

Indra Pal Gupta

Vs

Managing Committee, Model Inter College, Thora

Civil Appeal No. 571 of 1975

(A. P. Sen, O. Chinnappa Reddy, E. S. Venkataramiah JJ)

03.05.1984

JUDGMENT

VENKATARAMIAH, J. -

1. The appellant was appointed on probation as the Principal of the Model Inter College, Thora, District Bulandshahr (hereinafter referred to a 'the College') on August 28, 1967 in accordance with the procedure prescribed by the Intermediate Education Act, 1921 (U. P. Act No. 2 of 1921) (hereinafter referred to as 'the Act') and the Regulations made thereunder. The period of probation prescribed was one year. Shortly before the expiry of the period of probation on August 25, 1968, the Managing Committee of the College passed a resolution extending the period of probation of the appellant by one year. Thereafter on April 27, 1969, the Managing Committee met to consider the question of confirmation of the appellant in the post of the Principal. As the Managing Committee was not satisfied with the services of the appellant, it resolved to terminate his services and after obtaining the approval of the District Inspector of Schools wrote a letter dated June 30, 1969 to the appellant communication its decision to terminate the service of the appellant enclosing therewith a copy of its resolution dated April 27, 1969. The letter dated June 30, 1969 reads thus :

#

From

The Manager

Model Inter College

Thora (Bulandshahr)

To

Shri I. P. Gupta

Chilkana House,

Kumaran,

Bridge, Saharanpur.

Ref. No. Dated June 30, 1969

Sub : Termination of your service as Principal.

Dear sir,

##

With reference to the above, I have to mention that in view of the resolution No. 2 of the Managing Committee dated April 27, 1969 (copy enclosed) and subsequent approval by the D. I. O. S. Bulandshahr you are hereby informed that your service as Principal of the Institution is terminated with immediate effect. You will however be entitled to your dues in lieu of notice. Please hand over complete charge to Shri D. D. Gupta, who is being instructed accordingly, without delay.

Please note that you cease to function as Principal of this Institution forthwith. You are neither authorised to operate any account nor will you perform any other act in the capacity of the Principal of this Institution hence forth. Of course the civil suit filed by Shri S. P. Jain of Meerut for the recovery of his dues is your sole responsibility. Please see that the matter is reasonably settled failing which you shall be liable to any loss caused to the Institution in that respect. While handing over charge please do not forget to return all papers or documents relating to the College, or any other College property in your possession. All accounts also may kindly be cleared.

Since despite several assurances you have failed to return during the complete summer vacation, this intimation is being conveyed to you at your Saharanpur address, in this state of uncertainty under registered cover to ensure safe delivery. Recently you are reported to have been to Bulandshahr for a few days. Please come immediately and do the needful in the matter.

Sri D. D. Gupta is to assume office of the Principal of this Institution with immediate effect in officiating capacity till further instruction. He may take over charge from Sri I. P. Gupta when he returns.

#

Yours faithfully,

(Sd.)

Manager Model Inter College,

Thora (Bulandshahr)

##

2. The copy of the resolution of the Managing Committee sent along with the above letter reads thus :

Resolution passed by the Managing Committee in its meeting held on April 27, 1969 terminating the probationary period of the Petitioner.

2. The report of the Manager was read. Sri I. P. Gupta, the Committee to have his say in respect of the report. At first he refused to say anything but when the Committee requested him to consider it seriously and let the Committee have the benefit of his views, he said that he had nothing to say in that respect since he wanted to quit himself due to circumstances. On this the Committee again requested him to put some such suggestion in consultation with the Manager as may be helpful for the Committee to arrive at some conclusion. In the absence of any satisfactory suggestion the Committee took the decision. At this stage the Principal retired out of courtesy.

On the basis of the Service Book of the Principal, the manager told that last year his confirmation was due on August 28, 1968 but in the meeting of the Committee held on August 25, 1968 in which the Principal was also present the report of the Manager, dated July 4, 1968 was put as desired by the President. Resolution 3 dated August 25, 1968 under the head "Consideration on confirmation of Shri I. P. Gupta, Principal" incorporates the decision of the Committee as "According to the Manager's report the period of probation of the Principal extended by one year". The proceedings book contains signatures of Sri I. P. Gupta for receiving a copy of the said resolution. At the end of the proceedings the minute book contains signatures of Sri. I. P. Gupta along with other members of the Committee present.

The facts contained in the report of the Manger being serious and not in the interest of the Institution, this Committee unanimously resolves that the period of probation of Sri I. P. Gupta, Principal, be terminated without waiting for the period to end and the Manger is empowered to take necessary steps in this respect. Anything done by him in this respect shall be considered to have been done by this Committee. The Manager is also authorised to hand over charge to Sri D. D. Gupta when necessary.

