

# **Sanjay Kumar Sengar vs State Of U.P. And Others on 3 March, 2025**

**Author: Saurabh Shyam Shamshery**

**Bench: Saurabh Shyam Shamshery**

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Neutral Citation No. - 2025:AHC:29188

Reserved on- 06.02.2025

Delivered on- 03.03.2025

Court No. - 10

Case :- WRIT - A No. - 63857 of 2007

Petitioner :- Sanjay Kumar Sengar

Respondent :- State of U.P. and Others

Counsel for Petitioner :- H.N. Malhotra,Ajay Bhanot,Gaurav Singh,Kripa Shanker Singh,L.S

Counsel for Respondent :- C.S.C.,Akhilesh Kumar Singh,G.K. Singh,Hritudhwaj Pratap Sahi,

With

Case :- WRIT - A No. - 52910 of 2011

Petitioner :- C/M K.L.Jain Inter College Sasni Mahamaya Nagar And Another

Respondent :- State of U.P. and Others

Counsel for Petitioner :- G.K.Singh,Hritudhwaj Pratap Sahi,Sankalp Narain

Counsel for Respondent :- Ajay Bhanot,Pankaj Kumar,Rahul Pandey,Sanjeev Singh

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri Sanjeev Singh, learned counsel for petitioner; Sri V.K. Singh, learned Senior Counsel assisted by Sri Samarth Singh, learned counsel for respondents and Sri Akhilesh Kumar Singh, learned counsel appearing for respondent no. 2. Sri V.K. Singh, learned Senior Counsel assisted by Sri Samarth Singh, learned counsel for petitioners in connected Writ Petition, Sri Sanjeev Singh, learned counsel appearing for respondent no. 2 in connected petition and Ms. Shruti Malviya, learned counsel appearing for State-respondent in the connected petition.

2. The petitioner was appointed on the post of Assistant Teacher, Vyayam in pursuance of a recruitment process initiated in pursuance of an advertisement and he joined on 04.01.2006 with the respondent-institution (a Minority Institution) on probation of one year i.e. up to 3rd January, 2006, which was further extended for one year i.e. upto 3rd January, 2008, by a resolution of the Committee of Management of School.

3. According to the petitioner, when he was not declared permanent and not paid regular salary, he approached the DIOS, Hathras, who passed strict orders dated 09.05.2007 and 21.05.2007 and directed Institution to pay his salary, which were challenged before this Court in Writ-A No. 24751 of 2007 by the respondent-Committee of Management, which was initially tagged with present writ petition but later on , on basis of statement made by its counsel it was disposed of being rendered infructuous by order dated 28.03.2024. The petitioner was thereafter served with a charge-sheet dated 06.09.2007 making allegations that he has not discharged his duties of Assistant Teacher, Vyayam diligently and was indulged in activities, which were determined to the interest of Institution and despite repeated requests, he had not improved his conduct.

4. The petitioner had submitted a reply to it and denied the charges by a reply dated 17.09.2007. The Institution thereafter submitted a letter dated 20.09.2007 to the petitioner assigning reasons that they were not satisfied with his reply and all allegations were reiterated.

5. The Manager of the Institution submitted a charge sheet dated 08.10.2007 mentioning eight charges. For reference the same are reproduced hereinafter:-

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6. The petitioner replied to the charge-sheet and denied all charges levelled against him. Thereafter, the petitioner was required to appear before the Inquiry Committee. Learned counsel for petitioner submitted that certain objections were filed by the petitioner that relevant documents were not provided still the Inquiry Committee thereafter submitted a report dated 14.11.2007, whereby all the charges were found to be true and proved and the petitioner's work was found unsatisfactory, therefore, it was proposed that probation period be not extended and his services was terminated.

The relevant part of the inquiry report is reproduced hereinafter:-

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7. The Manager of Committee of Management of college thereafter issued a show cause notice dated 20.11.2007 along with a copy of the inquiry report and fixed a date for consideration of the report and reply.

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9. Aforesaid order was impugned in present writ petition. A fresh advertisement to fill up the post of Assistant Teacher, Vyayam was also under challenged by way of an amendment.

10. It is not under dispute that in pursuance of said fresh recruitment process, one Waliuzzaman Khan was appointed and when his salary was not paid by subsequent order dated 29.06.2009, he along with Committee of Management had filed a writ petition being Writ-A No. 52910 of 2011 (C/M K.L. Jain Inter College Sasni Mahamaya Nagar & Anr. vs. State of U.P. & Ors.), which was also heard alongwith this writ petition.

