

AFR
Reserved.

Case :- WRIT - A No. - 21057 of 2018

Petitioner :- Vikalp Kumar

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Siddharth Khare, Sri Ashok Khare (Sr. Advt.)

Counsel for Respondent :- C.S.C.

Hon'ble Vivek Varma, J.

1. Present writ petition has been filed for quashing the order dated 10.9.2018 (Annexure No. 13 to this writ petition) passed by Basic Shiksha Adhikari, Bijnor i.e. respondent no. 4 whereby the services of the petitioner as an Assistant Teacher has been terminated. The petitioner also prayed for reinstatement and for payment of his salary on month to month basis and further to release his arrears of salary w.e.f. 13.3.2018 with interest.

2. In brief, an advertisement dated 12.12.2014 was placed in the news papers inviting applications for the post of Assistant Teachers in Primary Institutions. Petitioner having possessed Graduation degree and two years Bachelor Training Certificate (BTC) Course applied pursuant to the said advertisement. The petitioner was selected under General category and was accordingly issued appointment letter dated 28.6.2016 by the Basic Shiksha Adhikari, Bijnor. The petitioner joined as Assistant Teacher on 27.6.2018 at Primary Institution, Pittahedi, Block Kiratpur, District Bijnor. After completion of one year, the appointment was confirmed by the competent authority.

3. On 13.3.2018, petitioner was placed under suspension by the District basic Education Officer, Bijnor on the allegation that he had simultaneously pursued BTC course and M.Sc. First Year, as a regular student in the academic session 2014-15. The order of suspension was challenged by the petitioner before this Court being Civil Misc Writ Petition No. 12548 of

2018, which was dismissed on 24.5.2018 with the observation that the authority concerned shall conclude the departmental proceedings in accordance with law, within a period of three months from the date of production of certified copy of the order after considering the reply of the petitioner.

4. On 16.7.2018 a charge sheet was issued to the petitioner which contained three charges. The first charge states that the petitioner had simultaneously pursued BTC course from District Education and Training Institute, Bijnor and M.Sc. (1st Year) from Vardhman College, Bijnor in the same year and thus has played fraud upon the department. The second charge is with regard to lowering the image of the department and third charge pertains to indiscipline and violation of Employee Discipline and Conduct Rules.

5. The petitioner submitted his reply that he had done the BTC Course in the academic session 2012-13, 2013-14 while the M.Sc. Course was undergone by him in the academic sessions 2014-15 and 2015-16, therefore, the academic sessions are different. He got the M.Sc. Degree cancelled, attention in this regard was drawn to the cancellation order dated 27.3.2018. It was categorically stated that he had not taken any benefit of M.Sc, degree in obtaining the appointment on the post of Assistant Teacher in Primary Institution. It was also submitted that even a perusal of his application form for appointment on the post of Assistant Teacher would reflect that he has not even mentioned his M.Sc. Qualification.

6. Thereafter, a letter dated 7.9.2018 was issued by Block Education Officer, Kiratpur seeking further reply on certain other issues, which was also replied by the petitioner. After completing the inquiry an inquiry report dated 10.9.2018 was submitted by the Block Development Officer to the District Basic

Education Officer. Relying upon the said ex-parte inquiry report dated 10.9.2018, the services of the petitioner were terminated on the same day vide order dated 10.9.2018 passed by District Basic Education Officer, Bijnor. It is this order which is subject matter of challenge before this Court.

7. Learned counsel for the petitioner has submitted that the aforesaid impugned order has been passed in violation of principles of natural justice inasmuch as before passing the order impugned, no opportunity of hearing of any kind whatsoever was afforded to the petitioner. He has not been provided any relevant documents including the copy of inquiry report, and he has also not been afforded an opportunity of oral hearing, therefore, he submitted that the impugned order is bad and is liable to be quashed. It was further contended that there is no bar against pursuing a degree course and a certificate course, simultaneously, in view of the resolution of University Grants Commission, New Delhi. He has also submitted that the petitioner has not played fraud or misrepresented before the respondents.

