

Chandra Kanti Das

Vs

State of Uttar Pradesh and Others

Civil Appeal No. 213 of 1981

(R.S. Pathak, O. Chinnappa Reddy, Baharul Islam JJ)

10.03.1981

JUDGMENT

PATHAK, J. -

1. This appeal by special leave is directed against the judgment of the Allahabad High Court allowing a writ petition filed by the fifth respondent against an order of the District Inspector of Schools, Mathura.
2. The appellant Chandra Kanti Das was appointed a daftri in the Shri Krishna Chaityana Intermediate College, Nand Gaon in the district of Mathura in June 1971. He was confirmed in the post on June 24, 1972. It appears that he took leave and proceeded home, apparently because his father was seriously ill. It is said that the father subsequently died and the appellant, who himself fell ill, could not rejoin duty within time. When he returned to his post, he was not permitted to join and was served with an order terminating his services. Thereafter, the fifth respondent, Krishna Shakhya Kachhi was appointed in his place and, it seems, later confirmed. Meanwhile, the appellant, it is claimed, appealed to the Managing Committee against the order terminating his services. There is some dispute whether he actually did so. A few days later, he preferred an appeal to the District Inspector of Schools complaining of the order terminating his services. The District Inspector issued a notice dated August 19, 1976 of the appeal to the Principal and appointed August 25, 1976 at 10.00 o' clock of the morning for hearing the appeal. The case of the Principal is that he did not receive the notice but what he did receive in fact was a subsequent letter dated August 23, 1976. Accordingly to the Principal, he received that letter on August 25, 1976 but late in the afternoon so that he was unable to appear before the District Inspector for the hearing of the appeal. On September 13, 1976, the District Inspector made an order in which after holding that the termination of the appellant's services was contrary to law he directing his reinstatement with immediate effect with a further direction that he should be treated as on leave without pay from April 25, 1975. He also directed that the person appointed in his place be dismissed. It may be noted that besides preferring an appeal against the order terminating his services, the appellant had also instituted a civil suit in the Court of the learned Munsif, but the suit was dismissed. The appellant declares that he had applied for withdrawing the suit and it was disposed of as withdrawn. The fifth respondent urges that it was not withdrawn but was dismissed. This controversy need not detain us.
3. On coming to know of the order of the District Inspector on the appeal filed by the appellant, the fifth respondent filed a writ petition before the Allahabad High Court. On January 1, 1979, the High Court allowed the writ petition on the finding that appeal had been disposed of by the District Inspector without a proper opportunity to the principal of being heard in support of the order terminating the appellant's services. The High Court set aside the order of the District Inspector

dated September 13, 1976. It also quashed a consequential order passed by the principal on September 25, 1976. The High Court also directed the District Inspector to reconsider the appeal after giving a reasonable opportunity to the Committee of Management of participating in its hearing. Various auxiliary directions were also given to the District Inspector in regard to the scope of the appeal. The writ petition was allowed with costs to the fifth respondent against the appellant.

4. The principal, and the only serious, contention on behalf of the appellant before us is that the notice issued by the district Inspector of the appeal filed by the appellant was served in time on the principal and there was adequate opportunity to the Principal to appear during the hearing of the appeal, and therefore the High Court should not have interfered with the order of the District Inspector. We have examined the record before us and we are unable to hold that the finding of the High Court is perverse and against the evidence on the record. There was material before the high Court on the basis of which it would have come to the conclusion reached by it and we see no reason why we should interfere. The order made by the High Court while disposing of the writ petition is an appropriate order in the circumstances of the Case, and there is good reason why it should be maintained. The only modification we propose is in regard to the order directing the appellant to pay costs to the fifth respondent. In our judgment, that does not accord with reason and needs to be set aside.

5. Mr. M. L. Verma, counsel of the fifth respondent, has vehemently contended that the termination of the appellant's services had been approved by an earlier District Inspector of Schools, and the approval having become final it was not open to the successor District Inspector to consider the matter afresh. This contention is not open to Mr. Verma because in effect it amounts to a submission that the High Court was wrong in referring the dispute back to the District Inspector for fresh consideration of the appellant's appeal on its merits. If the case of the fifth respondent is that the District Inspector could not reopen the order of his predecessor approving the termination of the appellant's services, the fifth respondent should have come to this Court against the order of the High Court sending the case back to the district Inspector. As this was not done, we cannot permit Mr. Verma to raise the point.

6. On the aforesaid considerations, we find no substance in the appeal and dismiss it except as it directs the appellant to pay costs to the fifth respondent. There is no order as to costs of this appeal. The matter will now go back to the district Inspector of Schools who will dispose of the proceedings before him within three months from today.

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