after expiry of 60 days. Meaning thereby, the exercise of power by the District Inspector of Schools is mandatory and is not dependent on the outcome of the enquiry, therefore, a resolution by the Committee to terminate the service of a teacher would have no bearing on the decision taken by the District Inspector of Schools. The purpose of the provision is to protect the teachers from the highhanded approach of the Committee.

14. The documents and materials available on record would reflect that the fact finding Committee was constituted on 6 February 2015 which submitted its report on 18 February 2015, the petitioner was suspended on 2 March 2015, charge-sheet was issued on the same date containing as many as 20 charges. The Enquiry Committee submitted the enquiry report on 20 March 2015 holding the petitioner guilty thereupon the service of the petitioner was terminated by the management on 12 April 2015. The undisputed facts would reveal the meteoric speed in which the entire proceedings was concluded against the petitioner in a span of 40 days. That apart, the impugned order passed by the District Inspector of Schools cannot be justified and sustained as no reasons have been assigned in the impugned order. The only reason stated by the District Inspector of Schools is that the enquiry committee constituted by the management has submitted the enquiry report returning a finding that the charges against the petitioner stands proved, therefore, in the opinion of the District Inspector of Schools the suspension order is justified. The impugned order does not record any reason nor there is application of mind by the District Inspector of Schools while approving the suspension order. In view of the consistent pronouncement on the subject, the District Inspector of Schools was required to record reasons while approving the suspension order. The exercise of power under Section 16(G)(7) was independent of the outcome of the disciplinary proceedings, merely because the enquiry Committee held that the charges against the petitioner was proved would have no bearing while approving or disapproving the suspension order. The impugned order does not consider the objections raised by the petitioner for the revocation of the suspension order nor does it *prima facie* examine as to whether the charges have any substance or there is sufficient material to support the charges. Consequently, the order of the District Inspector of Schools dated 6 April 2015 cannot be sustained and is accordingly quashed.

15. The writ petition is allowed with all consequential benefits. No order as to costs.