

Mohd. Fazil Zafri vs State Of U.P. And 3 Others on 30 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:67753

Court No. - 38

Case :- WRIT - A No. - 10314 of 2018

Petitioner :- Mohd. Fazil Zafri

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sheraz Ali,Siddharth Khare

Counsel for Respondent :- C.S.C.,Irfan Raza Khan,Niyaz Ahmad Khan(Senior Adv.)

Hon'ble Donadi Ramesh,J.

1. The present writ petition is filed challenging the order dated 24.01.2018 wherein the services of the petitioner was terminated. The petitioner working as Assistant Teacher in L.T. Grade for physical education in the respondent- Institution since 2001. Meanwhile, an F.I.R. dated 10.08.2017, under Sections -419, 420, 467, 468, 471, 120- B and 34 I.P.C. and also Section 3 and 5 of Prevention of Damages to Public Property Act, 1984 has been lodged against the petitioner and the petitioner has preferred a Criminal Misc. Bail Application No.4174 of 2018, in which bail has been granted to the petitioner vide order dated 05.02.2018.

2. In view of the above said registration of the FIR against the petitioner, the Manager, Committee of Management Mahgaon Intermediate College, has terminated the services of the petitioner through the impugned order dated 24.01.2018.

3. Learned counsel appearing on behalf of petitioner has vehemently contended that the petitioner services was terminated only on the ground of registration of an FIR against the petitioner and neither any charges has been framed against the petitioner by the Institution nor any other departmental disciplinary proceedings got initiated. Hence, impugned order is contrary to the Regulation 34 to 36 as envisaged in Regulations framed under the Intermediate Education Act, 1921. The same question has came up for consideration in Writ A No.48167 of 2010 (Smt. Indu

Srivastava Vs. State of U.P. and Others) and this Court has passed the following orders:-

"A Division Bench of this Court in Dr. Subhash Chandra Gupta v. State of U.P. and others 2012 (1) ESC 279 (All) (DB), while dealing with the provision of rule 7 and 9 of the Rules applicable to Government Servants, held that the procedure for imposition of major penalty is mandatory and where the statute provides to do a thing in a particular manner that thing has to be done in that manner. Paras 15 is as follows:-

"15. It is well settled that when the statute provides to do a thing in a particular manner that thing has to be done in that very manner. We are of the considered opinion that any punishment awarded on the basis of an enquiry not conducted in accordance with the enquiry rules meant for that very purposes is unsustainable in the eye of law. We are further of the view that the procedure prescribed under the inquiry rules for imposing major penalty is mandatory in nature and unless those procedures are followed, any out come inferred thereon will be of no avail unless the charges are so glaring and unrefutable which does not require any proof. The view taken by us find support from the judgment of the Apex Court in State of U.P. and another v. T.P. Lal Srivastava, 1997 (1) LLJ 831, as well as by a Division bench of this Court in Subash Chandra Sharma v. Managing Director and another, 2000(1) UPLBEC 541."

The Supreme Court in Dev Prakash Tewari vs. U.P. Cooperative Institutional Service Board (2014) 7 SCC 260, was considering the case that as to whether disciplinary proceedings after retirement of an employee could be continued in absence of any rule to that effect. The Court made the following observation:-

"Once the appellant had retired from service on 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits."

The Supreme Court in Mathura Prasad v. Union of India and others (2007) 1 SCC (L&S) 292, held that when an employee is sought to be deprived of his livelihood for alleged misconduct, the procedure laid down under the rules were required to be strictly complied with:

"When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedure laid down under the sub-rules are required to be strictly followed: It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in the manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact, for sufficient reasons may attract the principles of judicial review."

The Supreme Court in *State of Jharkhand vs. Jitendra Kumar Srivastava* (2013) 12 SCC 210, held that in absence of any provision in pension rules, the State Government cannot withhold even a part of pension or gratuity during pendency of the departmental or disciplinary proceedings.

The Supreme Court in *Punjab State Power Corporation Limited vs. Atma Singh Grewal* (2014) 13 SCC 666, held that initiation of departmental enquiry after retirement de hors statutory rules was impermissible.

A Division Bench of this Court in *Ravindra Singh Rathore vs. District Inspector of Schools, Etawah and others* 2004 (1) AWC 310, held that Civil Service Regulations are not applicable upon the employees of State aided educational institutions, therefore, disciplinary proceedings against a teacher cannot be continued after retirement.