8. Per contra, learned counsel for the respondents submitted that the impugned order has been passed strictly in accordance with law and hence no interference is called for. The writ petition lacks merit and is liable to be dismissed.

9. Heard learned counsel for the parties and perused the material on record.

10. The question that needs to be answered first as to whether the disciplinary authority was justified in passing the impugned order of removal of petitioner from service without supplying the copy of the enquiry report and further whether the procedure prescribed under the Rules for holding departmental

inquiry in respect of imposition of major penalty have been followed or not.

11. It is not in dispute that service conditions of the petitioner is governed by the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999. It is apposite to extract Rules 7, 8 and 9 of the Rules, 1999, which read as follows:

"7. Procedure for imposing major penalties.--Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner:

(i) The Disciplinary Authority may himself inquire into the charges or appoint an Authority subordinate to him as Inquiry Officer to inquire into the charges.

(ii) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the disciplinary authority :

Provided that where the appointing authority is Governor, the charge-sheet may be approved by the Principal Secretary or the Secretary; as the case may be, of the concerned department.

(iii) The charges framed shall be so precise and clear as to give sufficient indication to the charged Government servant of the facts and circumstances against him. The proposed documentary evidence and the name of the witnesses proposed to prove the same along with oral evidence, if any, shall be mentioned in the charge-sheet.

(iv) The charged Government servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and Inquiry Officer shall proceed to complete the inquiry ex parte.

(v) The charge-sheet, alongwith the copy of the documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government servant personally or by registered post at the address mentioned in the official records. In case the charge-sheet could not be served in aforesaid manner, the charge-sheet shall be served by publication in a daily newspaper having wide circulation :

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charged

Government servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government servant appears and admits the charges, the Inquiry Officer shall submit his report to the disciplinary authority on the basis of such admission.

(vii) Where the charged Government servant denies the charges the inquiry officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to be produced in his defence:

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976.

(ix) The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry ex parte. In such a case, the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government servant.

(xi)

(xii)

8. Submission of inquiry report.-- When the inquiry is complete, the Inquiry Officer shall submit its inquiry report to the Disciplinary Authority along with all the record of the inquiry. The Inquiry Report shall contain a sufficient record of brief facts, the evidence and statement of the findings on each charge and the reasons thereof. The Inquiry Officer shall not make any recommendation about the penalty.

9. Action on Inquiry Report.-- (1) The Disciplinary Authority may, for reasons to be recorded in writing, remit the case for re-inquiry to the same or any other Inquiry Officer under intimation to the charged Government servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the Disciplinary Authority, according to the provisions of Rule 7.

(2)

(3)

(4) If the Disciplinary Authority, having regard to its findings on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged Government servant, he shall give a copy of the inquiry report and his findings recorded under sub-rule (2) to the charged Government servant and require him to submit his representation if he so desires, within a reasonable specified time. The Disciplinary Authority shall, having regard to all the relevant records relating to the inquiry and representation of the charged Government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned speaking order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged Government servant."

12. The procedure as contemplated under the Rule 7,8 & 9 of the Rules 1999 for imposition of major penalty was not followed. The enquiry officer admittedly did not fix any date or time for the enquiry, neither any evidence was led by the District Basic Education Officer to substantiate the charge.

13. The enquiry officer submitted his report to the Disciplinary authority on 10.9.2018. The Disciplinary Authority i.e. District Basic Education Officer agreed with the findings of the enquiry report and without supplying the copy of the same and without issuing any show cause against the proposed punishment, passed the order dated 10.9.2018 terminating his services. Failure to supply copy of the inquiry report, before the disciplinary authority, takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a clear breach of the principles of natural justice.

14. The object of rules of natural justice is to ensure that an employee is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. It is a basic requirement of rules of natural justice that an employee should be given a reasonable opportunity of being

heard in any proceeding which may culminate in a major punishment being imposed on the employee. Thus, the disciplinary proceedings stood vitiated.

