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(Judgment reserved on 21.01.2020)

(Judgment delivered on 06.05.2020)

In Chamber**Case :-** WRIT - A No. - 909 of 2020**Petitioner :-** C/M Janta Inter College And Another**Respondent :-** State Of U.P. And 3 Others**Counsel for Petitioner :-** J.P.N. Singh**Counsel for Respondent :-** C.S.C., Arvind Srivastava Iii**Hon'ble Surya Prakash Kesarwani, J.**

1. Heard the learned counsel for the petitioner, learned standing counsel for the State respondents and the learned counsel for the respondent no. 4.

2. Briefly stated facts of the present case are that the respondent no. 4 is an Officiating Principal in Janta Inter College, Ahmadpur, Brahman, Saharanpur. From the averments made in paragraphs 4 & 5 of the writ petition, it appears that there are two rival groups in Committee of Management. One such group is led by the petitioner no. 2. It appears that a Writ-C No. 25966 of 2019 was filed by the Committee of Management in which an order dated 13.9.2019 was passed by this Court directing that the petitioners shall publish an election notification forthwith announcing the election programme and the District Inspector of Schools shall appoint an election observer whenever a demand is made by the petitioner and the election shall be held as per election programme.

3. In the aforementioned facts, it appears that the petitioners issued notices to the respondent No.4 dated 24.10.2019 and 24.10.2019 followed by reminders dated 11.11.2019 and 26.11.2019 making allegations of misbehavior (indiscipline) and use of vulgar words against the Manager. The respondent no. 4 submitted a reply dated 24.10.2019 denying the allegations and submitted that he made the request to the

Manager to sign the salary bill of teachers and non teaching staff for the months of September and October, 2019 which was not signed till 23.10.2019 and after persuasion and on request of the Deputy Manager, it was signed by the Manager. He also submitted that if the request so made has been felt otherwise by the Manager in any way, then he submits apology. He also submitted that on 22.10.2019, he was on election duty.

4. The aforesaid notices dated 24.10.2019 and 11.11.2019 issued by the petitioners to the respondent No.4 are confined only on two points; **firstly** the allegation of misbehaviour (indiscipline) by the respondent no. 4 for getting signature on salary bills and **secondly** absence on 22.10.2019 and use of vulgar words.

5. The notice dated 11.11.2019 issued by the petitioners to the respondent no. 4 is reproduced below:-

“प्रेषक, सेवा में,

प्रबन्धक प्रधानाचार्य

जनता इण्टर कालेज जनता इण्टर कालेज

अहमदपुर ब्राह्मण, पो0 अलीपुरा(सहारनपुर) अहमदपुर ब्राह्मण,स0पुर

जनपद कोड-16 विद्यालय संख्या:-1015



पत्रांक-जे0ए0बी0 / प्र0स0-210-75 / 2019-20

दिनांक 11-11-2019

द्वितीय नोटिस

विषय:- आप द्वारा दिनांक 23.10.2019 को अनुशासनहीनता अभद्रता के सम्बन्ध में।

उपर्युक्त विषयक द्वितीय नोटिस के माध्यम से आपको सूचित किया जा रहा है कि दिनांक 24.10.2019 को पत्र संख्या जे0ए0बी0 / प्र0स0 / 262-67 / 2019-20 के द्वारा आपसे अनुशासनहीनता, अभद्रता एवं अपशब्दों का प्रयोग किये जाने के सम्बन्ध में स्पष्टिकरण मांगा गया था जिसके लिए आपको एक सप्ताह का समय दिया गया था। परन्तु आपने इसके सम्बन्ध में आज तक भी कोई स्पष्टिकरण नहीं दिया। जिससे प्रतीत होता है कि आप आदेशों की अवहेलना कर रहे हैं। (दिनांक 24.10.2019 को किये गये स्पष्टिकरण की छायाप्रति पत्र के साथ संलग्न है।)