In *Dakshinanchal Vidyut Vitran Nigam Limited vs. Aziz Ullah*, 2015 (1) AWC 35 (DB) the Court held that the disciplinary proceeding commences with the issue of chargesheet and can be continued after retirement if there is a specific provision to that effect in the rules.

The facts are not in dispute between the parties. It is admitted that no charge-sheet was issued to the petitioner as required under the Regulations for initiating disciplinary proceedings for imposing penalty. The enquiry had not commenced before the petitioner had superannuated. The learned counsel for the respondents failed to point out any rule as to whether disciplinary proceedings could be initiated against the petitioner after retirement. Even otherwise, after retirement the penalty of termination cannot be imposed as the employer/employee relationship no longer exists. There is no allegation of causing loss to the Institution which is to be recovered, hence no enquiry could have been initiated against the petitioner after retirement. The impugned order of termination was passed on 16 June 2010 merely on a show cause notice. The petitioner retired on attaining the age of superannuation, thus on the date of superannuation, there being no enquiry pending or contemplated and by adopting a procedure in violation of Regulations 35 to 37 by straightway terminating the petitioner was wholly illegal and arbitrary exercise of power.

Accordingly, the impugned order dated 16 June 2010 passed by the sixth respondent, Principal, Rastriya Kanya Inter College, Barhalganj, District Gorakhpur terminating the service of the petitioner is quashed.

The writ petition is allowed with all consequential benefits. The petitioner shall be entitled to salary till the date of her superannuation, her retiral dues shall be paid by the District Inspector of Schools, Gorakhpur within three months from the date of production of the certified copy of this order failing which petitioner shall be entitled to 8% interest on the sum from the due date.

The petitioner being a Class-IV employee was subjected to harassment and victimization, as such, she is entitled to costs which is quantified at Rs.20,000/- payable by the sixth respondent, the Principal of the Institution."

4. Also in Writ A No.4208 of 2025 (Jayant Kumar Singh Vs. State of U.P. and 3 Others), it has been held as follows:-

"11. Having tested the impugned order in the light of the aforesaid facts and circumstances and the decisions so cited above, I find that the impugned order dated 14.02.2025 is illegal, arbitrary and unwarranted inasmuch as the aforesaid punishment order has been passed in utter violation of principles of natural justice and without conducting any inquiry to that effect. Even if the reason to terminate the services of the petitioner is that one F.I.R. was lodged against him wherein he remained under judicial custody with effect from 10.01.2025 to 17.01.2025, the petitioner should have been placed under suspension pending the departmental inquiry. But terminating his services only for the aforesaid reason casts stigma upon him. Besides, if there are no service rules to conduct the departmental inquiry against erring employee, at least the principles of natural justice must be followed before passing the impugned punishment order."

5. Learned counsel for the petitioner submitted that even the said ratio is upheld by the Division Bench of this Court in various matters. Learned counsel further submitted that without initiation of departmental proceedings and merely on the ground of having registered FIR against the petitioner, his termination is not only contrary to the Regulation 34 to 36 as envisaged in Regulations framed under the Intermediate Education Act, 1921 and also against orders passed by this Court in the above said writ petition.

6. Further, learned counsel has submitted that in view of the termination orders the respondents have prevented the petitioner to discharge his duties and in view of the illegal termination the petitioner is also entitled for salaries from the date of termination. Petitioner supporting his contention has relied on the judgment of this Court in Special Appeal Defective No.704 of 2023 (State of U.P. and 2 Others Vs. Rajesh Kumar Yadav), wherein the co-ordinate bench has set aside the termination orders and awarded consequential benefits and all allowances along with salaries to the petitioner. The said directions were assailed before this Court in a special appeal. This Court in the said special appeal confirmed the direction of the order passed in the writ petition wherein the appellants to pay salary to the petitioner for the period he was prevented from performing his duties in pursuance of the illegal termination order.

7. Learned counsel appearing on behalf of State has submitted that as the petitioner was involved in a criminal proceeding, hence, the Committee of Management has terminated the services of the petitioner, but the Committee of Management is not able to place any material with regard to initiation of departmental proceedings against the petitioner.

8. In view of the said circumstances, as the issue has already been decided by this Court and the same was upheld by the Division Bench, this writ petition is also allowed and the impugned order dated 24.01.2018 terminating the services of the petitioner only on the ground of having implicated in a criminal proceeding is set aside and in view of the observations made by the Division bench in the special appeal, the petitioner is also entitled for all consequential benefits, including salary.

Order Date :- 30.4.2025/AdityaG (Donadi Ramesh,J.)