



2026:AHK-LKO:22111

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 7270 of 2011

Jagdish Kumar Verma S/O C.P.Verma

.....Petitioner(s)

Versus

State Of U.P. Through Prin. Secy. Secondary Edu.
Lko. And Ors.

.....Respondent(s)

Counsel for Petitioner(s)	: H.G.S. Parihar, Meekanshi Singh, Shashank Shekhar Parihar
Counsel for Respondent(s)	: C.S.C., Manoj Kumar Pandey, Prasant Kumar Tripathi, Ram Lakhan Vishwakarma

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Sri Prashant Singh, learned counsel for the petitioner, learned Standing Counsel for the respondent-State and Sri Ram Lakhan Vishwakarma, learned counsel for the respondent No.4.

2. By means of the present writ petition, the petitioner is challenging the order dated 19.7.2011, passed by respondent No.4, whereby service of the petitioner has been terminated and order dated 7.9.2011, passed by respondent No.2, granting approval to the termination of the petitioner. Further prayer has been made to issue a writ in the nature of mandamus commanding the respondents to allow the petitioner to work on his post of Assistant Teacher L.T. Grade (Science) and to make payment of salary of the said post month by month regularly alongwith arrears of salary.

3. Factual matrix of the case is that the institution namely Sardar Patel Higher Secondary School is recognized by U.P. Intermediate Education Act, 1921 and the provision of U.P. Secondary Education Services Selection Board Act, 1982, as amended up to date are applicable to the said institution. The institution is receiving grant in aid from the State Government and the provisions of U.P. Act No.24 of 1971 are applicable to the said institution.

4. Initially, the petitioner was appointed on the post of Lab Assistant on

1.8.1985 in the institution in question. The qualification of the petitioner is High School and Intermediate. He has also done his graduation (B.Sc.) in the year 1987 and Shiksha Visharad Examination (equivalent to B.Ed.) in the year 1991.

5. Against one post of Assistant Teacher (Science), the petitioner was appointed vide order dated 25.7.1991 on ad-hoc basis after following due procedure of direct recruitment i.e. advertisement and selection etc. The petitioner was issued an appointment letter on 25.7.1997 and he submitted his joining on 1.8.1991 and started discharging his duties. The approval of the appointment of the petitioner was not granted by the respondent No.2 and as such, he filed Writ Petition No.3236 (S/S) of 1997, however, during its pendency, the Manager of the institution cancelled the appointment of the petitioner vide order dated 29.10.2004 for want of approval.

6. The petitioner challenged the order dated 29.10.2004 in Writ Petition No.336 (S/S) of 2005, wherein the order was stayed by this Court and direction was issued for payment of salary vide interim order dated 24.1.2005. In compliance of the interim order, the respondent No.2 granted approval to the appointment of the petitioner and sanctioned payment vide order dated 3.2.2007 w.e.f. 25.7.1991 and since then, the petitioner started getting his salary.

7. In the month of February, 2011, the petitioner submitted leave application due to illness w.e.f. 28.2.2011 to 14.3.2011 and further he remained on leave owing to the illness up to 25.4.2011. Thereafter, he submitted joining on 26.4.2011 with medical certificate which was sanctioned by the Manager.

8. In the meantime, a meeting was held on 15.3.2011, levelling allegations against the petitioner in which it was decided to hold enquiry against the petitioner by appointing three members committee. Thereafter, two members resigned from the Management assigning reasons regarding arbitrary modus-operandi of the Committee of Management. The Treasurer of the Committee of Management also wrote a letter to the District Inspector of Schools mentioning therein that the meeting dated

15.3.2011 is illegal and fabricated. The Manager also threatened the petitioner for bitter consequences, thus, the petitioner moved an application before the Superintendent of Police, Sitapur on 29.4.2011, making complaint.

9. The President of the Committee also held a meeting on 28.4.2011 and wrote a letter to the Manager and District Inspector of Schools in favour of the petitioner when the illegal action of the Manager came into his knowledge. Thereafter, the Manager issued charge sheet on 30.4.2011 to the petitioner seeking response within a week. The petitioner filed his reply vide letter dated 1.5.2011.

10. In the meantime, the petitioner was suspended by the Manager vide order dated 19.5.2011 without the decision of the Committee of Management, which was subsequently cancelled by the Committee of Management headed by the President on 1.6.2011. A letter was also issued by the President of enquiry committee on seeking reply of the petitioner on certain charges. The suspension order was challenged by the petitioner in Writ Petition No.3933 (S/S) of 2011 in which the Manager filed supplementary affidavit on 12.7.2011 enclosing an extract of newspaper dated 9.7.2011 fixing date for appearance in enquiry on 16.7.2011.

11. Before the petitioner could participate, the impugned order dated 19.7.2011 was passed wherein the enquiry report dated 16.7.2011 was also enclosed.

12. Submission of learned counsel for the petitioner is that while passing the impugned order dated 19.7.2011, the enquiry report was not supplied to the petitioner, therefore, placing reliance on the enquiry report, violates the principles of natural justice, as has been held in the case of **Union of India and others Vs. Mohd. Ramzan Khan [(1991) 1 Supreme Court Cases 588]**.