अतः आपको इस नोटिस के माध्यम से पुनः सूचित किया जा रहा है कि

दिनांक 24.10.2019 को मांगे गये स्पष्टिकरण का जवाब पत्र प्राप्त के पांच दिन के अन्दर प्रस्तुत करें। अन्यथा की स्थिति में आपके विरुद्ध अनुशासनात्मक कार्यवाही करने के लिए मुझे बाध्य होना पड़ेगा जिसके लिए आप पूर्णतया उत्तरदायी होंगे।

संलग्नक:- उपरोक्तानुसार

भवदीय
डा० विजय कुमार शर्मा (प्रबन्धक)
जनता इण्टर कालेज अहमदपुर ब्राह्मण
सहारनपुर

पत्रांक:-जे०ए०बी० / प्र०स०-2019-20

दिनांक तदैव

प्रतिलिपि:- निम्नवत् सभी की सेवा में सूचनार्थ प्रेषित।

1. श्रीमान आयुक्त मण्डल, सहारनपुर।
2. जिलाधिकारी महोदय, सहारनपुर।
3. संयुक्त शिक्षा निदेशक सहारनपुर मण्डल, स०पुर।
4. जिला विद्यालय निरीक्षक, सहारनपुर।

डा० विजय कुमार शर्मा (प्रबन्धक)
जनता इण्टर कालेज अहमदपुर ब्राह्मण
सहारनपुर”

6. It is the case of the petitioners that the Committee of Management by resolution dated 12.12.2019 has suspended the respondent no. 4 and issued a suspension order dated 13.12.2019 informing the respondent no. 4 that he has been suspended with immediate effect.

7. The petitioners sent a letter dated 13.12.2019 to the District Inspector of Schools for approval of suspension of the respondent no. 4 which is reproduced below:-

“प्रेषक, सेवा में,

प्रबन्धक श्रीमान जिला विद्यालय निरीक्षक
जनता इण्टर कालेज सहारनपुर
अहमदपुर ब्राह्मण, पो० अलीपुरा(सहारनपुर)
जनपद कोड-16 विद्यालय संख्या:-1015



पत्रांक-जे०ए०बी० / प्र०स०-305-06 / 2019-20

दिनांक 13-12-2019

विषय:- कार्यवाहक प्रधानाचार्य श्री राममित्र मिश्र के निलम्बन का अनुमोदन दिये जाने के सम्बन्ध में।

महोदय,

सूचनार्थ निवेदन है कि इस विद्यालय के कार्यवाहक प्रधानाचार्य श्री राममित्र मिश्र द्वारा की गई अनुशासनहीनता, दुराचरण एवं अन्य कारणों से प्रबन्ध समिति ने अपनी बैठक दिनांक 12-12-2019 के प्रस्ताव सं०-02 के द्वारा श्री राममित्र मिश्र, कार्य० प्रधानाचार्य को निलम्बित कर दिया है।

अतः आवश्यक पत्राजात संलग्न करते हुए अनुरोध करना है कि निलम्बन का अनुमोदन प्रदान करने की कृपा करें। आपकी अति कृपा होगी।

संलग्नक:- निम्नानुसार प्रेषित हैं।

1. श्री राममित्र मिश्र, कार्य० प्रधानाचार्य के निलम्बन पत्र की छायाप्रति।
2. श्री राममित्र मिश्र, कार्य० प्रधानाचार्य के स्पष्टिकरण की छायाप्रति।
3. साक्ष्य की सी०डी०।
4. श्री राममित्र मिश्र, कार्य० प्रधानाचार्य के विरुद्ध अनुशासनहीनता, दुराचरण आदि के सम्बन्ध में छात्र/छात्राओं, अध्यापक/कर्मचारियों व अन्य से पूर्व में प्राप्त शिकायती पत्रों की छायाप्रतियां।
5. एजेण्डे की प्रमाणित छायाप्रति।
6. दिनांक 12.12.2019 की बैठक की कार्यवाही की प्रमाणित छायाप्रति।
7. प्रस्ताव की सत्य प्रतिलिपि।

प्राप्त
16.12.2019



प्रबन्धक
डा० विजय कुमार शर्मा (प्रबन्धक)
जनता इण्टर कालेज अहमदपुर ब्राह्मण
सहारनपुर”

8. By the impugned order dated 4.1.2020, the District Inspector of Schools, Saharanpur disapproved the suspension of the respondent no. 4. Aggrieved with this order, the petitioners have filed the present writ petition.