15. The Hon'ble Apex Court in the case of **Union of India & Ors. Vs. Mohd. Ramzan Khan, (1991) 1 SCC 588**, has held that it is mandatory to provide enquiry report to the delinquent in order to provide an opportunity to submit reply to the same. In case the punishment order imposing major penalty has been passed without providing enquiry report to the delinquent employee the said punishment order is not sustainable in the eyes of law. The relevant paragraphs read as under:-

"14. This Court in *Mazharul Islam Hashmi v. State of U.P.* [(1979) 4 SCC 537 : 1980 SCC (L&S) 54] pointed out:

"Every person must know what he is to meet and he must have opportunity of meeting that case. The legislature, however, can exclude operation of these principles expressly or implicitly. But in the absence of any such exclusion, the principle of natural justice will have to be proved."

15. Deletion of the second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the Forty-second Amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendation, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-second Amendment has not brought about any change in this position.

16. At the hearing some argument had been advanced on the basis of Article 14 of the Constitution, namely, that in one set of cases arising out of disciplinary proceedings furnishing of the copy of the inquiry report would be insisted upon while in the other it would not be. This argument has no foundation inasmuch as where the disciplinary authority is the Inquiry Officer there is no report. He becomes the first assessing authority to consider the evidence directly for finding out whether the delinquent is guilty and liable to be punished. Even otherwise, the inquiries which are directly handled by the disciplinary authority and those which are allowed to be handled by the Inquiry Officer can easily be classified into two separate groups ? one, where there is no inquiry report on account of the fact that the disciplinary authority is the Inquiry Officer and inquiries where there is a report on account of the fact that an officer other than the disciplinary authority has been constituted as the Inquiry Officer. That itself would be a reasonable classification keeping away the application of Article 14 of the Constitution.

17. There have been several decisions in different High Courts which, following the Forty-second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgments in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a coordinate or a larger bench of this Court taking this view. Therefore, the conclusion to the contrary reached by any two-Judge bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground.

18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

16. Now coming to the other issue as to whether the petitioner has played fraud or misrepresented in getting appointment as Assistant Teacher. In this connection, a perusal of the record would disclose that the petitioner completed two years BTC course during the academic session 2012-13 and

2013-14, while M.Sc. Course was pursued and completed by the petitioner during academic session 2014-15 and 2015-16. Therefore, the academic session of both the courses are different. Further, based upon the application dated 14.3.2018 filed by the petitioner, the M.J.P. Rohilkhand University, Bareilly vide order dated 27.3.2018 proceeded to cancel the M.Sc. Degree of the petitioner. It appears from the impugned order dated 10.9.2018 that neither the Enquiry Officer nor the Disciplinary Authority considered this issue and passed the order terminating the services of the petitioner. Non supply of the enquiry report thus has seriously prejudiced the cause of the petitioner.

17. The impugned order would also reflect that it proceeds on the charge that by appearing in two examinations simultaneously for the same year, petitioner has played fraud and lowered the image of the respondents-department. Further the petitioner also acted in violation of the relevant Service Conduct Rules.

18. The reasoning given by the District Basic Education Officer is clearly unsustainable in as much as no such provision governing the petitioner's service has been brought to the notice of the Court, which may prohibit any such employee to undergo in the two examinations simultaneously. Infact the petitioner has relied upon the resolution of the University Grants Commission, New Delhi dated 28.12.2012, whereby a decision was taken that "a student pursuing a degree programme under regular mode may be allowed to pursue a maximum of one certificate/diploma/ advanced diploma/ PG Diploma programme simultaneously either in regular or open and distance mode in the same university or from other institutions" to contend that a

student may pursue a degree course along with a certificate course.

19. Thus, it is more than apparent that the authorities have neither considered the issue in correct perspective nor the respondents have been able to show that there is any such regulation or rule contemplating that a degree and a certificate course cannot be pursued simultaneously. Moreover, the petitioner has been selected by the respondents on fulfilling the essential qualifications prescribed for the post of Assistant Teacher. The petitioner has not derived any benefit on account of his post-graduate degree (M.Sc.). The M.Sc. Degree was got cancelled by the petitioner. Even otherwise in view of the University Grants Commission resolution dated 28.12.2012, a student can pursue a degree course and a certificate course simultaneously. Therefore, appointment of the petitioner cannot be annulled on the ground that the petitioner tried to pursue both the courses simultaneously. It is also not the case of the respondents that petitioner has pursued the courses while holding the post of Assistant Teacher. The allegation that the petitioner has committed fraud or misrepresentation in procuring the job of Assistant Teacher is not substantiated from the record and pleadings of the respondents.

