



2026:AHC-LKO:25065

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 7914 of 2009

Suresh Bahadur Singh Kaushik S/O Late Sri
Shyam Singh

.....Petitioner(s)

Versus

The State Of U.P.Through Secretary Basic
Education And Others

.....Respondent(s)

Counsel for Petitioner(s) : Ravindra Pratap Singh, Ashish
Chaturvedi
Counsel for Respondent(s) : C.S.C., D.R.Misra, Rahul Shukla, Uday
Veer Singh

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Sri N.K. Seth, learned Senior Counsel assisted by Ms. Anveksha Shukla, learned counsel for the petitioner, Dr. Uday Veer Singh, learned counsel for Basic Education Officer - respondent No.3 and Sri Anil Kumar Chaubey, learned Standing Counsel for respondent - State.

2. By means of present writ petition, the petitioner is seeking writ of certiorari quashing the impugned order dated 30.10.2009 passed by respondent No.2 contained as Annexure-1 to the writ petition by which the petitioner has been reverted from the post of Assistant Teacher, Junior Basic School to the post of Assistant Teacher, Primary School.

3. Factual matrix of the case is that the petitioner was granted appointment as Assistant Teacher in Junior Basic School on 18.02.1987. An alleged complaint was lodged against him by Sri Rakesh Kumar Awasthi in regard to working of the petitioner as Journalist in the news paper. On the basis of complaint, the petitioner was suspended vide order dated 28.03.2009.

4. The inquiry committee issued a letter to the petitioner and the petitioner submitted reply to the same on 02.04.2009. The petitioner was issued show cause notice on 11.05.2009 and he submitted reply in pursuance thereof. In reply, he stated that provisions of U.P. Government Servant

(Conduct) Rules, 1956 are not applicable to the employees of Basic Education Department. An order was passed on 30.10.2009, whereby the petitioner has been reverted from the post of Assistant Teacher, Junior Basic School to the post of Assistant Teacher, Primary School.

5. Submission of learned Senior Counsel for the petitioner is that no charge sheet was served upon the petitioner in regard to charges levelled against him. He submitted that no date, time and place has been fixed for conducting oral hearing and to examine the complainant in the matter, therefore, his submission is that the entire proceeding vitiated with the vices of principles of natural justice.

6. He further submitted that the person who lodged the alleged complaint against the petitioner has given application supported by affidavit that the application does not bear his own signature and is a forged one. In case the complainant would have called for oral hearing, he would have submitted application along with affidavit denying the complaint lodged against the petitioner.

7. He next submitted that in pursuance to Government Order issued, which is annexed as Annexure RA1 & RA2, it has been provided that the complaint lodged against an employee should be verified by calling the person who has lodged the complaint and an affidavit should also be taken from him. He submitted that in the present case no such exercise was done by the disciplinary authority and in a very cursory manner the order was passed. He also submitted that the provisions of U.P. Government Servant (Conduct) Rules, 1956 are not applicable to the employees of Basic Education Department, therefore, the order impugned is illegal and is liable to be quashed. In support of his submissions, he placed reliance upon following judgments:

A) Tufail Ahmad Vs. State of U.P. and others; Neutral Citation No.2023:AHC-LKO:33572

B) Qaji Jamil Ahemad Vs. U.P.S.R.T.C., Lucknow and others; 2008 (26) LCD 1176.

8. On the other hand, learned counsel for respondent No.3 submitted that

the Government Order referred in Annexure 1 & 2 pertains to Grade A Employees, therefore, the same is not applicable. He further submitted that proper opportunity of hearing was provided to the petitioner while passing the impugned order.

9. He next submitted that the impugned order does not suffer from any infirmity or illegality and is just and valid. He submitted that the petitioner is discharging duty as whole time Journalist, therefore, the teaching work in the institution has affected, therefore, proceeding was initiated against him for taking disciplinary action.

10. Learned Additional CSC for respondent - State also adopted the same arguments, as advanced by learned counsel for respondent No.3.

11. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as law reports cited by learned Senior Counsel for the petitioner.

12. To resolve the controversy involved in the matter, relevant portion of the judgments relied upon are being quoted below:

A) Tufail Ahmad (Supra):

"5. The said order has been passed merely on the ground that in the suit filed by Merajunnisan certain admissions were made as such the action of the respondent was contrary to the Government Services Conduct Rules which prohibits bigamy and after considering the material on record, the order of termination came to be passed.

6. Learned counsel for the petitioner argues that the services of the petitioner are governed under Uttar Pradesh Basic Education (Teachers) Services Rules, 1981 (hereinafter referred to as "The Rules, 1981"). He argues that in terms of the said Rules, 1981, the appointment to be granted to the aspirant mandates the clarification of marital status, in fact the discretion is conferred upon the Board to grant the appointment to a person irrespective of his second marriage.

7. He thus argues that under the Rules, 1981, there is no bar on bigamy, he further argues that reliance on the U.P. Government Servant's Conduct Rules, 1956 (hereinafter referred to as "The Rules, 1956") is wholly unwarranted inasmuch as the said Rules, 1956 have never been adopted to the teachers employed under the U.P.

Basic Education and are solely governed by Rules, 1981. He further argues that even the factum of marriage of the petitioner was not established in view of the fact that the suit filed was dismissed in default.