Submissions:-

9. Learned counsel for the petitioners submits that the **impugned order dated 4.1.2020 has been passed by the respondent without affording opportunity of hearing to the Committee of Management.** He relied upon two Division Bench judgments of this Court in ***Committee of Management of Maharajganj Inter College Vs. District Inspector of Schools, Maharajganj (1999) 3 UPLBEC 1765*** and ***Hari Singh Rajpoot Vs. State of U.P. (2015) 2 UPLBEC 1362***. He further

submits that before disapproving the suspension, it was mandatory by the respondent no. 3 under Section 16(G)(7) of the U.P. Intermediate Education Act to afford an opportunity of hearing to the Committee of Management. Thus, the impugned order of disapproval is in breach of principles of natural justice, and therefore, deserves to be quashed.

10. **Learned counsel for the respondent no. 4 submits** that there is a serious dispute between two rival groups of Committee of Management. He submits that the resolution was defective inasmuch as only seven members have passed the alleged resolution dated 12.12.2019 whereas on the same day eight members of the Committee of Management passed another resolution. An Enquiry Officer was appointed by the District Inspector of Schools who inquired into the matter and submitted a report to the District Inspector of Schools, Saharanpur that there is serious dispute between two rival groups of Committee of Management. He submits that the impugned resolution is merely a paper work and it was technically defective as observed in the impugned order, and therefore, the impugned order cannot be said to suffer from any error of law. He further submits that the other technical defect was that the resolution was not in accordance with Regulation 39 Chapter III framed under the U.P. Intermediate Education Act, 1921.



Discussion and Findings:-

11. I have carefully considered the submissions of learned counsels for the parties.

12. The relevant provisions having bearing on the controversy involved in the present writ petition are the provision of sub sections 5, 6, 7 & 8 of Section 16(G) of the U.P. Intermediate Education Act, 1921 (herein after referred to as the Act '1921') and Regulation 39 of Chapter III of the Regulations framed under the Act 1921 which are reproduced

below:.

“Section-16(G)

(5) *No Head of Institution or teacher shall be suspended by the management, unless in the opinion of the management--*

(a) the charges against him are serious enough to merit his dismissal, removal or reduction in rank; or

(b) his continuance in office is likely to hamper or prejudice the conduct of disciplinary proceedings against him; or

(c) any criminal case for an offence involving moral turpitude against him is under investigation, inquiry or trial.

(6) *Where any Head of Institution or teacher is suspended by the Committee of Management, it shall be reported to the Inspector within thirty days from the date of the commencement of the Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975, in case the order of suspension was passed before such commencement, and within seven days from the date of the order of suspension in any other case, and the report shall contain such particulars as may be prescribed and be accompanied by all relevant documents.*

(7) *No such order of suspension shall, unless approved in writing by the Inspector, remain in force for more than sixty days from the date of commencement of the Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975, or as the case may be, from the date of such order, and the order of the Inspector shall be final and shall not be questioned in any Court.*

(8) *If, at any time, the Inspector is satisfied the disciplinary proceedings against the Head of the Institution or teacher are being delayed, for no fault of the Head of the Institution or the teacher, the Inspector may, after affording opportunity to the management to make representation to revoke an order of suspension passed under this section.”*

Regulation 39-



(a) The report regarding the suspension of the head of institution or of the teacher to be submitted to the Inspector under sub-section 6 of Section 16-G shall contain the following particulars and be accompanied by the following document-

(a) the name of the persons suspended along with, particulars of the)posts including grades) held by him since the date of his original appointment till the time of suspension including particulars as to the nature of tenure held at the time of suspension, e.g., temporary permanent or officiating;