11. Mr. Sanjeev Singh, learned counsel for petitioner (Sanjay Kumar Sengar) has submitted that in the disciplinary proceedings, Principles of Natural Justice were not followed and no opportunity was granted to the petitioner to place his case before the Appointing Authority. Learned counsel further submitted that impugned order was passed only on basis of inquiry report without considering his reply and that all the allegations were false. The inquiry was not conducted in pursuance of relevant provisions.

12. Learned counsel has further stated that the petitioner ought to have declared permanent after probation period of one year was completed. However, it was extended for further period of one year without any legal backup or provisions. The order of termination being a stigmatic order, therefore, his stand has to be considered before the impugned termination order was passed. However, no such opportunity was granted.

13. Learned counsel also submitted that by conducting a fresh recruitment, despite present matter was seized with this Court has created a position that even in an event this writ petition would allowed, petitioner probably may not get any benefit.

14. Per contra, learned Senior Counsel appearing for the Committee of Management has supported the impugned order and submitted that petitioner was under probation and upon inquiry, his conduct was not found satisfactory as he was indulged in illegal activities and has not discharged his duties as Assistant Teacher, Vyayam diligently, therefore, his probation was not extended and, accordingly, his services was terminated by complying with due process including the principle of natural justice.



15. Learned Senior Counsel appearing for newly selected candidate also submitted that fresh recruitment process, to fill up a post of Assistant Teacher, Vyayam, was in regard to the other post and which would not give any adverse effect on the claim of the petitioner.

16. Learned Senior Counsel for the petitioner in the connected writ petition being Writ-A No. 52910 of 2011 (C/M K.L. Jain Inter College Sasni Mahamaya Nagar & Anr. vs. State of U.P. & Ors.) submits that the separate recruitment process was initiated to fill up post of Assistant Teacher, Vyayam and since the posts were not created subject wise, therefore, there was no illegality to initiate process to fill up a post of Assistant Teacher, Vyayam and after due process the petitioner No. 2 in said writ petition was appointed and when his salary was stopped from the State Exchequer, he had approached this Court by way of above referred petition wherein by an interim order dated 28.05.2013, the impugned order therein was stayed and accordingly petitioner no. 2 is still working and being paid regular salary. There is no allegation that selection process was de hors of relevant provisions.

17. Learned counsel for the State has made an objection to the maintainability of the said writ petition and has submitted that it has been filed by both i.e. Committee of Management and the selected candidate, whereas the writ petition is accompanied by an affidavit of selected candidate, who has no concern with the Committee of Management.

18. Sri V.K. Singh, Senior Advocate assisted by Sri Samarth Singh, learned counsel appearing on behalf of petitioners in referred writ petition submitted that this writ petition may be considered to be filed by the petitioner no. 2 only as he was the affected party.

19. Heard the counsel for parties and perused the record. Petitioner, Sanjay Kumar Sengar, was appointed as Assistant Teacher, Vyayam on 02.01.2006 on probation for a period of one year, which was extended for further one year. Though during probation period if the services of a selected candidate was not satisfactory his probation may not be extended, still since it appears there were certain allegations, therefore a department proceeding was initiated. There is no much legal force in arguments of the counsel for petitioner that he ought to have been considered to be permanent after completion of probation of one year. It is also not under dispute that after completion of satisfactory service during the probation, an employee can be given permanent appointment.

20. The allegations against the petitioner are mainly of not discharging his duties as Assistant Teacher, Vyayam diligently as well as the standard of games were not improved during his service of two years of probation.

21. Learned counsel for the petitioner has not brought on any substantial material that standard of sports was improved during his tenure of two years of probation. An appointment of probationary can be set aside without even conducting an inquiry if his services were found unsatisfactory. However, as observed above it appears that since there were certain allegations against the petitioner. Therefore, a charge sheet was issued and thereafter an inquiry was also conducted.

22. In order to consider whether principles of natural justice were followed or not, the Court has looked into the inquiry report. There is no denial that a charge sheet was submitted to which the petitioner and he has reiterated his earlier submissions submitted on a notice issued by the Manager of Committee of Management of concerned college and thereafter an inquiry report was submitted. Therefore, at this stage principles of natural justice were substantially complied with.