Sri I. P. Gupta also came in. With a vote of thanks to the Chair the meeting ended.

3. The English translation of the relevant part of the report of the Manager on the basis of which the above resolution was passed which is incorporated in the counter-affidavit filed on behalf of the Managing Committee reads thus :

It will be evident from the above that the Principal's stay will not be in the interest of the Institution. It is also evident that the seriousness of the lapses is enough to justify dismissal but no educational institution should take all this botheration. As such my suggestion is that out purpose will be served by termination of his service. Why, then, we should enter into any botheration. For this, i.e. for termination of his period of probation, too, the approval of the D. I. O. S. will be necessary. Accordingly any delay in this matter may also be harmful to our interest.

Accordingly I suggest that instead of taking any serious action, the period of probation of Sri Inder Pal Gupta be terminated without waiting for the period to end.

4. Aggrieved by the order of termination of this services referred to above, the appellant filed a petition under Article 226 of the Constitution in Writ Petition No. 4823 of 1970 on the file on the High Court of Allahabad challenging its correctness and praying for appropriate relief. The learned Single Judge who heard the writ petition allowed it by his order dated January 2, 1973 by quashing the order of termination. The Managing Committee of the College preferred an appeal against that

decision to the Division Bench of the High Court in Special Appeal No. 31 of 1973, the Division bench allowed the appeal and dismissed the writ petition filed by the appellate by its order dated March 14, 1973. This appeal is filed by the appellant against the judgment of the Division Bench after obtaining the special leave of this Court under Article 136 of the Constitution.

5. The College is an institution recognised under the Act and is governed by the provisions of the Act. Section 16-G of the Act provides that every person employed in a recognised institution shall be governed by such conditions of service as may be prescribed by Regulations and that the Regulations inter alia may be made in respect of the period of probation, the conditions of confirmation and the procedure for the imposition of punishment. The Board of High School and Intermediate Education is authorised to make Regulations by Regulations with the previous sanction of the State Government. Under the Regulations so made under the act, the period of probation prescribed is one year whether a person is a direct recruit or has been promoted from a lower grade in the service of the institution to a higher grade. The period of probation of principle of Head Master may be extended by a maximum period of twelve months. At least six weeks before the date on which the confirmation of a Principal or a Headmaster is due, the Manger of the institution is required to prepares his confirmation paper and place them before the Committee of management and the decision of the Committee of Management in each case is required to be records in the from of a resolution. Regulation 10 provide that a person placed on probation shall be confirmed if he fulfills the requirements of Regulation 9, has worked with diligence and otherwise proved himself it for the post for which he was recruited and his integrity is certified. Whenever the punishment of dismissal, removal or discharge, reduction in rank or diminution in emoluments is impose, d prior approval of the Inspector should have to be obtained. Regulations 35 to 38 of the Regulations made under the Act which prescribe the procedure of termination of the services of an employee by way of the punishment reads thus :

35. On receipt of a complaint or an adverse report of facts of a serious nature the Committee may in the cases of teachers appoint the Headmaster or Principal or Manger as the inquiry officer (or the manger may himself set up the inquiry if such power has been delegated to him by the Committee under rules) and in the case of the Headmaster or Principal, a small sub-committee, with instructions to submit the report as expeditiously as possible.

36. (1) The grounds on which it is proposed to take action shall be reduced in the from of a definite charge or charges which shall be communicated to the employee charged and which shall be so clear and precise as to give sufficient indication to the charged employee of the facts and circumstances against him. He shall be required within three weeks of the receipt of the charge-sheet to put in a written statement of his defence and to state whether he desired to be here in person. If he or the inquiring authority so desires, an oral inquiry shall be held in respect of such of the allegations as are not admitted. At that inquiry such oral evidence will be heard as the inquiring authority considers necessary. The person charged shall entitled to cross-examine the witness to give evidence in person, and to have such whiteness called as he may wish, provided that the inquiring authority conducting the inquiry may, for sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof. The inquiring authority conducting the inquiry may also, separately from these proceedings, make his own recommendation regarding the punishment to be imposed on the employee.

(2) Clause (1) shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him.

(3) All or any of the provisions of clause (1) may for sufficient reasons to be recorded in writing be waived where there is difficulty in observing exactly the requirements thereof and those requirements can in the opinion of the inquiring authority be waived without injustice to the person charged.

37. Soon after the report of the proceedings and recommendation from the inquiring authority are received, the Committee of Management shall meet to consider the report of the proceedings and recommendation made and take decision on the case. The employee shall, however, be allowed, if he so desires, to appear before the Committee in person to state his case and answer any question that may be put to him by any member present at the meeting. The Committee shall then send a complete report together with all connected papers to the Inspector or Regional Inspectors as the case may be, for approval of action proposed by it.