(b) a certified copy of the report on the basis of which such person was last confirmed or allowed to cross efficiency bar, whichever later;

(c) details of all the charges on the basis of which such person was suspended;

(d) certified copies of the complaints, reports and inquiry report, if any, of the inquiry officer on the basis of which such person was suspended;

(e) certified copy of the resolution of the Committee of Management suspending such person;

(f) certified copy of the order of suspension issued to such persons;

(g) in case such person was suspended previously also, details of the charges, on which and the period for which he was suspended on previous occasions accompanied by certified copies of the orders on the basis of which he was reinstated.

(2) An employee other than a head of institution or a teacher may be suspended by the appointing authority on any of the grounds specified in Clauses (a) to (c) of sub-section (5) of Section 16-G.”

[(3) उप-विनियम (2) के अन्तर्गत निलम्बन का कोई आदेश प्रभाव में नहीं रहेगा, जब तक कि ऐसे आदेश के दिनांक से साठ दिन के भीतर निरीक्षक द्वारा इसका लिखित रूप में अनुमोदन न कर दिया जाय।”



13. In the case of the Managing Committee, Dayanand Inter College,

Gorakhpur (through Sri Uma Shankar, Manager) and another vs. The District Inspector of Schools and others, 1980 UPLBEC 168 (paras 4, 6, 10, 11 and 17), a Division Bench of this court has observed that **no opportunity of hearing is required at the time of approval or disapproval** of a resolution under Section 16(G)(7) of the Act, 1921. It **held as under:**

“10. We are hence inclined to read in sub-section (7) the power of Inspector to disapprove the order of suspension. **In our opinion, the power of approval embraces within it the power to also disapprove.** This is a well understood rule of general law. The principle underlying Section 16 of the U.P. General Clauses Act would also, in our view, apply. In this connection, we may usefully refer to the decision of the Federal Court in *Rayarappan v. Madhavi Amma* (A.I.R. 1950 F.C. p.140)

17. In regard to the next submission of the learned counsel that in absence of any opportunity having been afforded to the management, the impugned order against respondent no.3 would stand vitiated in law. Here again we are unable to agree. In view of our analysis of the provisions above, **we are clearly of the view that at the stage where the Inspector considers the question of approval or disapproval of the order of suspension**, the management, apart from the requirement of sending the report containing particulars as may be prescribed and the relevant documents, **it has in law no right to be afforded an opportunity as contemplated in sub-section (8).** The present was not a case of revocation of an already approved order of suspension.”

(Emphasis supplied by me)

14. In the case of **Committee of Management of Maharajganj Inter College & another Vs. District Inspector of Schools, Maharajganj & another (1999) 3 UPLBEC 1765**, a Division Bench judgment of this Court considered a case **where on receipt of papers for approval of suspension of the Principal, the District Inspector of Schools**



received objections of the Principal and without examining the papers submitted by the Committee of Management along with the resolution, declined to approve the suspension relying upon the letter addressed to him by the Principal. On such facts, the Division Bench quashed the order of disapproval passed by the District Inspector of Schools and remitted back the matter to him to decision afresh. The Division Bench held as under:-



*“In fact, the question was not examined by the learned single Judge in the above perspective and instead the learned single Judge dismissed the writ petition holding that while considering the approval or disapproval of suspension order, no opportunity of hearing was required to be given by the District Inspector of Schools. It is true that a Division Bench of this Court has held in the case of *Managing Committee, Dayanand Inter College v. District Inspector of Schools and others*, 1980 UPLBEC 168, that at the stage of approval or disapproval of the suspension order, the Inspector is not required to afford any opportunity of hearing to the management and that he is only to consider the relevant material referred to in Registration No. 39 of Chapter III of the Regulations. The said decision, in our opinion, is of no avail. In the instant case, however, as pointed out above, the District Inspector of Schools did not address himself to the charges and the relevant documents and disapproved the suspension order on the basis of the representation made by the teacher concerned. If the suspension is to be disapproved on consideration of any defect pointed out by the concerned teacher by means of a representation, opportunity has to be afforded to the Management before disapproving of the suspension on any such defect in the proceedings.”*