13. Learned counsel for the petitioner submits that the order of termination dated 19.7.2011 was also cancelled by the Committee of Management in its meeting and the same was communicated to the District Inspector of Schools. In spite of the aforesaid, the respondent

No.2 issued notice to the petitioner to which he filed his reply. The respondent No.2 passed an order of approval to the termination dated 7.9.2011.

14. It is further submitted by learned counsel for the petitioner that the procedure for enquiry and punishment has been provided under Regulations 31 to 45 of Chapter III framed under the Act. Regulation 36 provides issuance of charge sheet. Regulation 37 provides decision by the Committee of Management on enquiry report by issuing second show cause notice. Regulation 40 provides time limit and procedure and Regulation 45 provides implementation of decision of the District Inspector of Schools.

15. Next submission is that the enquiry committee has been constituted in violation of Regulation 35 as the Principal, Lecturer or Manager can be the enquiry officer with regard to the Assistant Teacher. It is also submitted that the charge sheet has not been issued mentioning definite charges and not too by the enquiry officer. It is submitted that the Manager himself has passed the impugned order dated 19.7.2011 relying upon the enquiry report dated 16.7.2011, which was neither placed before the Committee of Management for decision nor supplied to the petitioner seeking response thereto.

16. Further submission is that the petitioner has not been issued second show cause notice as required under the Act and Regulation. Regulation 37 framed under Chapter III of the Act clearly mentions that second show cause notice is to be issued to the delinquent employee before terminating the service, which has not been done in this case. No second show cause notice has ever been issued to the petitioner and outrightly, the Manager of the institution passed the order provides decision by the Committee of Management on enquiry report by issuing second show cause notice.

17. Power of punishment to the Assistant Teacher has been conferred to the Committee of Management under Regulation 13 of Chapter II framed under the U.P. Intermediate Education Act, 1921, therefore, the impugned punishment order passed by the Manager without any decision of the Committee of Management is wholly without jurisdiction. Prior to

passing the order of termination, papers are to be submitted before the U.P. Secondary Education Services Selection Board and obtain approval, as required under Section 21 of the U.P. Secondary Education Services Selection Board Act, 1982. Here in the present case, it is admitted case of the parties that no prior approval of termination of service of the petitioner has been obtained from the U.P. Secondary Education Services Selection Board, therefore, the order, without obtaining prior approval, is illegal and not sustainable in the eyes of law.

18. After the commencement of the Act No.5 of 1982, the power of approval stands vested in the Board from the District Inspector of Schools and as such the order of approval passed by the District Inspector of Schools is without jurisdiction.

19. He placed reliance upon the judgment in the case of **Committee of Management S.B. Inter College Vs. UPSESSB [2008 (2) ADJ 318]**, wherein it has been held that the Management is not competent to terminate the employee without prior approval and without issuing second show cause notice, which has not been done in the case in hand.

20. In the case of **Dhananjay Singh Vs. State of U.P. (Writ-A No.5351 of 2021)**, it has been held that Shiksha Visharad Examination is equivalent to B.Ed.

21. In the case of **Yoginath D Bagde Vs. State of Maharashtra [1999 (7) SCC 739]**, it has been held that second show cause notice is to be issued to the delinquent employee before terminating the service, which has not been done in this case.

22. In the case of **Dharmendra Kumar Yadav Vs. State of U.P. and others [2021 (7) ADJ 241 (LB)]**, it has been held that since the punishment order was declared nonest in the eyes of law, then the benefit of salary from the date of dismissal till the date of reinstatement may not be denied.

23. In regard to disciplinary proceeding cannot continue after the retirement of employee, learned counsel for the petitioner placed reliance upon **Ravindra Singh Rathore Vs. District Inspector of Schools**

(CMWP No.16905 of 2000).

24. I have heard the submissions advanced and perused the law report provided by learned counsel for the petitioner.

25. On perusal of the judgments on which reliance has been placed, it is held that the order of termination without issuing second show cause notice is wholly illegal and arbitrary in nature. It is also held that the termination order has been passed without obtaining approval from the U.P. Secondary Education Secondary Selection Board, therefore, the order, without obtaining prior approval, is illegal and not sustainable in the eyes of law.

26. It is also seen that the order of termination has been passed by the Manager of the Committee of Management. Under Regulation 37, it is provided that it is the Committee of Management who has been assigned to issue second show cause notice, obtaining reply from the employee concerned, which has not been issued in the case of the petitioner, therefore, the order impugned of termination is wholly without jurisdiction and as such, it is liable to be set aside by this Court.

27. On the reasons recorded above, the impugned orders suffer from apparent illegality and are liable to be set aside, therefore, the impugned order dated 19.7.2011, passed by respondent No.4, whereby service of the petitioner has been terminated and order dated 7.9.2011, passed by respondent No.2, granting approval to the termination of the petitioner are hereby set aside. The writ petition succeeds and is **allowed**.

28. The respondents are directed to pay salary to the petitioner w.e.f. the date of termination i.e. 19.7.2011 till the date of retirement within a period of three months from the date of production of a certified copy of this order.

(Irshad Ali,J.)

March 30, 2026
Gautam