38. If it is felt at any stage that the matter can be more properly dealt with by action to terminate service with notice, this may be done with the approval of the Inspector or Regional Inspectors, as the case may be.

6. It is seen from the foregoing that the above provisions relating to the procedure to be followed before imposing the punishment of dismissal or removal from service are virtually the same as provided by Article 311(2) of the Constitution and the principles which should govern this case should, therefore, be the same as those underlying Article 311(2). The decision in *Parshotam Lal Dhingra v. Union of India*, *Shamsher Singh v. State of Punjab* and *Anoop Jaiswal v. Government of India* explain the true legal position governing the termination of the services of a probationer. In *Parshotam Lal Dhingra* case, this Court observed at page 862 thus :

In short, if the termination of service is founded on the right following from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with.

7. The above rule applies to probationers too.

8. Admittedly no inquiry was held in this case as provided in Regulations 35 and 36 of the Regulations made under the Act. Apparently in the light of the principles enunciated in *Parshotam Lal Dhingra* case the learned Single Judge who decided the writ petition at the first instance in the High Court observed in the course of his order thus :

In this petition under Article 226 of the Constitution the petitioner questions the validity of the so-called termination of this service by the resolution passed by the Managing Committee on April 27, 1969. His case is that the termination in the

circumstances in which it has been made by the Managing Committee amounts to punishment of removal or dismissal from service and the punishment having been imposed upon him without following the procedure prescribed under Section 16-G of the Intermediate Education Act and the regulations framed there under becomes vitiated. Indeed it has not been denied or controverted in the counter-affidavit that the action against the petitioner was taken by the Managing Committee on serious charges of mismanagement brought against the principal by the Manager. But it was submitted by the learned counsel for the opposite parties that a reasonable opportunity was afforded to the petitioner by the Managing Committee when he was faced with the charges and asked to explain on April 27, 1969, at the meeting of the Managing Committee. But the learned counsel for the opposite parties when faced with the relevant regulations and Section 16-G of the Intermediate Education Act found it difficult to justify that what was done at the meeting of the Managing Committee on April 27, 1969, complies with those provisions. The attack made by the petitioner based on non-compliance of the relevant regulation and the provisions of Section 16-G of the Act on the validity of the action taken, appears to be sound and sustainable. No matter the petitioner was not a permanent Principal yet he was entitled to a regular show cause notice against the charge brought and an opportunity to be heard as required by the regulations. The impugned order of termination thus was a mere camouflage and cannot be regarded in the circumstances as having been passed by the Managing Committee in the normal course. The District Inspector of Schools was in error in approving the termination in those circumstances.

9. But the Division Bench of the High Court took a contrary view. The first error in the judgment of the Division Bench lies in its observation :

Firstly, the order of termination is innocuous. It does not refer to any allegations or even to the report of the Manager.

10. It is seen from the letter dated June 30, 1969 by which the services of the appellant were terminated that the resolution of the Managing Committee dated April 27, 1969 is made a part of it by treating it as an enclosure to that letter. The resolution actually begins with a reference to the report of the Manager, and states that the facts contained in the report were 'serious' not in the interest of the institution". It further refers to the fact that the appellant was asked to give his explanation to the allegations made in the said report. That report stated :

It is also evident that the seriousness of the lapses is enough to justify dismissal but no educational institution should take that botheration.

11. The above report was the real foundation on which the decision of the Managing Committee was based. This is a case where the order of termination issued is merely a camouflage for an order imposing the penalty of termination of service on the ground of misconduct. Secondly, the Division Bench has tried to justify the action of the Management by observing that since the Management had to secure the approval of the District Inspector to its action, it was necessary for it to give its assessment of the work of the appellant as Principal and, therefore, "in the context of the statutory requirement, it cannot be said that merely because the Manager's report or the resolution of the Managing Committee refers to the various aspects of the assessment of the performance of the Principal in terms unfavorable to him, it would in law, amount to casting a stigma upon the Principal". It is difficult to engraft an exception of the above type to the well-settled rule that if the

order of termination carries a stigma, it has to fall to the ground unless it is preceded by an inquiry as contemplated by law. A reading of the letter of termination of the service and the resolution which forms part of that letter clearly shows that they bear a mark of disgrace or infamy and that the appellant is visited with evil consequences as explained in Parshotam Lal Dhingra case. The Division Bench, therefore, erred in holding that on the facts and in the circumstances of the case, the order of termination was an innocuous one and did not carry any stigma. The order of the Division Bench is, in our opinion, an unsustainable one and is liable to be set aside.

12. In the result, we allow this appeal, set aside the judgment of the Division Bench of the High Court and restore the judgment of the learned Single Judge. We hereby declare that the appellant continues to be in the service of the College. He is entitled to all the benefits flowing from this declaration including the salary and allowances as if there was no break in his service. The respondent College shall also pay the costs of this appeal to the appellant.

</html