

C/M, Ram Bharose Maikulal Inter ... vs State Of U.P Thru. Add. Chief Secy./ ... on 30 April, 2025

Author: Rajesh Singh Chauhan

Bench: Rajesh Singh Chauhan

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?AFR

Neutral Citation No. - 2025:AHC-LK0:24901

Court No. - 3

Case :- WRIT - A No. - 2603 of 2025

Petitioner :- C/M, Ram Bharose Maikulal Inter College,Lko. Thru. Mgr., Sri Sant Sahu And

Respondent :- State Of U.P Thru. Add. Chief Secy./ Secondary Education, Lko. And Other

Counsel for Petitioner :- Mahendra Bahadur Singh,Vikas Singh

Counsel for Respondent :- C.S.C.,Hari Prasad Gupta,Hari Ram Gupta

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri M.B. Singh, learned counsel for the petitioner, Sri Vivek Shukla, learned Additional Chief Standing Counsel for opposite party nos. 1, 2, 3 and 6 and Sri H.P. Gupta, learned counsel for the opposite party no. 5.

2. Application for dismissal of the writ petition filed by Sri Hari Prasad Gupta, learned counsel for the opposite party no. 5 and application for taking short rejoinder affidavit filed by Sri Vikas Singh, learned counsel for the petitioner is taken on record.

3. Since, DIOS has been impleaded by name as opposite party no. 4, and no notice was issued to him, therefore, no one has appeared on behalf of opposite party no. 4, though, in the present writ petition malafide has been alleged against the opposite party no. 4 vide paragraph no. 29 but without advertng to those allegations of malafide, I am testing the impugned order only in the light of Section 16-G of the U.P. Intermediate Education Act, 1921 (hereinafter referred as 'Act, 1921') and also in the light of the judgements rendered by this court interpreting the relevant provisions of Section 16-G of the Act 1921. By means of impugned order dated 11.02.2025, the DIOS, Lucknow has disapproved the suspension order dated 04.01.2025 passed against the opposite party no. 5. The relevant provision for the controversy in question would be sub-Section 7 and 8 of Section 16- G of the Act, 1921, which reads as under:-

"(7) No such order of suspension shall, unless approved in writing by the Inspector, remain in force more than sixty days form the date of commencement of the Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975, or as the case may be, from the date of such order, and the order of the Inspector shall be final and shall not be questioned in any Court.

(8) If, at any time, the Inspector is satisfied that disciplinary proceedings against the Head of Institution or teacher are being delayed, for no fault of the Head of Institution or the teacher, the Inspector may, after affording opportunity to the Management to make representation revoke an order of suspension passed under this section."

4. The decisions of the constitutional Courts clearly mandate that if any Teacher or Head of the institution, as the case may be, has been placed under suspension, it shall be approved or disapproved by the DIOS within time frame and if the suspension order is disapproved, an opportunity of hearing should be given to the Committee of Management and the charged employee, failing which that disapproval order would vitiate. This Court in para 12 in re:- Satya Pal Singh Vs. State of U.P. and others, 2006 SCC OnLine All 602 has observed as under:-

"12. Under Clause (5) of section 16-G, the Committee of Management could suspend a teacher or a Head of the Institution on certain grounds mentioned therein. The order was forwarded under Clause (6) along with the papers prescribed under Regulation 39 of Chapter-III. These papers were required to be considered and the Inspector was required to apply his mind and was required to give the reasons while according approval or disapproval of the suspension order. In the present case, no reasons have been recorded and, therefore, it is clear, that the Inspector did not apply his mind to the facts and the circumstances of the case. There is another aspect of the matter. The Committee of Management while issuing the suspension order is not required to given an opportunity of hearing to the teacher or the head of the institution. Therefore, at the stage when the order of suspension is being approved and the Inspector is required to apply his mind, it is at that stage, a bare minimum opportunity of hearing is required to be given to the suspended teacher or the Principal, as the case may be. This is the bare minimum requirement of the principles

of natural justice, which is required to be given at that time, by the Inspector, while approving or disapproving the suspension order. This is on account of the fact, that the papers forwarded by the Committee of Management under Regulation 39 of Chapter III may contain the reasons, which are only one sided. The other side of the coin should also be considered and that is when the suspended teacher or the Principal would come into the picture. Consequently, in the opinion of the Court, the Inspector is also required to give an opportunity of hearing and hear the version of the suspended teacher or the principal before approving or disapproving the order of suspension. In the present case, no opportunity of hearing was provided to the petitioner."