20. A similar issue also arose for consideration before the Hon'ble the Apex Court in **Kuldeep Kumar Pathak Vs State of UP and others, 2016 (3) SCC 521**, wherein the Court held as under:-

“6. Before us, Mr. Pradeep Kant, learned senior counsel for the appellant has made a neat legal argument. He submits that though the impugned judgment proceeds on the basis that appearing in two examinations simultaneously for the same year is violation of the Regulations of the Board, this reason given by the High Court is clearly unsustainable inasmuch as no such Regulation is shown by the Board which prohibited any such candidate to appear in two examinations

in the same year. The learned senior counsel further argued that the impugned order passed by the respondents for confiscating his Certificate of Intermediate exam was, otherwise also, contrary to the principles of natural justice inasmuch as no show cause notice and opportunity of hearing was given to the appellant before passing such an order, which was passed belatedly after a period of nine years from the passing of the said examination by the appellant.

7. We are of the opinion that both the submissions of the learned senior counsel are valid in law and have to prevail. The High Court has been influenced by the argument of the respondents that simultaneous appearance in two examinations by the appellant in the same year was 'contrary to the Regulations'. However, no such Regulation has been mentioned either by the learned Single Judge or the Division Bench. Curiously, no such Regulation has been pointed out even by the respondents. On our specific query to the learned counsel for the respondents to this effect, he expressed his inability to show any such Regulation or any other rule or provision contained in the U.P. Intermediate Education Act, 1921 or Supplementary Regulations of 1976 framed under the aforesaid Act or in any other governing Regulations. Therefore, the entire foundation of the impugned judgment of the High Court is erroneous.

8. It is also pertinent to note that the appellant's intermediate examination and result thereof was not in question before the U.P. Board. No illegality in the admission in that class has been pointed out by the respondents. The alleged charge of simultaneously appearing in two examinations, one of the U.P. Board and other of the Sanskrit Board, was with respect to Class X and equivalent examination which did not relate to admission in intermediate course. The only provision for canceling the said admission is contained in Regulation (1) of Chapter VI-B. It details the procedure for passing the order of punishment canceling intermediate results and, inter alia, prescribes that a committee consisting of three different members is to be constituted and entrusted with the responsibility of looking into and disposing of cases relating to unfair means and award appropriate penalty as specified in the Regulations itself. However, there is no allegation of any unfair means adopted by the appellant in the instant case and, therefore, that Regulation has no applicability. Even otherwise, no such committee was constituted. Therefore, having taken admission in Intermediate on the basis of past certificate issued by a separate Board, which was recognised, and not on the basis of the result of Class X of the U.P. Board, the appellant derived no advantage from his examination of the U.P. Board while seeking admission in Intermediate course. Thus, from any angle the matter is to be looked into, the impugned orders dated April 20, 2011 and May 10, 2011 passed by the respondents are null and void, apart from the fact that they are in violation of the principles of natural justice.

9. The appeal is, accordingly, allowed with costs by

quashing the aforesaid impugned orders and reversing the impugned judgment of the High Court. The appellant shall, accordingly, be entitled to all consequential benefits.”

21. The law laid by the Hon'ble Apex Court cited in the preceding paragraph is fully applicable to the facts and circumstances of the present case.

22. In view of the aforesaid the writ petition is allowed. The impugned order dated 10.9.2018 (Annexure No. 13 to this writ petition) passed by Basic Shiksha Adhikari, Bijnor i.e. respondent no. 4. is hereby quashed and consequently respondents are directed to reinstate the petitioner forthwith with all consequential benefits.

Order Date :- 20.09.2019
RavindraKSingh

(Vivek Varma, J.)