(Emphasis supplied by me)

15. In the case of *Hari Singh Rajpoot Vs. State of U.P. (2015) 2 UPLBEC 1362* (paragraphs 4, 6 & 8) a Division Bench of this Court

held as under:-



“4. When the District Inspector of Schools considers whether to approve an order of suspension under Section 16-G of the Act, it is a well settled principle of law that an opportunity of being heard ought to be granted to the teacher, the Principal and the Management. Moreover, it is also a well settled principle of law that the District Inspector of Schools must pass a reasoned order indicating at least **brief reasons for granting his approval or, as the case may be, disapproval to the suspension of a teacher** (See: Committee of Management, Maharajganj Inter College Vs. District Inspector of Schools, 1999 (3) UPLBEC 1765. **In the present case, ex facie the order of the District Inspector of Schools dated 9 December 2014, which was in question before the learned Single Judge, did not indicate any reasons.**

6. We have duly perused the order of the District Inspector of Schools dated 9 December 2014. The first paragraph of the order contains only a recital of the fact that following **the enquiry report, the Management had resolved on 16 November 2014 to place the appellant teacher under suspension and, accordingly, an application was submitted on 4 December 2014 for approval.** The second paragraph of the order only contains his conclusion granting approval. **Not even brief reasons were indicated in the order,** which is totally bereft of any reasons whatsoever. Moreover, it is not in dispute that the **appellant was not given an opportunity of being heard,** which has been held to be required in the judgment of the Division Bench noted above.

8. For these reasons, we allow the special appeal and set aside the impugned judgment and order of the learned Single Judge dated 9 February 2015. We set aside, in consequence, the order of approval granted by the **District Inspector of Schools on 9 December 2014 and direct that the District Inspector of Schools shall pass a fresh order in accordance with law after furnishing to the appellant a reasonable opportunity of being**

heard. We however, decline to accede to the prayer of the appellant that the appellant should be reinstated in service pending a decision by the District Inspector of Schools.”



(Emphasis supplied by me)

16. In the case of **Ram Autar Verma vs. State of U.P. (2006) 65 ALR 592 (All) (Para-11)**, a bench of this court considered the provisions of Section 16G(7) of the Act and Regulation 39 and held as under:-

“By necessary corollary the District Inspector of Schools is required to consider the approval of the suspension effected by the Management in the light of the documents which are so forwarded to him under Regulation 39. He is not expected to take into consideration any other documents which is not required to be transmitted under Regulation 37, subject however to the condition that any other document may be filed by the delinquent employee for alleging malafides, non-consideration of martial evidence which may already be on record as well as any other document relevant (the list is not exhaustive and may vary in facts of particular case). **However, consideration of such foreign documents must be proceeded by opportunity of hearing to the Committee of Management.”**

17. A careful reading of Section 16G(7) of the Act, 1921 read with Regulations 39 and 40 leads to an irresistible conclusion that where any head of the Institution or teacher is suspended by the Committee of Management, it shall be reported to the Inspector within seven days from the date of order of suspension. The report sent by the Committee of Management shall contain such particulars and shall be accompanied with such documents as are prescribed in Regulation 39. The order of suspension is subject to approval of the inspector under sub-Section (7). Neither sub-section (7) of Section 16G nor Regulation 39 require any

opportunity of hearing to the Committee of Management or the employee for approval of the order of suspension. However, the question of affording opportunity of hearing either to the Committee of Management or the suspended employee has been judicially interpreted by three Division Benches of this Court as mentioned in paragraphs-13, 14 and 15 above. At first glance, there appears to be some conflict between these judgments on the point of affording opportunity of hearing but on deeper examination, I find that there is no conflict between these judgments.

