

Committee Of Management Indira Gandhi ... vs Rajendra Prasad Sharma on 16 January, 2020

Bench: Sanjay Kishan Kaul, K.M. Joseph

ITEM NO.103

COURT NO.12

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Civil Appeal

No(s). 4905/2018

COMMITTEE OF MANAGEMENT INDIRA GANDHI JUNIOR
HIGH SCHOOL THROUGH ITS MANAGER

App

VERSUS

RAJENDRA PRASAD SHARMA & ANR.

Res

(IA No. 45152/2018 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 16-01-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPH

For Appellant(s)

Mr. P.N.Mishra, Sr. Adv.
Mr. Abhishek Kumar S., Adv.
Mr. Abhish Kumar, AOR

For Respondent(s)

Mr. V.K.Shukla, Sr. Adv.
Ms. Parul Shukla, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. The services of the respondent No.1 has been terminated on the allegation that the certificate produced by him from the Agra University (Now Dr.B.R.Ambedkar University) is fabricated as verified from the University, a position disputed by the respondent No.1.

2. Respondent No.1 assailed the said order before the Allahabad High court and the learned Single Judge opined Reason: that the approval was required to be obtained by the appellant from the District Inspector on account of the fact that the appellolant-Institute was not upgraded to a high school in the year 2001 when the respondent No.1 had been employed. An appeal against the said order dated 4th August, 2006 was dismissed by the Division Bench on 14th November, 2017. The appellant thereafter preferred the special leave petition before this Court, interim orders were

granted staying the operation of the appellate order and subsequently leave was granted while making that order absolute. It was further directed that the appellant my "take appropriate action as permissible in law".

3. The appellant thereafter has moved the District Inspector of Schools in view of the aforesaid order and after examining the case the finding was reached that the mark-sheet was forged and thus approval was granted for termination of the services of respondent No.1. The representation of the appellant in this behalf was accepted and disposed of.

4. It now transpires that what was done was in terms of the Section 16-G (3)(b) of the Intermediate Education Act, 1921 as opined by the High Court. However what was not taken note of that there is a subsequent enactment i.e. The U.P.Secondary Education Services Selection Board Act, 1982 where Section 21 provides as under:

"21. Restriction on dismissal etc. of teachers - The Management shall not, except with the prior approval of the [Board] dismiss any teach or remove him from service or serve on him any notice of removal from service, or reduce him in rank or reduce his emoluments or withhold his increment for any period (whether temporarily or permanently) and any such thing done without prior approval shall be void."

5. We may note here that as per Section 1(2) of this Act the provision came into force from 14th July, 1987 except Section 21. Learned counsel state that the provision has been subsequently brought into force and that the said provision was amended by the Amending Act of 1993 with effect from 7th August, 1993 as quoted above.

6. It has also been pointed out that qua the earlier Act of 1921, Section 32 of the subsequent Act provides as under:

"32. Applicability of U.P.Act No.II of 1921 - The provisions of the Intermediate Education Act, 1921 and the Regulation made thereunder in so far as they are not inconsistent with the provisions of this Act [or the rules or regulations made thereunder] shall continue to be in force for the purposes of selection, appointment, promotion, dismissal, removal, termination or reduction in rank of a teacher."

7. In view of the aforesaid position, learned senior counsel for the appellant contends that what the appellant did was as per the mandate of the order of the learned Single Judge as affirmed by the Division Bench and now faced with the present position, the appellant should be given some time to approach the Board in terms of Section 21 of the subsequent Act. We may note the submission of the learned senior counsel for respondent No.1 that the manner of doing aforesaid is regulated by the U.P.Secondary Education Services Commission (Procedure for Approval of Punishment) Regulation, 1985.

8. We would not like to comment on anything but have recorded the contours of the controversy.

9. At request of the learned counsel for the appellant, list for directions on 23rd March, 2020 on the Miscellaneous List.

(ANITA MALHOTRA)
COURT MASTER

(ANITA RANI AHUJA)
COURT MASTER