8. On the other hand, learned counsel for the respondent no. 3 has tried to justify the order, however, he could not produce any material to demonstrate as to how the Rules, 1956 applicable to the U.P. Government Servants are applied to the teachers working with the U.P. Basic Education under the Rules, 1981.

9. The entire order is based upon the premise that the Rules, 1956 as applicable to U.P. Government Servants would apply to the teachers under U.P. Basic Education also and as the same prohibits bigamy, the petitioner was guilty of misconduct is faulty as the Rules, 1956 are not applicable to the teachers of U.P. Basic Education. In addition there to the Rule 12 of the Rules, 1981 does not prohibit the grant of employment to the person who has married twice, the order is clearly based upon misapplication of rules. Even otherwise, the factum of second marriage was disputed and not established in any Court of law as such the order dated 25.7.2019, which is Annexure -I to the petition is clearly unsustainable and is quashed."

B) Qaji Jamil Ahemad (Supra):

"9. The learned counsel for the opposite parties has placed before us the record pertaining to the enquiry proceedings. The record reveals that after submission of the charge-sheet, a reply was submitted by the petitioner and no witnesses were examined by the department to prove the charges mentioned in the charge-sheet. In the absence of any evidence being led by the department, the charges cannot be said to be proved or established. It also cannot be said that the delinquent officer associated in the enquiry proceedings. The enquiry was conducted by the enquiry officer in violation of the principle of natural justice. It is settled law that after a charge-sheet is given to a delinquent employee, an oral enquiry is a must-whether the employee requests for it or not.

10. In the instant case, no witnesses were examined by the department to prove the charges mentioned in the charge-sheet. We are of the view that it is no enquiry in the eyes of law as no date, time and place of enquiry was fixed by the enquiry officer. The impugned removal order and the order passed by the appellate authority are legally not sustainable. In the result, the writ petition succeeds and is hereby allowed. The impugned judgment and order dated 22.9.1995, passed by the State Public Services

Tribunal, Lucknow is hereby set aside and the impugned removal order dated 3.11.1989 and the order passed by the appellate authority dated 15.10.1990 are hereby quashed with all consequential benefits. A liberty is granted to the opposite parties to hold a fresh enquiry in accordance with law from the stage the reply was submitted by the petitioner to the charge-sheet. The consequential benefits will be subject to the outcome of fresh enquiry. Since the petitioner has already attained the age of superannuation, the opposite parties shall conclude the disciplinary proceedings expeditiously."

13. The first question to be taken into consideration is that whether Rakesh Kumar Awasthi made a complaint to the Chief Election Commission of India against some officer of District including District Magistrate, District Forest Officer and Station House Officer of Police Station Safderganj, District Barabanki and in the said complaint allegation was also made against the petitioner to the effect that he has set up some teachers in certain news paper in order to favour a particular political party. Name of the petitioner was also mentioned in one of the teachers working for news papers Swatantra Bharat and Janmorch and in pursuance thereof, respondent No.3 constituted an inquiry committee consisting of Deputy Basic Education Officer and the petitioner was suspended pending inquiry against him.

14. After submission of reply to the show cause notice, no date, time or place was fixed for oral inquiry and cross examination of witnesses relied upon, therefore, the inquiry proceeding vitiates in law and is not sustainable in the eyes of law.

15. In regard to applicability of Rules of 1956, reliance has been placed in the case of **Tufail Ahmad (Supra)**. On its perusal, it is transpired that entire order is based upon premise that the Rules, 1956 as applicable to U.P. Government Servants would apply to the teachers under U.P. Basic Education also. The same prohibits involvement in Journalism as involvement of the petitioner in journalism was guilty of misconduct.

16. In the said judgment, it has been held that Rules of 1956 are not applicable to the teachers of U.P. Basic Education. In addition there to the Rule 12 of the Rules, 1981 does not prohibit the grant of employment to

the person who is involved in journalism. Even otherwise, on the said basis, the impugned order was quashed by the Court.

17. In the case of **Qaji Jamil Ahemad (Supra)**, it has been held that due to non examination of witnesses to prove charges the Court was of the opinion that it is no inquiry in the eyes of law as no date, time and place of inquiry was fixed by the inquiry officer, therefore, the impugned order of removal was set aside holding that it is violation of principles of natural justice.

18. While dictating the judgment, learned Senior Counsel for the petitioner pointed out that on attaining the age of superannuation, the petitioner has retired from service on 31.03.2020.

19. In view of fact came while dictation of judgment, the petitioner cannot be restored as Assistant Teacher in Junior Basic School. The only remedy available to him is to provide consequential benefits of the post in case he was to be retained as Assistant Teacher, Junior Basic School, therefore, on the facts and circumstances and reasons recorded above, the impugned order dated 30.10.2009 is hereby quashed.

20. The writ petition succeeds and is **allowed**.

21. However, direction is issued to the respondent - District Basic Education Officer to treat the petitioner as Assistant Teacher, Junior Basic School w.e.f. 28.03.2009 till date of retirement with a further direction to ensure payment of salary and arrears of the post till 31.03.2020, forthwith.

(Irshad Ali,J.)

April 9, 2026
Adarsh K Singh