18. In the case of **the Managing Committee, Dayanand Inter College, Gorakhpur** (supra), the Division Bench held that where the report and papers as required under Sub-section (7) of Section 16G of the Act, 1921 read with Regulation 39 of the regulation are sent by the Committee of Management, then at that stage while considering the question of approval or disapproval of the order of suspension, no opportunity of hearing is to be afforded to the Committee of Management. In the case of **Committee of Management of Maharajganj Inter College & another** (supra), the Division Bench considered a case where the District Inspector of Schools received objections of the Principal and without examining the papers submitted by the Committee of Management along with the resolution, declined to approve the suspension relying upon the letter addressed to him by the Principal, then in that situation, the Division quashed the order of disapproval and distinguished the Division Bench judgment in the case of **the Managing Committee, Dayanand Inter College, Gorakhpur** (supra) and held that **if the suspension is to be disapproved on consideration of any defect pointed out by the concerned teacher by means of a representation, then an opportunity has to be afforded to the Management before disapproving of the suspension.**



19. In the case of **Hari Singh Rajpoot Vs. State of U.P.** (supra), the Division Bench laid down the law that while granting approval or disapproval to the suspension of a teacher, brief reasons should be recorded in the order of approval or disapproval. The judgment in the case of **the Managing Committee, Dayanand Inter College, Gorakhpur** (supra) was noticed in the case of **Committee of Management of Maharajganj Inter College & another** (supra) and it was distinguished inasmuch as an objection was received by the District Inspector of Schools from the suspended employee and on that fact, it was held that while considering the objection of the suspended employee, the Inspector should have afforded opportunity of hearing to the Management. The aforesaid judgment in the case of **Committee of Management of Maharajganj Inter College & another** (supra) has been followed in the case of **Hari Singh Rajpoot Vs. State of U.P.** (supra).

20. Scope of consideration under Section 16G(7) read with Regulation 39 is very limited as has also been explained in the case of Ram Autar Verma (supra). Thus, a conjoint reading of the afore-noted four judgments reveal that **if all the required papers and informations as prescribed under sub-section (7) of Section 16G of the Act, 1921 and Regulation 39 have been submitted by the Management to the District Inspector of Schools to obtain approval of suspension, then opportunity of hearing at the stage of granting approval or disapproval is not required to be afforded to the Management or the employee. But if the employee has submitted any representation or objection against the order of suspension, then the District Inspector of Schools shall afford an opportunity of hearing to the Management and the concerned employee while passing the order of approval or disapproval which must contain brief reasons.** This view is further supported by the provisions of sub-Section (8) of Section 16G, which



specifically provides for an opportunity of hearing at the subsequent stage to the Management by the District Inspector of Schools while considering to revoke an order of suspension passed under sub-section (7) when the Inspector is satisfied that the disciplinary proceedings against the head of the Institution or teacher, is being delayed for no fault of the head of the Institution or the teacher.

21. Undisputedly, the respondent No.3 has neither required the respondent No.4 to submit any objection nor any objection was submitted by the respondent No.4 before the respondent No.3 and as such in view of the law laid down by the Division Bench in the case of **the Managing Committee, Dayanand Inter College, Gorakhpur** (supra), the respondent No.4 has not committed any manifest error of law to pass the impugned order without affording opportunity of hearing to the Management and the respondent No.4.

22. Learned counsel for the petitioners has not made any submission on merits of the impugned order and confined his submissions only on the point that the impugned order is violative of principles of natural justice as it has been passed without affording opportunity of hearing. His submission has been rejected by me for reasons stated in paragraphs above. Therefore, I do not find any good reason to interfere with the impugned order, in view of the position settled by the Division Bench of this court in the case of **the Managing Committee, Dayanand Inter College, Gorakhpur** (supra). However, to meet the ends of justice, it is directed that the petitioners/ Competent Authority shall conclude the disciplinary proceedings against the respondent No.4, in accordance with law, expeditiously preferably within two months if not completed so far, keeping in mind the time frame provided in Regulation 40.

23. With the aforesaid directions, **the writ petition is disposed off.**

Order Date :- 06.05.2020

NLY