23. On basis of the inquiry report, a show cause notice was issued by the Appointing Authority. At this stage, the petitioner has claimed that copy of the show cause notice was not served upon him. Therefore, he was not able to file any reply. It has also been argued that the Committee of Management has also not granted substantial opportunity and it was an ex party report. The only consideration left is whether the show cause notice was served or not and any reply for consideration was filed or not and if filed whether it was considered. In this regard, the reply of the Committee of Management in the counter affidavit would be relevant and for reference its contents of para 17 are reproduced hereinafter:-

"17. That the contents of paragraph no.17 of the Affidavit filed in support of the amendment application by adding paragraph no. 38 in the writ petition are wrong, hence, denied. In reply thereto it is further submitted that the Committee of Management has sent a letter dated 20.11.2007 to the petitioner intimating therein that meeting will be held on 25.11.2007 to consider enquiry report, therefore, it is directed to the petitioner be present on that date. For kind perusal of this Hon'ble Court, Photostat Copy of the letter dated 20.11.2007 sent by the Manager of the Committee of Management of the College to the Petitioner is being filed herewith and marked as Annexure CA 3 to this Affidavit.

It is further relevant to mention that by this letter the Petitioner was also informed that if any reply or objection against the enquiry report if he wants to produce then he can submit the same on that date. Further in pursuance of the letter dated 20.11.2007 a meeting was held on 25.11.2007 and the Petitioner himself was present in that meeting and he has also put his signature on the presence sheet. For kind perusal of this Hon'ble Court, True/Photostat Copy of the presence sheet dated 25.11.2007 is being filed herewith and marked as Annexure CA-4 to this Affidavit."

(emphasis supplied)

24. As referred above, the petitioner was under probation, therefore, if his work was not satisfactory, the Committee of Management can pass an order not to extend his probation. The allegation against the petitioner mainly was that he was not discharging his duties as Assistant Teacher, Vyayam diligently and he was disturbing the normal working of college. It has been stated that instead of encouraging students of college concerned, he took other students for a competition of Kabaddi. The said allegation has not been specifically denied on the basis of relevant material and statements of witnesses recorded during inquiry including statements.

25. As referred above, principles of natural justice were substantially complied with. It is well settled that termination of services of a probationer under the Rules of the Employment or in exercise of Contractual Right is neither per se dismissal nor removal. However, if the order visits the employee against his character or integrity, it would be an order by way of punishment irrespective of whether the employee was a mere probationer or temporary. If he was terminated without giving a reasonable opportunity of showing cause against his termination and even in such matters if the principles of natural justice were followed and there was no deficiency of the procedure, the writ Court would not inclined to interfere.

26. In the aforesaid circumstances, it is now safe to observe that since during inquiry principles of natural justice were followed and his reply was considered by the inquiry committee and inquiry report was submitted thereafter as well as show cause notice was also served upon the petitioner by the Manager of Committee of Management and he also approved, no irregularity was committed. The contents of the counter affidavit and annexure annexed therewith would be sufficient to show that the petitioner has appeared in pursuance of the show cause notice and has put signature in the meeting dated 25.11.2007. Therefore, the submission of counsel for petitioner that at stage of show cause notice, principles of natural justice were not followed would be contrary to record.

27. In above referred circumstances and taking note of allegations, which are substantive that the petitioner was not discharging his duties diligently and standard of games were neither improved nor students of college were encouraged to participate in competition, the Court is of view that impugned order whereby probation period was not extended and service was terminated does not require any interference. The impugned order dated 26.11.2007 therefore is upheld.

28. The Court also takes note of a judgment passed by Supreme Court in Shamsher Singh vs. State of Punjab (1974) 2 SCC 831 that since principle of natural justice was substantially complied with and the petitioner was not able to explain his mis-conduct and that his services was not satisfactory, the law proposed in Shamsher Sing (supra) was also complied with that, even order of termination may be punitive, however since proper opportunity of hearing was granted, therefore, no ground exists for interference. (also see Swati Priyadarshini vs. the State of Madhya Pradesh & Ors., 2024 INSC 620).

29. So far as the writ petition being Writ-A No. 52910 of 2011 is concerned. In the said petition, an interim order was already passed in favour of selected candidate i.e. petitioner no. 2 therein and that there is merits in the arguments of learned counsel for the said petitioner that the posts are not subject wise and that there are teachers for other subjects, as such there was no bar to appoint another Teacher for Vyayam. Therefore, there was no illegality in the appointment of petitioner no. 2 in the said petition. Therefore, the interim order is made absolute.

30. With aforesaid observations, writ petition i.e. Writ-A No. 63857 of 2007 (Sanjay Kumar Sengar vs. State of U.P. & Ors.) is dismissed and connected writ petition i.e. Writ-A No. 52910 of 2011 (C/M K.L. Jain Inter College Sasni Mahamaya Nagar & Anr. vs. State of U.P. & Ors.) is allowed. The impugned order dated 29.06.2010 passed by Joint Director of Education, Aligarh Region Aligarh is hereby quashed.

Order Date :- 3.3.2025 Ruhi H. (Saurabh Shyam Shamshery,J.)