5. Division Bench of this Court in para 4 in re:- Committee of Management, Maharajganj Inter College and another Vs. District Inspector of Schools, Maharajganj and another, 1999, SCC OnLine All 693 has observed as under:-

"4. Having heard learned counsel for the parties, we are of the view that the order passed by the District Inspector of Schools cannot be sustained in law. A Division Bench of this Court in Committee of Management S.M.R.K. Inter College v. District Inspector of Schools, Ballia, has clearly held that order approving or disapproving resolution of Committee of Management to suspend Principal or teacher must contain reasons and further that absence of reasons would vitiate the order. Admittedly, the District Inspector of Schools did not address himself to relevant papers forwarded alongwith the letter seeking approval of the suspension and declined to accord approval on consideration of the representation made by the respondent-teacher. Section 16-G(5) of the U.P. Intermediate Education Act, 1921 provides that no head of institution or teacher shall be suspended by the Management, unless in the opinion of the Management-(a) the charges against him are serious enough to merit his dismissal or removal or reduction in rank; or (b) his continuance in office is likely to hamper or prejudice the conduct of the disciplinary proceedings against him; or (c) any criminal case for an offence involving criminal turpitude against him is under investigation, inquiry or trial. Sub-section (6) requires that where any head of the institution or teacher is suspended by the Committee of Management, it shall be reported to the Inspector within a period stipulated therein and it further provides that the report shall contain such particulars as may be prescribed and be accompanied by all relevant documents. Regulation 39 of Chapter III of the Act provides the particulars, which the report regarding suspension of the head of institution or of the teacher to be submitted to the Inspector is to contain and also provides the documents, which are to accompany the report. Sub-section (7) of Section 16 clearly provides that no order of suspension shall, unless approved in writing by the Inspector, remain in force for more than 60 days. Section 16-G empowers the District Inspector of Schools to revoke an order of suspension after affording opportunity to the management in case he is satisfied that the disciplinary proceedings against the head of the institution or the teacher are being delayed for no fault of the concerned teacher. These provisions clearly demonstrate that approval or

disapproval of suspension of a teacher including the Principal is not an empty formality. The Inspector is required to address himself to the grounds on which the order of suspension is founded as also the documents, if any, prima facie supporting the charges levelled against the Head of the Institution or the teacher, as the case may be. In case the charges of the nature referred to in sub-section (5) of Section 16-G are prima facie supported by evidence then in that event the Inspector can not withhold approval. On the other hand in case the charges are of trivial nature and are not covered by the charges mentioned in sub-section (5) of Section 16-G and/or there are no prima facie documents or material in support of the charges then the Inspector may disapprove of the suspension of the Principal or the teacher as the case may be. In the instant case the District Inspector of Schools appears to have failed to discharge his statutory duty and given no reasons in support of the order. In the circumstances, therefore, the order passed by the District Inspector of Schools was liable to be quashed and the learned Single Judge erred in law in dismissing the writ petition. In fact the question was not examined by the learned Single Judge in the above perspective and instead the learned Single Judge dismissed the writ petition holding that while considering the approval or disapproval of suspension order no opportunity of hearing was required to be given by the District Inspector of Schools. It is true that a Division Bench of this Court has held in the case of Managing Committee, Dayanand Inter College v. District Inspector of Schools, that at the stage of approval or disapproval of the suspension order the Inspector is not required to afford any opportunity of hearing to the management and that he is only to consider the relevant material referred to in Regulation No. 39 of Chapter III of the Regulations. The said decision, in our opinion, is of no avail. In the instant case, however, as pointed out above, the District Inspector of Schools did not address himself to the charges and the relevant documents and disapproved the suspension order on the basis of the representation made by the teacher concerned. If the suspension is to be disapproved on consideration of any defect pointed out by the concerned teacher by means of a representation, opportunity has to be afforded to the Management before disapproving of the suspension on any such defect in the proceedings."

6. This Court in re:- C/M of Janta Inter College and Another Vs. State of U.P. and 3 Others, Writ-A No.909 of 2020, vide judgment and order dated 06.05.2020 in para 20 observed as under:-

"20. Scope of consideration under Section 16G(7) read with Regulation 39 is very limited as has also been explained in the case of Ram Autar Verma (supra). Thus, a conjoint reading of the afore-noted four judgments reveal that if all the required papers and informations as prescribed under sub-section (7) of Section 16G of the Act, 1921 and Regulation 39 have been submitted by the Management to the District Inspector of Schools to obtain approval of suspension, then opportunity of hearing at the stage of granting approval or disapproval is not required to be afforded to the Management or the employee. But if the employee has submitted any representation or objection against the order of suspension, then the District Inspector of Schools

shall afford an opportunity of hearing to the Management and the concerned employee while passing the order of approval or disapproval which must contain brief reasons. This view is further supported by the provisions of sub-Section (8) of Section 16G, which specifically provides for an opportunity of hearing at the subsequent stage to the Management by the District Inspector of Schools while considering to revoke an order of suspension passed under sub-section (7) when the Inspector is satisfied that the disciplinary proceedings against the head of the Institution or teacher, is being delayed for no fault of the head of the Institution or the teacher."

7. Perusal of the aforesaid provisions and case laws makes it crystal clear that the life of the suspension order would be maximum 60 days unless it is approved by the DIOS within a period of 60 days. However, in the present case, the opposite party no. 5 was kept under suspension on 04.01.2025, but the DIOS has passed an order dated 09.01.2025 (Annexure No. 8), directing the petitioner to permit the opposite party no. 5 to discharge his duties as Officiating Principal during the period of suspension until the decision is taken on his suspension order. There is no provision under Section 16-G of the Act, 2021 to permit any suspended Teacher or Head of the Institution to discharge his duties as Officiating Principal during his period of suspension pending required exercises of approval/disapproval of the suspension order.

8. Therefore, the order dated 09.01.2025 (supra) has been passed in utter violation of provisions of the law. Though the suspension order has been disapproved by the impugned order dated 11.02.2025 (Annexure No. 1). Notably, against the order dated 09.01.2025 (Annexure No. 8), the petitioner preferred a representation on 11.01.2025 (Annexure No. 9), raising objection on such order and the DIOS thereafter passed an order dated 20.01.2025 (Annexure No. 10) withdrawing its earlier order dated 09.01.2025.

9. I am unable to understand or comprehend as to why the DIOS has passed the order dated 09.01.2025, whereas, he was having power under the Act to disapprove the suspension order, but without disapproving this suspension order, he circumvent the provision of law authorising the opposite party no. 5 to discharge his duties as Officiating Principal till any appropriate order is passed regarding approval/disapproval of the suspension. After the order dated 09.01.2025 having been passed, the suspension order had lost its efficacy for all practical purposes, though the suspension order lost its efficacy after passing the impugned order dated 11.02.2025. There is a trite law in the light of various judgements of this Court on the point that if the suspension order of any Teacher or Headmaster of the Institution is disapproved by the DIOS, an opportunity of hearing would be given to the Committee of Management as well as to the charged Teacher/Head of Institution. The purpose of this settled provision of law is that if the order of Committee of Management suspending any Teacher or any Headmaster is disapproved, it must be passed by affording an opportunity of hearing so that the Committee of Management could know about the shortcomings of the suspension order. In the impugned order dated 11.02.2025, whereby, the suspension order of opposite party no. 5 has been disapproved, it has been indicated that the petitioner appeared before the DIOS along with charged employee on 10.02.2025, but what has been stated by the petitioner before the DIOS defending suspension order has not been indicated in

the order dated 11.02.2025. Though this fact has been improved in the short counter affidavit of the opposite party no. 6 by submitting that on 10.02.2025, the petitioner was present before the DIOS, but he has stated that the matter be placed before any other DIOS as he has preferred an application to the Director (Education) for seeking transfer of the issue placing the same before any other DIOS levelling allegations against him.

10. Learned counsel for the petitioner has stated that in more or less similar facts and circumstances, this Court in Committee of Management, D.P.S.N. Inter College, Kanpur and Another Vs. State of U.P. and Others, 2018 (2) ADJ 840 has observed that if the Committee of Management approaches any higher authority seeking transfer of the issue before any other authority to decide the issue, the same exercises may be undertaken and in that case no decision should be taken by the DIOS till any decision is taken by the authority before whom any application has been preferred.

11. However, at this stage, Sri M.B. Singh has submitted that since the present DIOS has not afforded any opportunity of hearing to the petitioner properly, therefore, he will not press his request to transfer the issue before any other authority, but the issue may be decided a fresh by the same DIOS by affording him an ample opportunity of hearing.

12. Having considered the arguments of the learned counsel for the parties as well as the aforesaid case laws and having considered the impugned order dated 11.02.2025, wherein, this fact has not been disclosed as to whether any opportunity of hearing was provided to the petitioner before passing the impugned order dated 11.02.2025, and if the petitioner had denied to avail the opportunity of hearing by submitting any other plea, the same fact must have been indicated and reflected in the impugned order dated 11.02.2025, I find that the impugned order has not been properly issued in terms of Section 16-G of the Act, 1921. In the impugned order, the opportunity of hearing so given to the employee, i.e., opposite party no. 5 is being reflected, but no such opportunity is being reflected so far as the present petitioner is concerned.

13. Therefore, on the aforesaid limited grounds, the impugned order dated 11.02.2025 is hereby set aside/quashed, remanding the same before the DIOS, Lucknow to pass a fresh order strictly in accordance with law by affording opportunity of hearing to the parties concerned. The DIOS, after receipt of this order, may fix any date, providing opportunity of hearing to the parties within seven days and any appropriate decision may be taken approving or disapproving the suspension order within a further period of three weeks.

14. It is needless to say that the parties shall cooperate in the proceedings.

15. The writ petition is allowed in view of the aforesaid terms.

Order Date :- 30.4.2025 Anurag